IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, Plaintiff, v. CITY OF PITTSBURGH, PITTSBURGH BUREAU OF POLICE, and DEPARTMENT OF PUBLIC SAFETY, Defendants.	)	97 0354 CIVIL NO. _____

COMPLAINT

The United States brings this action under 42 U.S.C. § 14141 to remedy a pattern or practice of conduct by law enforcement officers of the Pittsburgh Bureau of Police that deprives persons of rights, privileges, and immunities secured and protected by the Constitution and laws of the United States. The City of Pittsburgh, the Pittsburgh Bureau of Police, and the Department of Public Safety have engaged in a pattern or practice of subjecting individuals to uses of excessive force, false arrests, and improper searches and seizures. The defendants have tolerated this conduct through their failure to supervise, train, investigate, and discipline police officers adequately.

The United States of America alleges:

DEFENDANTS

1. The City of Pittsburgh ("City") is a municipality in the Commonwealth of Pennsylvania.

2. The Pittsburgh Bureau of Police ("Bureau" or "PBP") is a law enforcement agency operated by the City.

3. The Department of Public Safety ("DPS") is a government agency operated by the City, which oversees the Bureau and other agencies operated for the safety of persons in Pittsburgh.

JURISDICTION AND VENUE

4. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331 and 1345.

5. The United States is authorized to initiate this action pursuant to 42 U.S.C. § 14141.

6. Venue is proper in the Western District of Pennsylvania pursuant to 28 U.S.C. § 1391, as the defendants reside in and the claim arose in the Western District of Pennsylvania.

FACTUAL ALLEGATIONS

7. From at least 1990 to the present, PBP officers have engaged and continue to engage in a pattern or practice of using excessive force against persons in Pittsburgh. This use of excessive force includes, but is not limited to:

a. use of excessive force in effecting arrests or detaining persons suspected of engaging in criminal activity;

b. use of excessive force against individuals in police custody (including persons handcuffed or otherwise physically restrained);

c. use of excessive force in otherwise routine encounters with citizens; and

d. use of force after unnecessarily escalating ordinary encounters with citizens into violent confrontations.

8. From at least 1990 to the present, PBP officers have engaged and continue to engage in a pattern or practice of falsely arresting persons in Pittsburgh. These false arrests include, but are not limited to:

a. falsely arresting persons who witness incidents of violent police misconduct, who threaten to report incidents of police misconduct, or who seek to collect evidence of police misconduct;

b. falsely arresting persons who try to prevent incidents of police misconduct from occurring;

c. falsely arresting persons who challenge the authority of PBP officers; and

d. falsely arresting persons for summary offenses without warrants where such arrests are not authorized by either City ordinance or state statute.

9. From at least 1990 to the present, PBP officers have engaged and continue to engage in a pattern or practice of improperly stopping, searching, and seizing persons in Pittsburgh. These actions include, but are not limited to:

a. improperly stopping and detaining persons without lawful authority;

b. improperly searching cars incident to a traffic stop without lawful authority;

c. improperly searching dwellings or places of business without lawful authority; and

d. improperly seizing property of persons arrested by PBP officers without lawful authority for such seizures.

10. The acts or omissions of PBP officers, described in paragraphs 7-9, above, constitute a pattern or practice of such conduct by law enforcement officers.

11. The municipal defendants have tolerated the acts of individual officers, described in paragraphs 7-9, above, through its acts or omissions. These acts or omissions include, but are not limited to:

a. failing to train adequately PBP officers to prevent the occurrence of misconduct;

b. failing to supervise adequately PBP officers to prevent the occurrence of misconduct;

c. failing to monitor adequately PBP officers who engage in or who are likely to engage in misconduct;

d. failing to investigate adequately citizen complaints of police misconduct; and

e. failing to discipline adequately PBP officers who engage in misconduct.

CAUSE OF ACTION

12. Through the actions described in paragraphs 7-11 above, the municipal defendants have engaged in and continue to engage in a pattern or practice of conduct by PBP officers that deprives persons in Pittsburgh of rights, privileges, or immunities secured and protected by the Constitution (including the Fourth and Fourteenth Amendments) or the laws of the United States in violation of 42 U.S.C. § 14141.

PRAYER FOR RELIEF

13. The Attorney General is authorized under 42 U.S.C. § 14141 to seek declaratory and equitable relief to eliminate a pattern or practice of law enforcement officer

conduct that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

WHEREFORE, the United States prays that the Court:

a. declare that the municipal defendants have engaged in a pattern or practice by PSP officers of depriving persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, as described in paragraphs 7-11, above;

b. order the municipal defendants to refrain from engaging in any of the predicate acts forming the basis of the pattern or practice of conduct as described in paragraphs 7-11, above;

c. order the municipal defendants to adopt and implement policies and procedures to prevent PSP officers from depriving persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States; and

d. order such other appropriate relief as the interests of justice may require.

Respectfully submitted,

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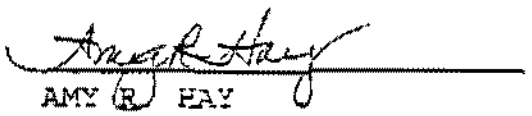

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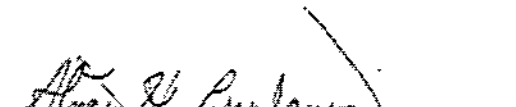

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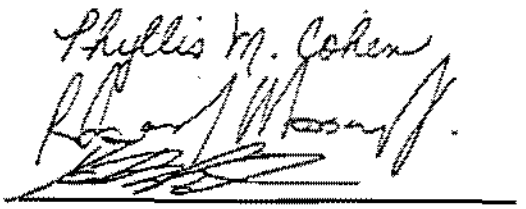

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(3)

CONSENT DECREE

INTRODUCTION

1. The United States brings this action to enforce Section 210401 of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141. The United States alleges that there is a pattern or practice of conduct by law enforcement officers of the Pittsburgh Bureau of Police that deprives persons of rights, privileges, and immunities secured and protected by the Constitution and laws of the United States.

2. The defendants in this action, collectively hereinafter the "City", are the City of Pittsburgh, a municipality in the Commonwealth of Pennsylvania; the Pittsburgh Bureau of Police ("PBP"), a law enforcement agency operated by the City of Pittsburgh; and the Department of Public Safety

("DPS"), a government agency operated by the City of Pittsburgh, which oversees the PBP and other agencies operated for the safety of persons in Pittsburgh.

3. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331 and 1345. The United States is authorized to initiate this action pursuant to 42 U.S.C. § 14141. Venue is proper in the Western District of Pennsylvania pursuant to 28 U.S.C. § 1391.

4. The City denies any and all allegations advanced by the United States. The City acknowledges that allegations have been advanced against the City relating to the City's management systems for training, misconduct investigations, supervision, and discipline. The City denies such allegations, however, the parties agree that the manner and means for avoiding such claims is to achieve and maintain the best available practices and procedures for police management.

5. The parties enter into this Decree jointly and for the exclusive purpose of avoiding the risks and burdens of litigation.

6. This Consent Decree resolves all claims in the United States' Complaint under 42 U.S.C. § 14141, and resolves any

claims the United States may have regarding a pattern or practice of racial discrimination that could have been raised at this time under 42 U.S.C. § 14141 or 42 U.S.C. § 3789d.

7. Nothing in this Consent Decree shall constitute or be construed as an acknowledgment, agreement, admission, statement or evidence of liability of the City under 42 U.S.C. § 14141 or 42 U.S.C. § 3789d, nor shall the Consent Decree constitute or be construed as an acknowledgment, agreement, admission, statement or evidence of any violation of applicable law or of the existence of a pattern or practice of conduct by law enforcement officers of the City that deprives persons of rights, privileges, and immunities secured or protected by the Constitution and laws of the United States. Nothing in this Consent Decree shall constitute or be construed as an acknowledgment, agreement, admission, statement or evidence that the management system and/or systems employed by the City prior to execution of this Consent Decree were in any manner inadequate, unconstitutional or constituted deliberate indifference of the City within any context, and in particular, within the context of 42 U.S.C. § 1983 or 42 U.S.C. § 14141. Nothing in this Consent Decree shall be construed to impair the right of any person or organization to seek relief against the City for its conduct or the conduct of its law

enforcement officers. Nothing in this Decree is intended to alter the collective bargaining agreement between the City and the Fraternal Order of Police, Fort Pitt Lodge No. 1.

8. The City hereby reaffirms and acknowledges its obligation to discourage activity by City law enforcement officers which deprives persons of rights, privileges, and immunities secured and protected by the Constitution and laws of the United States.

9. This Consent Decree shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications, oral or written, or prior drafts shall be relevant or admissible for purposes of determining the meaning of any provisions herein in any litigation or any other proceeding.

10. The City, by and through its officials, agents, employees, and successors are enjoined from and shall not engage in a pattern or practice of conduct by law enforcement officers of the PBP that deprives persons of rights, privileges, and immunities secured and protected by the Constitution and laws of the United States.

11. The following definitions apply to this Decree:

a. The term "body cavity search" means any search

involving the visual inspection or the internal physical examination of body cavities or organs such as the stomach cavity.

b. The term "complaint history" means a summary of all misconduct complaints filed against a particular officer since 1986 and a summary, with a narrative description of the allegations, of lawsuits filed involving the officer as maintained in the automated early warning system described in Paragraph 12 below.

c. The terms "document" and "record" shall be interpreted to include "writings and recordings" as defined by Federal Rules of Evidence Rule 1001(1).

d. The term "field training officer" or "FTO" means an experienced police officer whose responsibilities include providing on the job training and supervision of probationary police officers and continual training of all police officers.

e. The terms "police officer" or "officer" means any law enforcement officer employed by the PBP, including supervisors and senior supervisors.

f. The term "serious injury" means any injury that results in death or that the City has reason to know requires or results in professional medical care or treatment.

g. The term "strip search" means any search of an individual requiring the removal or rearrangement of some or all clothing to permit the visual inspection of

genitals, anus, breasts, buttocks, or undergarments.

h. The terms "supervisor" and "senior supervisor" mean a management or non-management police officer with oversight responsibility for other officers. The term "supervisor" shall include sergeants, lieutenants, and other officers with similar responsibilities. The term "senior supervisor" includes commanders, assistant chiefs, deputy chiefs, the Chief, and other officers with similar responsibilities.

i. The term "zone" means a geographic subdivision of the City of Pittsburgh used by the PBP to delineate jurisdiction among police stations.

MANAGEMENT AND SUPERVISION

12. The United States acknowledges that the City has taken steps to establish a database containing relevant information about its officers, as well as a statistical model to identify and modify the behavior of problem officers (also known as an "early warning system"). The City shall have an automated early warning system in place and operational within twelve (12) months of entry of this Decree.

a. The City's automated early warning system shall collect and record, at a minimum, the following information about an officer: officer name and badge number; citizen complaints, including textual descriptions of the allegations and all fields entered by the City of

Pittsburgh Office of Municipal Investigations ("OMI") described in Paragraph 44; hit and non-hit officer-involved shootings; commendations and other indicia of positive performance; discipline imposed and related file numbers; all training, reassignments, transfers and mandatory counseling; status of any administrative appeals or grievances; a detailed description of all criminal investigations of possible officer misconduct; a detailed description of all civil or administrative claims filed against the City arising from PBP operations; a description of all other civil claims or suits that the officer is a named party to involving allegations of untruthfulness, physical force, racial bias, or domestic violence; a description of all lawsuits filed against the City, the PBP, or its officers arising from PBP operations; all arrests with the location of each arrest, the race of each arrestee, and the code violation(s); and searches and seizures as documented in the search and seizure reports described in Paragraph 15; use of force as documented in the use of force reports described in Paragraph 15; and traffic stop information documented in the reports described in Paragraph 16.

b. The City's automated early warning system shall have, at a minimum, the capability to retrieve information in the following categories: individual officer; squad,

zone, shift, or special unit; arrests by officer(s) and types of arrests to determine the number of times a particular officer or groups of officers have filed discretionary charges of resisting arrest, disorderly conduct, public intoxication, or interfering with the administration of justice.

c. Data regarding an officer shall be maintained in the automated early warning system during that officer's employment with the PBP and for three (3) years after the officer leaves the PBP. Data regarding an officer that is removed from the automated early warning system shall be maintained in an archive indefinitely. The City shall input all data from the OMI database and all other available data into the automated early warning system for the three years prior to the entry of this Decree.

d. Within four (4) months of the entry of this Decree, the City shall develop a written protocol governing the use of the automated early warning system. This protocol shall specify, at a minimum: (i) the numbers and types of incidents per officer requiring review by senior supervisors, the frequency of these reviews, and the follow-up actions to be taken by PBP senior supervisors based on information in the automated early warning system (including meeting with the officer and recommending appropriate remedial training, counseling,

transfer, or re-assignment); (ii) re-training and re-certification requirements; (iii) confidentiality and security provisions; and (iv) quality assurance checks of data input. The City shall provide this protocol to the United States for review and approval at least 30 days prior to its implementation. If the parties are unable to agree on a written protocol, the auditor described in Paragraph 70 shall have final authority to determine the protocol.

e. Until full implementation of the automated early warning system, the City shall continue to identify for review all officers with three or more complaints of misconduct. Such review shall be documented and result, where appropriate, in re-training, counseling, transfer or reassignment.

13. The City shall develop and implement a use of force policy that is in compliance with applicable law and current professional standards. Prior to the implementation of such policy, the City shall provide the United States an opportunity to review the proposed policy and provide comments.

14. PBP officers shall conduct strip searches in compliance with applicable law and current professional standards. Specifically, PBP officers shall conduct strip searches only

when authorized by a supervisor or senior supervisor and then only if specially trained to conduct strip searches. Such strip searches shall be conducted in conformance with hygienic procedures and practices, in a room specially designated for strip searches, by the fewest number of personnel necessary all of whom must be of the same sex as the person searched, and under conditions that provide privacy from all but those authorized to conduct the search. Field strip searches of persons in custody shall be conducted only in exigent circumstances where the life of officers or others may be at risk, and only in privacy with the explicit approval of a supervisor or senior supervisor.

15. The City shall develop, and require all officers to complete, a written report each time a PBP officer (a) exercises a use of force; (b) performs a warrantless search (excluding searches incident to arrests, frisks, and pat downs); (c) performs a body cavity search or strip search; and (d) conducts any warrantless seizure of property (excluding towing vehicles). The record shall include the officer's name and badge number; description of incident; the specific type of use of force, search or seizure; description of any injuries and medical/hospital data; name, race and gender of all persons involved in the use of force, search or seizure; names and contact information for all witnesses; any weapons, evidence, or contraband found during

the search; whether the individual involved in the use of force, search or seizure was arrested or cited, and if so, the charges; date, time, and location of the incident and search or seizure; and the signatures of the officer and his immediate supervisor.

16. The City shall develop, and require all officers to complete, a written report each time a PBP officer makes a traffic stop. The record shall include the officer's name and badge number; the race and gender of the individual searched or stopped; approximate time and location; whether the stop involved a frisk or pat-down search; any weapons, evidence, or contraband found during the search; whether the individual involved was arrested or cited, and if so, the charges.

17. Data captured on the reports described above in Paragraphs 15 and 16 shall be entered into the City's automated early warning system. Hard copies of these reports shall be maintained by OMI.

18. The City shall conduct regular audits and reviews of the uses of force by all officers. PBP supervisors and senior supervisors shall have an affirmative obligation to act on this data with the goal of preventing the use of excessive force. Such actions shall include, at a minimum:

a. Each use of force report prepared as required by Paragraph 15 above shall be reviewed by the reporting officer's chain of command within one week of the use of force. Senior supervisors shall refer to OMI for investigation all incidents where a use of force report reasonably indicates a possible violation of PBP policies; OMI shall investigate all such incidents. OMI shall also investigate, and issue findings regarding the appropriateness of, all incidents resulting in serious injury where a use of force report was required to be completed.

b. PBP senior supervisors shall analyze use of force data from the automated early warning system on a quarterly, cumulative basis to detect trends in PBP use of force. The analysis shall include a review by officer, by injury, and by type of force used. PBP senior supervisors shall act on this data to ensure that PBP officers are using appropriate types and amounts of force.

19. The City shall conduct regular audits and reviews of search and seizure practices by all officers. PBP supervisors and senior supervisors shall have an affirmative obligation to act on this data with the goal of preventing improper search and seizure practices by their officers. Such actions shall include, at a minimum:

a. Each search and seizure report prepared as required by Paragraph 15 above shall be reviewed by the reporting officer's chain of command within one week of the search or seizure. Senior supervisors shall refer to OMI for investigation all incidents where a search and seizure report reasonably indicates a probable violation of PBP policies; OMI shall investigate all such incidents. OMI shall also investigate, and issue findings regarding the appropriateness of, all strip searches, all body cavity searches, and all incidents resulting in serious injury where a search and seizure report was required to be completed.

b. PBP senior supervisors shall analyze search and seizure data from the automated early warning system on a quarterly, cumulative basis to detect trends in PBP search or seizure practices. The analysis shall include a review by officer, by injury, and by type of search or seizure used. PBP senior supervisors shall act on this data to ensure that PBP officers are using appropriate types and methods of searches and seizures.

20. The City shall conduct regular audits and reviews of potential racial bias, including use of racial epithets, by all officers. PBP supervisors and senior supervisors shall have an affirmative obligation to act on this data with the goal of eliminating actions that reflect racial bias by

officers. Such actions shall include, at a minimum:

a. Each citizen or other complaint of racial bias by officers shall be reviewed by the accused officer's chain of command within one week of completion of the OMI investigation.

b. PBP senior supervisors shall analyze racial bias and racial epithet data from the automated early warning system on a quarterly, cumulative basis to detect trends of possible PBP racial bias or racial epithets. The analysis should include: a review by officer, by use of force reports and complaints, search and seizure reports and complaints, traffic stops, discretionary arrests (resisting arrest, disorderly conduct, public intoxication, or interfering with the administration of justice), racial epithets, or other indicators of possible racial bias.

21. After evaluating the most recent quarterly reports described in Paragraphs 18(b), 19(b), 20(b) above and evaluating an officer's complaint history, the City shall, at a minimum:

a. Require and provide appropriate remedial training, assignment to an FTO, counseling, transfer, and/or reassignment to all officers: (i) as required in the protocol developed in Paragraph 12(d); (ii) who have had three (3) or more complaints containing allegations of similar types of misconduct (e.g., verbal abuse,

excessive force, improper search and seizure) within the last two years, whether the complaints are sustained or not; and (iii) who have had five or more complaints of any kind within the last two years, whether the complaints are sustained or not. Such training, counseling, transfer, and/or reassignment shall address the type of misconduct alleged.

b. Impose appropriate discipline on each officer against whom a complaint is sustained as soon as possible after the OMI disposition. Except where the discipline is termination, remedial training or counseling shall also be imposed on each officer against whom a complaint is sustained. Where appropriate, transfer and reassignment shall also be imposed on each officer against whom a complaint is sustained. Where appropriate, remedial training, counseling, transfer, or reassignment shall be required of each officer where a complaint is disposed of by a disposition other than sustained.

c. For each officer against whom a complaint is sustained, consider an officer's prior record of complaints and the immediate misconduct when determining discipline. Prior remedial training, counseling, discipline, transfer, or reassignment for allegations of related misconduct shall be used in assessing the severity of the discipline imposed. Each disciplinary

recommendation shall include the name of the officer, the date(s) discipline was imposed, any OMI file number or other related cross-references, and a detailed description of the factors considered in determining the particular penalty selected.

22. Within 60 days of the entry of this Decree, the City shall include in the PBP's central personnel files and OMI files an officer's disciplinary actions as described in Paragraph 21(c), and all underlying and supporting documentation. Each commander shall continue to maintain a zone personnel file on each officer under his or her command. This zone personnel file shall include all disciplinary action reports ("DARs") and all OMI and non-OMI complaints against the officer.

23. The United States recognizes that the PBP has developed a program to conduct annual performance evaluations. The PBP shall require annual performance evaluations of all officers, supervisors, and senior supervisors. The performance evaluation shall be in writing and shall fully explain the weight and substance of all factors used to evaluate an officer. At a minimum:

a. Supervisors and senior supervisors shall be evaluated on their ability to monitor, deter, and appropriately address misconduct by officers they supervise; and

b. The PBP shall evaluate each officer on the basis of his or her complaint history, focusing on patterns of misconduct.

24. In addition to the Civil Service guidelines, the performance evaluations shall be considered as one of the factors in making promotions.

25. The City shall continue to provide an employee assistance program ("EAP"). This program shall at a minimum provide counseling and stress management services to officers. This program shall be staffed by sufficient licensed and certified counselors who are trained and experienced in addressing psychological and emotional problems common to police officers. The City shall publicize the availability of these services to all officers. The City shall authorize officers to attend counseling without any adverse actions taken against them. The City shall refer officers to, but not require their participation in, EAP counseling where the City believes an officer's job performance may benefit from EAP services. These provisions are separate from any counseling the City may require as part of its "Track III" mandatory counseling program.

26. The City shall require all officers to notify the City when the officers have been arrested, criminally charged, or

named as a party in any civil suit involving allegations of untruthfulness, physical force, racial bias, or domestic violence. The City and PBP management shall monitor all such civil litigation and all criminal prosecutions of officers.

a. PBP shall discipline and appropriately re-train, counsel, re-assign, or transfer officers found guilty or liable by a court or jury.

b. OMI shall independently investigate and make findings on all incidents giving rise to the litigation or prosecution where the court or jury does not find the officer guilty or liable, even when the complaint is withdrawn or settled.

c. Such litigation and investigations shall be reflected in the early warning system described in Paragraph 12 and an officer's complaint history.

27. OMI shall monitor all criminal proceedings containing allegations of false arrests or improper searches or seizures by PBP officers. Officers determined by a court to have falsely arrested an individual or conducted an improper search or seizure shall be disciplined, retrained, counseled, transferred, or reassigned, as the circumstances warrant. Such litigation and investigations, as well as the management response, shall be documented and reflected in the early warning system described in Paragraph 12 and an

officer's complaint history.

28. PBP shall continue to discipline, re-train, counsel, transfer, or reassign officers who are the subject of civil litigation settled by the City prior to adjudication, as the circumstances and OMI investigation warrant.

29. The City shall continue to provide its officers with access to a legal advisor twenty-four hours per day, seven days per week. The legal advisor shall be an attorney licensed in the Commonwealth of Pennsylvania. This legal advisor shall provide officers with regular training and counseling on legal issues and requirements, including the use of force, searches and seizures, and racial bias.

30. The City shall develop and implement a rotation schedule that ensures that officers regularly are supervised by and work with different officers.

COMMUNITY RELATIONSHIPS

31. The United States recognizes that PBP officer representatives attend meetings of community groups within their zone. The PBP shall continue to make every effort to participate in these meetings, including meetings organized by or oriented towards minorities.

32. OMI shall continue to use television to inform the public about OMI's function. OMI representatives shall continue to attend community meetings to increase public awareness of OMI. The City shall continue to publish, and shall distribute at various places throughout the city, pamphlets describing the OMI complaint process.

TRAINING

33. The United States recognizes that the PBP has provided training to all officers in cultural diversity. The City shall continue to provide all officers with annual training by qualified instructors that includes, at a minimum, training on how to relate to persons from different racial, ethnic, and religious groups, and persons of the opposite sex. The City shall also provide training in communications skills and avoiding improper racial, ethnic, and sexual communications.

34. The PBP shall monitor complaints of police misconduct to gauge the effectiveness of training and to detect the need for new or further training.

35. The PBP shall train all officers in the use of verbal de-escalation techniques as an alternative to the use of force, and shall incorporate such techniques into all other training that implicates the use of force. Such training

shall include specific examples of situations that do not require the use of force, but may be commonly mishandled, resulting in force being used (for example, individuals verbally challenging an officer's authority or asking for an officer's identifying information).

36. The PBP shall train all officers in integrity and ethics, cultural diversity, and verbal de-escalation techniques at the beginning of the academy training curriculum to serve as a foundation for all other classes.

37. The PBP shall train all officers in integrity, ethics, the PBP's missions and values statements, and cultural diversity. This training shall occur at least annually and shall cover the duties of truthfulness and reporting misconduct by fellow officers, the importance of avoiding misconduct, and professionalism.

38. The PBP shall instruct all officers in the OMI complaint process and their obligation to cooperate with OMI investigations.

39. The City shall encourage highly qualified candidates to apply for instructor and FTO positions. The City shall establish formal eligibility criteria for instructors and FTOs based on their performance evaluations and previous

superior performance as police officers. The City shall disqualify any instructor or FTO, or candidate for those positions, with a poor disciplinary record or complaint history.

40. The City shall ensure that all training instructors and FTOs receive adequate training to enable them to carry out their duties. Training instructors and FTOs shall be required to maintain, and demonstrate on a regular basis, their proficiency in their areas of instruction. The City shall maintain current documentation of instructors' and FTOs' proficiency and training.

41. The City shall maintain written records documenting all training of officers. At a minimum, these records shall reflect the name of the officer, the dates of the training, the reasons for any mandatory training (including any OMI file number or other related cross references), the general subject matter of the training (including lesson plans where available), and whether the training was completed satisfactorily.

42. The City shall maintain written records documenting all mandatory counseling of officers. At a minimum, these records shall reflect the name of the officer, the reasons for the referral (including any OMI file number or other

related cross references), the general subject matter of the mandatory counseling, and whether the mandatory counseling sessions were attended.

43. The City shall provide all senior supervisors with mandatory annual supervisory and leadership training, which includes command accountability, integrity, and cultural diversity.

COMPLAINT AND INVESTIGATION PROCESS

Quality Assurance

44. OMI shall continue to enter all complaints and investigations of misconduct into a computerized database recording incidents occurring since 1986. This database, in addition to the requirements described in Paragraph 12, shall include the file number, the names of all involved officers, contact information for all officers and complainants, the race and gender of all involved officers and complainants, a textual description of the allegations, significant dates, the street address and zone of the incident, and the disposition of the complaint. When the City prepares a complaint history from the automated early warning system, it shall include, at a minimum, the officer's name, the OMI file number, the date of the incident, a textual description of the allegations, and the disposition. The actual investigation files shall be maintained for at least ten years from the date of the

disposition of the complaint; except for investigation files disposed as "unfounded", which shall be kept for at least one year. All information in the OMI database shall be maintained during that officer's employment with the PBP and for three (3) years after the officer leaves the PBP. Data regarding an officer that is removed from the OMI database shall be maintained in an archive indefinitely.

45. OMI files and records relating to a particular officer shall be available to personnel within that officer's chain of command who are responsible for that officer's training, counseling, or discipline.

46. OMI shall continue to maintain a manual detailing its policies and investigative procedures. The City shall ensure that all OMI investigators receive adequate training in these policies and procedures to enable them to carry out their duties, including training in proper techniques for questioning individuals. The PBP shall provide all OMI civilian investigators with police academy training and re-training in PBP policies and procedures including, but not limited to, use of force, searches and seizures, pursuits, transporting individuals in custody, restraints, arrests (including discretionary arrests), traffic stops, racial bias, report writing, and other relevant policies and procedures; investigative and interview techniques; cultural

sensitivity, ethics, integrity, professionalism and the missions and values statement. Such training shall be identical to that received by OMI police investigators. Investigators shall be evaluated based on their competency in following the policies and procedures for investigations. The City shall make the OMI manual of policies and procedures available for inspection by the public and officers at OMI headquarters and at each PBP facility.

Filing a Complaint

47. Complainants may initiate a complaint against an officer either in person or by telephone, mail, or facsimile transmission. Complainants shall not be required to file a complaint "form" to initiate an investigation. Complainants may be required to provide information available to them to enable OMI to identify the police officer(s) involved and the incident giving rise to the complaint.

48. A complainant may file an anonymous verbal or written complaint. OMI shall accept and investigate complaints filed by individuals other than the alleged victim of misconduct (third-party complaints). OMI shall ask anonymous and third-party complainants for corroborating evidence. OMI shall investigate anonymous complaints to the fullest extent possible to determine whether the complaint is corroborated. The City shall continue to require

officers to report misconduct by other officers. Misconduct by fellow officers shall be reported directly to OMI or through an officer's chain of command.

49. OMI shall not close an investigation without rendering a disposition solely because the complainant withdraws the complaint or is unavailable to make a statement. OMI shall investigate such complaints to the fullest extent possible to determine whether the complaint is corroborated.

50. OMI offices shall be relocated to other suitable City office space and shall be separate from any building occupied by PBP personnel. This new facility shall be convenient to public transportation. OMI shall publicize the relocation of its offices.

51. No complainant shall be required to go to a police station, any police building or OMI office to file a complaint or provide a statement. The City shall hold quarterly open meetings in rotating zones to educate the public about proper police functions; police misconduct, including excessive use of force, improper searches and seizures; and the proper methods for filing complaints against police officers. The City shall require OMI personnel to receive complaints at these quarterly open meetings. At least one week before such quarterly meetings, the City shall publish

the telephone number of OMI and the time and location of each quarterly meeting in a prominent location in all City buildings. Complaints received by OMI personnel at such meetings may relate to any misconduct within the jurisdiction of OMI and shall be treated like any other OMI complaint.

52. OMI shall notify the senior supervisors of an accused officer whenever a complaint has been filed against that officer alleging use of excessive force, improper search or seizure, or racial bias.

53. OMI shall be responsible for investigating all complaints. OMI shall monitor and be responsible for the progress and completeness of all investigations, including those it delegates for investigation. There shall be no discretion by any OMI staff to not accept a complaint. The City shall not permit any PBP officer to attempt to settle an OMI complaint through informal means without prior notice to, and approval by, OMI. OMI shall document all officer-initiated settlements of citizen complaints, and such documentation shall become part of the permanent OMI file.

54. PBP officers shall continue to be required to provide their name and badge number to any individual who requests it. Refusal to provide this identifying information shall result

in disciplinary action against the officer.

Investigating Misconduct

55. If complainants or witnesses are unavailable to be interviewed at OMI offices during business hours, OMI investigators shall offer to interview them at alternate sites and times, including at residences or places of business, and during reasonable weekend or after business hours. OMI investigators shall provide reasonable notice before all interviews.

56. All interviews of complainants, involved officers, and witnesses shall be tape-recorded and transcribed. These tapes shall be maintained and kept as part of the OMI investigative file. If a complainant or witness refuses to be tape-recorded, then OMI shall prepare a written narrative of the statement to be signed by the complainant or witness. OMI shall not conduct group interviews. OMI shall not accept a "special report" or written statement from any officer in lieu of an interview. OMI investigators shall have the authority to question all interviewees and to challenge their version of the facts.

57. In order to interview officers, OMI investigators shall obtain, and the PBP shall provide full access to, information from the automated early warning system and the

following information regarding the accused officer and officer witnesses: performance evaluations, assignment history, and training/qualification records.

58. Supervisors and senior supervisors on the scene of incidents that result in a misconduct complaint shall be interviewed. Supervisors and senior supervisors shall be required to detail their handling of the situation during and after the alleged incident and their observations of the complainant and accused officers.

59. OMI investigators shall canvass the scene of an incident for witnesses as soon as possible after receiving a complaint of misconduct where the evidence on hand is insufficient to conduct a complete investigation of the complaint and where canvassing the scene could reasonably yield additional information.

60. OMI shall review reports of firearm discharges prepared by the PBP and reports prepared pursuant to a coroner's inquest regarding all deaths caused by an officer and make a finding about whether any misconduct occurred during the incident. The City shall appropriately discipline, re-train, counsel, transfer, or re-assign officers involved in such incidents, as the circumstances and OMI finding warrant.

61. OMI shall itself aggressively collect all appropriate evidence to document each incident of potential misconduct, or any injury of a complainant, including medical records and photographs of injuries. OMI shall not require complainants or other witnesses to provide evidence that OMI itself can obtain.

62. OMI shall assess the propriety of all officer conduct during an incident it investigates. If during the course of an OMI investigation, the OMI investigator has reason to believe that misconduct other than that alleged by the complainant has occurred, OMI must investigate and make findings with respect to such misconduct. If, during the course of its investigation, OMI has reason to inquire whether an officer had the requisite probable cause for any stop, search or seizure, or arrest relevant to the complaint under investigation, OMI shall rely on any probable cause determinations made by a court of competent jurisdiction. If OMI finds that no court of competent jurisdiction has made a probable cause determination, OMI shall request the district attorney's office to make the probable cause determination.

63. At the conclusion of each investigation, OMI shall issue a final report describing the alleged misconduct, any other misconduct identified during the course of the

investigation, a summary of all evidence gathered during the investigation (including an explanation for the absence of any evidence), documentation of all credibility determinations, OMI's findings with respect to all potential misconduct, the accused officer's complaint history, and the analysis supporting OMI's finding. The final report shall be made a part of the investigation file.

64. The City shall provide OMI with sufficient staff, funds, and resources to perform the functions required by this Decree. The City shall encourage highly qualified candidates to become OMI police investigators. The City shall establish formal eligibility criteria for OMI police investigators based on their previous superior performance as police officers, including management potential. The City shall disqualify OMI police investigator candidates with poor disciplinary records and complaint histories. OMI police investigators shall serve terms in OMI not exceeding three years.

Adjudicating the Complaint

65. OMI shall continue to make findings based on a "preponderance of the evidence" standard.

66. There shall be no automatic preference of an officer's statement over a complainant's statement. In making

credibility determinations, OMI investigators shall consider the officer's history of complaints (including those with dispositions other than "sustained") and disciplinary records and the complainant's criminal history for crimes involving untruthfulness. Such credibility determinations shall be explained fully in writing.

67. Final authority and responsibility for determining the disposition of a complaint shall rest with OMI. The accused officers' supervisors and senior supervisors shall not have the authority to modify or reverse any OMI disposition of a complaint.

68. OMI shall change the classification of "Not Sustained" to "Not Resolved."

69. OMI shall continue to issue quarterly statistical report of investigations filed with OMI. Such reports shall include each investigation's significant dates, general allegations, disposition, and any resulting discipline.

AUDITOR

70. Within 90 days after the entry of this Decree, the City shall appoint an independent auditor who shall report on a quarterly basis the City's compliance with each provision of this Consent Decree. The auditor shall be an agent of the

Court and shall not be retained by any current or future litigant or claimant in a claim or suit against the City or its officers. The auditor shall not issue statements or make findings with regard to any act or omission of PBP, OMI, or the City, except as required by the terms of this Decree. The auditor may testify in court regarding any matter relating to the implementation, enforcement, or dissolution of this Decree. The auditor shall be acceptable to both parties. If the parties are unable to agree on an auditor, each party shall submit two names, along with resumes or curricula vitae and cost proposals, to the Court and the Court shall appoint the auditor from among the names submitted. The City shall bear all costs of the auditor.

71. The auditor shall perform quality assurance checks of OMI investigations. The City shall provide the auditor with full access to all OMI staff and records (including databases, files, and quarterly statistical summaries), the automated early warning system described in Paragraph 12, all information regarding officer use of force and searches and seizures (including the use of force reports required by Paragraph 15, and the search and seizure reports required by paragraph 15), all information required in Paragraph 16, and all relevant City manuals of policies and procedures that the auditor deems necessary to fulfill his or her duties, as defined below. The auditor shall review and evaluate the

following information, and issue a quarterly report to the parties and the Court describing the review and analysis:

a. All OMI final reports as described in Paragraph 63, and all remedial training and disciplinary records described in Paragraphs 41 and 21(c). The City shall forward all OMI final reports and all disciplinary and training records to the auditor immediately upon their completion.

b. The substance and timeliness of at least 50% of all OMI investigations completed during each quarter of the City's fiscal year.

c. Statistical information on the number and types of complaints of PBP misconduct, the timeliness of the investigations, the disposition, and any remedial training, counseling, discipline, transfers, or reassignments.

d. Discipline, remedial training, mandatory counseling, transfers, and reassignments actually imposed as a result of each complaint.

e. Officer use of force, searches and seizures, and traffic stops.

72. OMI shall re-open for further investigation all investigations the auditor determines to be incomplete. The auditor shall provide written instructions for completing the investigation.

73. Ninety (90) days following entry of this Decree and every six (6) months thereafter until this Decree is terminated, the City shall file with the Court and the auditor, with a copy to the United States, a status report delineating all steps taken during the reporting period to comply with each provision of this Decree. The City shall state whether any internal or external audits of the PBP or DPS functions that relate to the PBP have been performed and will summarize the subject matter and results of such reports. The City shall provide the United States with copies of these reports or audits upon request.

74. The City shall maintain all records necessary to document their compliance with all terms of this Decree. The City shall also maintain any and all records required by or developed under this Consent Decree.

75. During all times while the Court maintains jurisdiction over this action, the auditor shall have unrestricted access to and, upon request made to the City Solicitor, receive copies of any documents and any databases relating to the implementation of this Decree. The auditor shall, with 48 hour prior written notice to the City Solicitor, have access to all staff and facilities as necessary to monitor the City's compliance with the terms of this Decree.

76. During all times while the Court maintains jurisdiction over this action, the United States shall have access to and, upon request made to the City Solicitor, receive copies of any documents and any databases necessary to evaluate compliance with this Decree. The United States shall provide written notice to the City Solicitor, to obtain access to all staff and facilities as necessary to evaluate the City's compliance with the terms of this Decree. Such access shall be provided in a reasonable time, place, and manner.

COMPLIANCE

77. The City shall immediately provide copies of, and explain the terms of this Decree to all current and future officers, OMI employees, and all DPS employees with oversight or responsibility for PBP operations, in order to ensure that they understand the requirements of this Decree and the necessity for its strict compliance. All such individuals shall sign a statement indicating that they have read and understand this Decree and acknowledge receiving an individual copy of the Decree. These statements shall be retained by the City.

78. Except where otherwise specifically indicated, the City shall implement all provisions of this Decree within 90 days

after entry of this Decree.

79. The Court shall retain jurisdiction of this action for all purposes during the term of this Decree. At any time after five (5) years from the date of entry of this Decree, and after substantial compliance has been maintained for no less than two years, the City may move to terminate this Decree. Any motion to terminate must detail all aspects of the City's compliance with each provision of this Decree, supported by affidavits and supporting documentation. The United States shall have ninety (90) days from receipt of the City's motion to terminate to file its objection(s). In the event the United States files objections to the City's motion, the Decree shall remain in effect at least until entry of a court order disposing of the motion and thereafter as dictated by the court's order. In the event the United States objects to termination of the Decree, the Court shall hold a hearing, at which both parties may present evidence, before ruling on the City's motion to terminate. At the hearing, the burden shall be on the City to demonstrate that it has fully and faithfully implemented all provisions of this Consent Decree and maintained substantial compliance for at least two years.

MODIFICATIONS

80. No changes, modifications, or amendments of this Consent Decree shall be effective unless they are ordered by the Court.

CORRESPONDENCE

81. All correspondence with the City concerning this Consent Decree shall be addressed to:

City Solicitor
City of Pittsburgh Department of Law
313 City County Building
414 Grant Street
Pittsburgh, PA 15219

SEVERABILITY

82. The parties agree to defend the provisions of this Consent Decree. The parties shall notify each other of any court challenge to this Decree. In the event any provision of this Consent Decree is challenged in any local or state court, removal to a federal court shall be sought.

83. In the event any provision of this Consent Decree is declared invalid for any reason by a Court of competent jurisdiction, said finding shall not affect the remaining provisions of this Decree.

We consent and seek entry of this Decree:

For the United States of America:

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Pittsburgh, PA 15219
(412) 255-2010

SO ORDERED this 16 day of April, 1997.

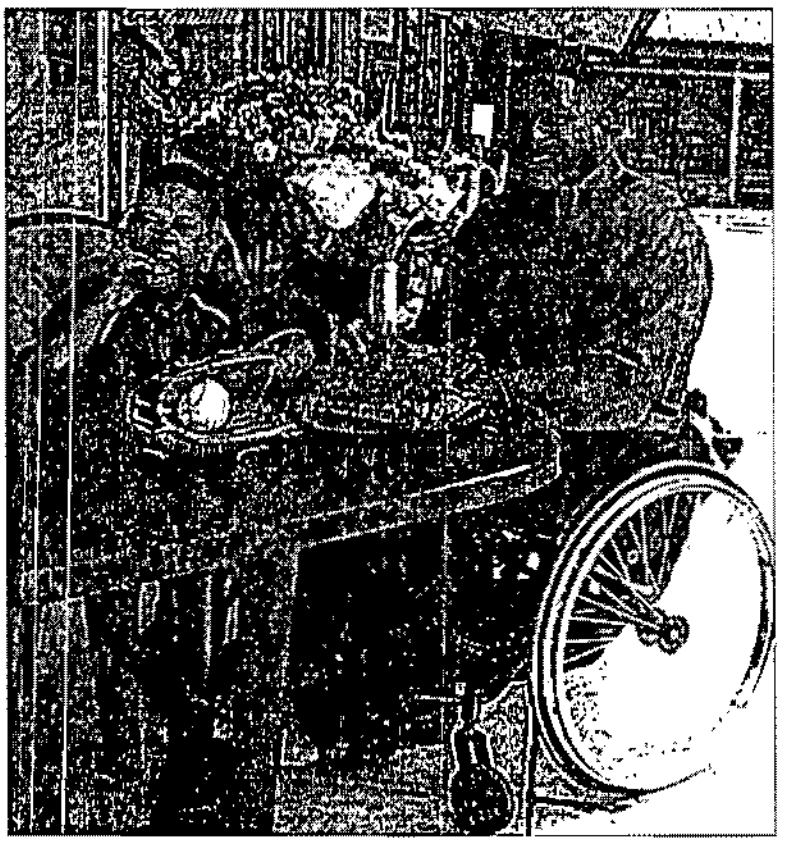
United States District Court Judge

U.S. Department of Justice
Civil Rights Division
Disability Rights Section

Enforcing the ADA:

Looking Back on a Decade of Progress

A Special Tenth Anniversary Status Report from the Department of Justice



July 2000

This is a special edition commemorating the tenth anniversary of the enactment of the ADA. This report, previous status reports, and a wide range of other ADA information are available through the Department's ADA Home Page on the World Wide Web (see page 38).

A Message from the Attorney General

On July 26, 2000, the Americans with Disabilities Act celebrates its 10th anniversary. And there is so much to celebrate!

Look around. Over the past decade so much has changed. It is no longer unusual to see people with disabilities dining out at restaurants, working in the office, participating in town hall meetings, shopping at the malls, watching a movie or cheering at a stadium. That's because the ADA is making the dream of access a reality.

As Attorney General, I have made enforcement of the ADA one of my top priorities. At the Justice Department we have engaged in extensive educational outreach, and entered into hundreds of agreements ensuring greater access to thousands of businesses and governments. We have also increased the number of attorneys who enforce the law, and stepped up funding for ADA-related programs across the country. And under the leadership of Acting Assistant Attorney General for Civil rights Bill Lann Lee, and our United States Attorneys across the country, we will continue to build on this past decade of access.

As this Report illustrates, the ADA has made a difference in the lives of so many. But there are many others who still face barriers -- barriers that man-made structures create and barriers stemming from people's attitudes. Those barriers took generations to create. It will take continued vigilance and dedication to remove them. But if the past 10 years is any indication, Americans with disabilities are well on their way to experiencing all society has to offer.

Janet Reno

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I. Enforcement Highlights

A. Participating in Everyday Civic Life

The ADA protects the right of people with disabilities to have equal access to the basic institutions of State and local government. The Department has sought to eliminate physical, communication, and policy barriers in law enforcement, town halls, jails, courtrooms, and legislative chambers.

1. Affirming the Right to Citizen Participation

Wisconsin City Makes City Hall Accessible -- In resolving a complaint by a Waukesha City alderman who uses a wheelchair, the City agreed to make its city hall accessible. It agreed to hold its closed deliberations in the accessible room in which it holds general meetings, renovate the first floor bathrooms, install automatic door openers at the building's entrance, and provide a van accessible parking space.

Small Montana Town Provides Access to Civic Functions -- Manhattan, Montana, agreed to make its town programs accessible by making a few renovations and taking alternative nonstructural measures. It agreed to install a ramp at the town hall entrance, make the route to the entrance accessible, create one van-accessible parking space, and make the water fountain and bathroom on the first floor accessible. Also, town council meetings would be moved to the first floor when necessary.

Public Address System Boosts Communication -- A small New York community agreed to purchase a public address system to resolve a complaint from a hard of hearing citizen who wanted to listen to town board meetings.

Toledo To Be More Accessible to People with Disabilities --Toledo, Ohio, agreed to make significant changes to its policies and facilities to provide greater access for persons with disabilities. The agreement resolves allegations that Toledo violated title II by failing to take the steps necessary to ensure that its programs are accessible to persons with disabilities. The city agreed to --

- Modify its facilities to ensure access to city programs, including the municipal courthouse, district and neighborhood police stations, a market-outlet complex, fire stations, parking garages, museums, community and social service centers, the health department, and other city administrative buildings. Modifications include providing accessible parking and accessible restroom facilities, installing ramps, widening doors, providing accessible public telephones, and lowering information counters;

- Adopt policies and procedures to improve accessibility at city programs, which could include moving programs to accessible locations, if necessary;

- Take steps to ensure that effective communication is available to persons with disabilities, including those with hearing, speech, and vision impairments, at city activities such as court proceedings and public meetings;

- Submit a plan to the Department that will ensure that parks, pools, ice rinks, and arts programs will become more accessible to persons with disabilities by December 2000;
- Train employees on the city's responsibilities under the ADA; and
- Publicize its new nondiscrimination policies on the city's web site and in a local newspaper.

North Dakota Town Provides Program Accessibility -- Dickinson, North Dakota entered into an agreement with the Department of Justice to resolve allegations that the Dickinson City Hall was inaccessible to individuals who use wheelchairs. Specifically, the complaint alleged that both the upper and lower levels of the city hall were inaccessible and, therefore, that city activities on these levels, including city commission meetings, municipal court proceedings, voting, and other city hall programs and services, were inaccessible to individuals who use wheelchairs. Until it completed construction of a new city hall, Dickinson agreed to relocate municipal court proceedings to the Stark County Courthouse. The city also relocated city commission meetings and other public meetings to the National Armory Building in Dickinson, which is fully accessible. The city also agreed to provide the services of its administrative offices in the front foyer of the existing city hall and installed an accessible counter there to enable individuals who have mobility impairments to transact business. Finally, Dickinson agreed to train all of its employees on how to respond to requests for accommodations under the ADA.

ADA Celebration at the Dickinson City Hall

"Martin can drive his electric scooter around town because of curb cuts. Cassandra can continue to attend junior high due to widened doors and elevators. And no one complains about 'universal access' -- it's the most used entrance for all, be they disabled, elderly, parents with babies in strollers, or John or Jane Q Public."

-- Wally Itrich, Dickinson resident

City Removes Barriers at Town Buildings, Country Music Museum -- The City of Georgiana, Alabama, agreed to remove architectural barriers at the City Hall, the Police Station, the Magistrate's Court and Council Chamber, and the Hank Williams, Sr., Museum -- the childhood home of the well-known country music singer-songwriter. The City will install entrance ramps, modify existing rest rooms, and alter sidewalks to provide access to the programs offered at the sites.

Appellate Court Finds Zoning Covered by ADA -- The U.S. Court of Appeals for the Second Circuit ruled in Innovative Health Systems, Inc. (IHS) v. City of White Plains that the ADA covers all the activities of State and local government, including zoning practices. The U.S. Attorney for the Southern District of New York filed an amicus brief supporting plaintiffs' efforts to stop White Plains, New York, from preventing them from operating an alcohol and drug dependency treatment program in its downtown area. The Court also ruled that Innovative Health Systems, Inc., the organization that operates the treatment center, has standing to challenge the City's action under the ADA, and that IHS was entitled to a preliminary injunction.

Oregon State Lottery Commission to Ensure Accessible Outlets -- Oregon agreed to make its State lottery accessible to persons with mobility impairments under a negotiated agreement with the Department. The State will require more than 3,000 retail outlets participating in the lottery program to ensure equal access to their lottery-related services by installing accessibility features, removing barriers through structural modifications, and, in some cases, using alternative methods of providing access to the services. Effective July 1, 1997, all new retailer locations and all locations sold to new owners had to be wheelchair accessible; existing retail outlets had an additional year to make their lottery-related facilities accessible. The agreement also created a procedure for dealing with complaints about inaccessible lottery retailers.

New Hampshire Sweepstakes Commission Agrees to Access Plan -- The New Hampshire Sweepstakes Commission signed an agreement with the Department of Justice to ensure program accessibility in the State's lottery program. The agreement resolved a complaint charging that establishments that sell lottery tickets were inaccessible to persons with mobility impairments. New Hampshire agreed to evaluate the accessibility of lottery sales in the 1300 retail establishments participating in the lottery program, the geographical dispersal of accessible facilities, the ratio of accessible to inaccessible sites in each town and county, and the rate of use of each retailer. It also agreed to develop and implement a plan to ensure that the lottery program as a whole is accessible to people with mobility impairments. Because of the large number of facilities participating in the lottery program, the settlement should substantially increase the overall accessibility of public accommodations and State facilities throughout New Hampshire.

2. Achieving Access to Courts

Utah State Courts Provide Interpreters for Deaf Jurors -- The Utah State Administrative Office of the Courts committed its courts to provide appropriate auxiliary aids and services, including qualified interpreters, when necessary to provide an individual with a disability an opportunity to serve as a juror. The agency agreed to establish a policy on providing interpreters for individuals serving on jury duty, notify the public about the policy, and instruct district court officials to adhere to the policy.

Rejected Blind Juror Receives D.C. Damages Award -- Donald Galloway sued the District of Columbia Superior Court alleging that it violated the law by categorically excluding blind persons from jury service. The federal court agreed, and awarded Galloway $30,000 in damages. The Justice Department argued in support of Galloway that compensatory damages can be obtained under both the ADA and the Rehabilitation Act of 1973.

Donald Galloway was excited to be called for jury duty in the District of Columbia and eager to fulfill his civic responsibility. At the courthouse, though, he was told that because he is blind he could have saved himself the trip -- he would not be allowed to serve.

3. Receiving Fair Treatment in Law Enforcement

Oakland Police Agree to Effective Communication in Arrests, Jails -- The Oakland, California, Police Department agreed to take the necessary steps to ensure that members of the public who are deaf or hard of hearing can communicate effectively with police officers during law enforcement situations ranging from traffic stops to arrests

to criminal interrogations. The agreement resolved three complaints involving three separate incidents between 1994 and 1997 where the Oakland Police allegedly failed to provide appropriate auxiliary aids and services to arrestees with hearing impairments. In one instance, an individual was denied pencil and paper with which to communicate with jail staff. In another, a deaf individual who had borrowed an automobile from a friend was unable to make a telephone call for approximately seven hours (because no operable TTY or text telephone was available) to clear up charges that he had stolen the automobile. Under the agreement, the police department will adopt policies for providing effective communication and publish and publicize them as official operating procedures. It also agreed to purchase an additional TTY, train jail personnel on how to operate TTY's, and initiate a testing program to ensure the TTY's are functioning properly. The Oakland Police will also ensure that one of the jail cells that provides a television set has closed captioning capability. All of the approximately 700 officers who deal with the public will receive extensive ADA training on how to implement the ADA's effective communication requirements in typical police situations. This instruction will be provided during annual police academy training that all officers are required to attend.

Supreme Court Says ADA Clearly Protects Prison Inmates -- In a unanimous opinion the Supreme Court ruled in Pennsylvania Department of Corrections v. Yeskey that a motivational boot camp operated for selected inmates by the Pennsylvania State prison system was subject to the requirements of the ADA. Prisoners who successfully complete the boot camp program were entitled to a significant reduction in their sentence. The Court agreed with the Department of Justice in ruling that the broad language of the ADA clearly covered prisons and provided no basis for distinguishing programs, services, or activities of prisons from those provided by other public entities. It rejected the State's arguments that the law was ambiguous and that prisoners cannot be "qualified individuals with disabilities" because they are not in prison voluntarily.

DOJ Document -- "Commonly Asked Questions About the ADA and Law Enforcement" addresses the ADA obligations of police departments in interacting with the public, including effective communication, program accessibility, and reasonable modifications in policies, practices, and procedures.

Houston Police, Courts, and Jail to Improve Communication with Deaf Individuals -- The City of Houston agreed to significantly improve the way its municipal courts system, police department, and jail communicate with people who are deaf or hard of hearing. Under the settlement, the Houston police, courts, and jails would each appoint an ADA coordinator, purchase TTY devices that will enable the agencies to communicate effectively by telephone with deaf TTY users, and train staff in how to operate the devices.

The Houston Police Department will --

- Adopt a new "General Order" instructing police officers on how to interact with witnesses, victims, and suspected criminals who are deaf or hard of hearing;
- Require that a qualified interpreter be called in any time a person who is deaf and needs an interpreter is involved in a major accident, is suspected of a felony, is under arrest, is being given a test measuring alcohol consumption, or is giving a statement in a case; and
- Provide training about the new procedures for every officer at the rank of sergeant and above, and ensure that the new General Order is discussed with every officer during roll call.

The city jail will --

- Inform all people under arrest, who are deaf or hard of hearing, that they have a right to auxiliary aids and services at every step of the criminal justice process;
- Maintain a list of qualified interpreters, who generally will be available within one hour of a request; and,
- Ensure that there is effective communication between persons who are deaf or hard of hearing and the medical staff at the jail health clinic.

In addition, the municipal court system will --

- Adopt a new written policy guaranteeing appropriate auxiliary aids and services for participants in court proceedings, including parties, witnesses, jurors, and spectators;
- Provide information about the new policies on all official notices of court dates, including tickets, summonses, and other similar notices, and publish notices in legal periodicals that reach the city's legal community; and
- Provide training on the new policies for every judge and court administrator.

B. Opening Up Jobs for Persons with Disabilities

The ADA is lowering barriers to educational and professional advancement faced by many people with disabilities. The Department has attacked discrimination in pension and retirement benefits and the failure to provide reasonable accommodations. It has enforced the right to testing accommodations, to accessible educational facilities, and to be free from undue requests by professional licensing authorities for personal and private information about physical or mental conditions.

1. Ensuring Equal Employment Opportunity

Illinois Remedies Pension Discrimination -- In response to a suit filed by the Department of Justice, Illinois enacted legislation to eliminate discriminatory provisions in its police and fire pension code. The Department had sued the board of trustees of the Aurora police pension fund, the City of Aurora, and the State for excluding police officers and firefighters from the City's pension funds on the basis of disability. Under the challenged system, police officers and firefighters were required to undergo separate physical examinations after they were hired to determine eligibility for retirement and disability benefits. Even though they were performing successfully on the job, police officers and firefighters could be denied disability and retirement benefits.

Kevin Holmes served successfully for ten years as a police officer in Aurora, Illinois. But, because he had diabetes, he was excluded from the State's pension fund. He would not receive the retirement pension available to other officers, and if he was injured in the line-of-duty, he would not receive any disability benefits.

Denver Police Must Pay Back Pay for Failure to Reassign -- The U.S. District Court in Denver awarded Jack Davoll full back pay with interest in the amount of nearly $150,000 and front pay of more than $76,000 in United States v. City and County of Denver. Davoll is a former Denver police officer who sought reassignment after he suffered injuries in the line of duty to his back, neck, and shoulder and could no longer perform the essential functions of a police officer. The Department earlier won a jury award on his behalf of $300,000 in damages for pain and suffering because of Denver's refusal to reassign him to a vacant job that he was qualified to perform -- such as criminal investigator or probation officer. The Court also granted full back pay relief in simultaneous private litigation to two other plaintiffs who were denied reassignment. Paul Escobedo was granted $250,000 in back pay and nearly $60,000 in front pay and Deborah Clair received $250,000 in back pay and more than $65,000 in front pay.

Jack Davoll wanted to be reassigned to a vacant job after being injured in the line of duty.

"My hope from the start of the [Denver] case was that officers injured in the line of duty would be able to continue working to provide an income for their family. Thanks to the ADA ... this case has and will continue to help injured workers."

--Jack Davoll

New York Plumbing Board Agrees to Test Accommodations -- The Rockland County Board of Plumbing, Heating, and Cooling Examiners entered an agreement to resolve a complaint alleging that the Board violated title II by denying a plumber with dyslexia a reader or oral test as an accommodation on the written portion of the County's master plumber licensing exam. The individual had been a plumber for 42 years, owned his own business until the County passed its licensing law in the late 1960's, and received numerous recommendations from former employers attesting to his quality work performance and experience as a plumber and heating mechanic. Despite his qualifications, the Board denied his requests for the testing accommodation for the past 23 years. Under the agreement, the Board was required to provide the plumber with a reader or an oral test during the written portion of the next licensing examination. The Board was also required to adopt a nondiscrimination policy on the basis of disability which was subject to Department of Justice approval. The settlement followed the issuance of a letter of findings holding that the Board had violated title II.

2. Opening Gateways to Opportunity

Bar Review Course Agrees to Auxiliary Aids, Damages -- Under a consent decree, the company that runs Bar/Bri, the nation's largest review course for students taking the bar exam, agreed to provide qualified sign language interpreters, assistive listening devices, and Brailled materials to students with disabilities. The Department had alleged that the course failed to provide appropriate auxiliary aids to students with vision and hearing impairments. The company, Harcourt Brace, also agreed to pay $28,000 in compensatory damages, pay $25,000 in civil penalties to the United States; adopt a policy ensuring that auxiliary aids and services are provided, educate its staff about the needs of students with disabilities, and promote the availability of auxiliary aids and services in its advertising.

Students with Disabilities Offered Additional SAT Test Dates -- The Educational Testing Service and the College Entrance Examination Board agreed to schedule more dates in 1994 for more than 20,000 students with disabilities wishing to take the new version of the Scholastic Assessment Test. Under the original testing schedule, students with disabilities requiring accommodations were offered only one date to take the updated version, as opposed to their peers who had several opportunities to take the test. The agreement also allowed approximately 2,600 students with disabilities who took the old version of the test the chance to cancel their scores and retake the new exam.

Jackie Okin is now in law school studying to be a civil rights attorney.

"The ADA gave me an equal chance to take the SAT. Because of that chance, I have graduated from Tufts University and have completed my first year of law school at American University's Washington College of Law. It has made a huge difference in my life."
-- Jackie Okin

C.P.A. Review Course Provides Interpreters, Assistive Listening Devices -- In a 1994 settlement resolving the first lawsuit filed by the Justice Department under the ADA, Becker C.P.A. Review, which prepares over 10,000 students annually to take the national certified public accountant exam, agreed to amend its auxiliary aids policy. Where a need can be demonstrated, Becker will provide qualified sign language interpreters and assistive listening devices to students who are deaf or hard of hearing. Becker also agreed to appoint a national ADA coordinator, train its staff regarding the policy revision, pay $20,000 in damages to be distributed to deaf and hearing impaired students, and establish a $25,000 scholarship fund for accounting students at California State University who have hearing impairments.

"The ADA gave me empowerment. Knowing that I had the ADA on my side made me more assertive in standing up for my rights which made me a better person and allowed my talents and skills to come through. The ADA also gave me peers .... Before the Becker CPA Review case, there were very few deaf CPAs. Now, there are many more deaf CPAs.... Thank you ADA!"
-- Rod Jex

Social Work Board Agrees to Qualified Readers for Blind Test Takers -- In 1999, two national standardized testing agencies, the American Association of State Social Work Boards and Assessment Systems, Inc., agreed to provide qualified readers for test takers with vision impairments and to pay $3,000 to a complainant who was not allowed to use his own reader for the social work license examination. Instead, he was allegedly required to use a college student who had been hired to work at the registration table and had never read for a person with a vision impairment. During the exam, the reader allegedly stumbled over technical terms and made mistakes in marking and recording the answers. AASSWB and ASI agreed to adopt written policies to ensure that readers are proficient in reading for people with vision impairments, that they are familiar with the examination, and that they work with the test-taker prior to the examination to allow the reader to adapt to the test-taker's style of receiving information. The agreement also makes clear that the testing entities may also simply choose to allow test-takers with vision impairments to supply their own reader.

Justice Sues for Law Admission Test Accommodations -- In 1999, the Department filed suit against the Law School Admission Council (LSAC) for not making reasonable modifications in policy to allow individuals with physical disabilities in appropriate cases to have additional time to take the Law School Admission Test (LSAT). The suit, filed in the U.S. District Court for the Eastern District of Pennsylvania, alleged that LSAC violated the ADA when it denied four individuals with physical disabilities, including cerebral palsy and juvenile rheumatoid arthritis, additional time on the multiple choice portion of the LSAT, a standardized test administered to those seeking admission to law school. The complaint alleged that LSAC illegally followed a policy of requiring applicants with physical disabilities to submit a psychoeducational assessment as the basis for determining whether extra time is appropriate. Such assessments, which are typically used to diagnose whether individuals have learning disabilities, are not appropriate for determining whether extra time is needed for individuals with physical disabilities. The complaint also asserted that LSAC failed to individually assess requests for accommodations, provide adequate reasons for denying accommodations, and engage in an interactive process with individuals seeking testing accommodations. The lawsuit asked the court to order LSAC to change its policies, pay civil penalties, and award compensatory damages to the four named individuals.

Duke Will Make Comprehensive Changes for Campus Accessibility -- Duke University in Durham, North Carolina, agreed to make a broad range of programs and facilities more accessible to persons with disabilities including academics, dining and living facilities, and social aspects of campus life. Under the agreement, Duke will --

- Modify elevators, entrances, counters, food service lines, telephones, and bathrooms throughout campus so they are accessible to persons with disabilities;
- Create accessible circulation paths to, among, and within university buildings and other facilities by repairing sidewalks and modifying hallways, doors, and ramps;
- Ensure that all programs and classes in which individuals with physical disabilities are enrolled are located in accessible spaces;
- Modify shuttle bus route schedules to ensure that accessible buses run regularly and frequently on each route;
- Make dormitory rooms fully accessible upon enrollment of students with disabilities until two percent of all dormitory rooms on campus are accessible;
- Enlarge doorways in at least half of the rooms on floors with accessible rooms in 18 of 25 dormitories, so students using wheelchairs can visit friends;
- Provide accessible seating in the Cameron Indoor Stadium and other assembly areas, access to stages and backstage areas around campus, and assistive listening devices in assembly areas;
- Provide accessible parking throughout campus;
- Replace signs throughout campus so they can be read by people with vision impairment and so that people with mobility impairments are properly directed to accessible routes and spaces; and
- Pay $25,000 in civil penalties to the United States and $7,500 in compensatory damages to the complainant, a wheelchair user who graduated from Duke in 1997.

Casey Martin May Use Golf Cart, Appellate Court Rules -- The U.S. Court of Appeals for the Ninth Circuit ruled in Martin v. PGA Tour, Inc. that Casey Martin, a professional golfer from Oregon with a rare disability, Klippel-Trenaunay Syndrome,

which substantially limits his ability to walk, has the right to a reasonable modification of the PGA Tour's ban on carts that would allow him to use a golf cart in tournament competition. The PGA argued that its rules governing tournament competition were not covered by title III because the area of the golf course that is restricted to competitors is not open to the general public and is not a "place of public accommodation." It also argued that allowing Martin to use a cart would "fundamentally alter" the competition. The Department filed an amicus brief arguing that the no-carts rule could be challenged under title III and that waiving the rule in this case would be a reasonable modification required by the ADA. The court of appeals agreed with the Department and ruled that the PGA's tournament rules are covered by title III because the playing areas are part of a place of public accommodation. It also concluded that permitting Martin to use a cart would not fundamentally alter the competition because, in Martin's particular case, it would not give him an unfair advantage. The court found that the purpose of the rule was to inject fatigue into the game, but that Martin experiences more fatigue than the other golfers, even if he uses a cart, and would not gain a competitive advantage.

Casey Martin uses his golf cart during golf tournaments.

"All I ever wanted was the chance to play and to see how good I could be. Without the ADA I never would have been able to pursue my dream of playing golf professionally."
-- Casey Martin

NCAA to Revise Eligibility Requirements to Accommodate Student-Athletes with Learning Disabilities -- The National Collegiate Athletic Association agreed to modify policies that each year prevented hundreds of students with dyslexia and other learning disabilities from playing college sports and receiving athletic scholarships. The 1998 agreement in United States v. National Collegiate Athletic Association, which was filed in the U.S. District Court for the District of Columbia, stemmed from a series of complaints lodged with the Department by student athletes alleging that the NCAA's initial-eligibility academic requirements discriminate against student-athletes with learning disabilities. The agreement requires the NCAA to modify its policies while at the same time enabling it to maintain its academic standards. The NCAA agreed to --

- Revise its rules so that classes designed for students with learning disabilities can be certified as core courses if the classes provide students with the same types of knowledge and skills as other college-bound students;

- Allow students with learning disabilities who are unable to meet the initial eligibility rules when they graduate from high school to earn a fourth year of athletic eligibility if they complete a substantial percentage of their degree work and maintain good grades;

- Direct its committees that evaluate applications filed by students who do not meet the requirements but are seeking a waiver to consider a broad range of factors in reviewing the student's high school preparation and performance when deciding whether to grant a waiver and not to use a

minimum qualifying test score on the SAT or ACT; and

- Include experts on learning disabilities on the committees that evaluate waiver applications.

In addition, the agreement required the NCAA to undertake efforts designed to prevent further violations of the ADA, including designating one or more employees as an ADA compliance coordinator to serve as a resource to NCAA staff and as a liaison with students with learning disabilities; providing training to its staff regarding the new policies; and publicizing the terms of the agreement to high schools, students, parents, and member colleges and universities. The NCAA also agreed to pay a total of $35,000 in damages to four student-athletes.

3. Providing Freedom from Unnecessary Inquiries into Disability

Professional Licensing Reform Proceeds Nationwide -- By challenging overly broad mental health inquiries by State licensing officials of applicants for professional licenses (law and medicine), the Department has spurred reform efforts nationwide. In briefs filed in New Jersey, Florida, and Virginia, the Department argued that broad questions about an individual's history of treatment or counseling for mental, emotional, or nervous conditions that do not focus on current impairment of an applicant's fitness to practice in a given profession violate the ADA. In one case challenging an unnecessarily broad inquiry into past mental health treatment, the Federal court ordered the Virginia Board of Bar Examiners to stop asking bar applicants whether they had received counseling within the past five years.

"I was thrilled ... The ADA and this case helped to reduce discrimination in professional licensing. I enjoy citing it in my work as a disability rights lawyer."
-- Ellen Saideman, who successfully challenged Florida's mental health questions for new lawyers.

C. Enjoying the American Way of Life

A primary goal of the ADA is to bring people with disabilities into the mainstream of the American economy. The Department has achieved greater accessibility in a wide variety of private-sector settings, including shopping, dining, recreation, and business and leisure travel.

1. Becoming Part of the Economic Mainstream

Venture Department Stores Modifies Check Cashing Policy -- The Department entered into a consent decree resolving its lawsuit against Venture Stores, Inc., a St. Louis company with more than 90 discount department stores in eight States. Venture agreed to modify its policy of permitting only customers with drivers' licenses to pay with a personal check, and will now permit individuals who do not drive because of a disability to pay by check if they have a non-driver State ID card. It also agreed to compensate the complainants.

Joan Abbati has epilepsy and is unable to get a driver's license. When making purchases by check, she shows the cashier an ID card issued by the State of Illinois. A Venture discount department store in Chicago refused to honor the card, preventing her from paying by check.

Discount Department Store Chain Removes Barriers -- By consent decree, the Department resolved a case against Gibson's Discount Center, the operator of 30 discount department stores in eight Midwest and Rocky Mountain States. The Department investigated complaints against several Gibson's department stores alleging that Gibson's had failed to remove architectural barriers to access and that it had made alterations that did not comply with the ADA's Standards for Accessible Design. Gibson's agreed to bring all its stores into full compliance with the Standards; provide at least one accessible fitting room and entrance at each store; and offer accessible parking, check-out aisles, and restrooms. Gibson's also agreed to pay $30,000 in civil penalties and $15,000 in compensatory damages.

In some Kansas communities, Gibson's Discount Center is the only place in town to shop for clothing, hardware, electronics, and sporting goods. But for Richard Knight, who uses a wheelchair, it was often impossible to shop at his hometown store because of insufficient accessible parking and inaccessible restrooms.

Smith Barney to Provide Large Print Account Statements -- Under a formal settlement, Smith Barney, a nationwide financial planning services company, agreed in 1994 to provide, upon request, financial statements and correspondence in large print to its customers with vision impairments. (Smith Barney already provided documents in Braille.) Smith Barney also agreed to pay $1,500 to the complainant and notify its customers of the new service.

Friendly's Agrees to Chainwide Barrier Removal Program Under Title III -- The U.S. Attorney for the District of Massachusetts and the Massachusetts-based Friendly Ice Cream Corporation entered into a consent decree under which Friendly's agreed to engage in an aggressive barrier-removal program to increase accessibility throughout its chain of 704 restaurants in 15 States. The 1997 consent order required Friendly's to come into substantial compliance within six years. In the first year, Friendly's agreed to complete barrier removal at 117 locations, including altering the entrances (removing steps, widening doorways, and redesigning vestibules) at those 93 restaurants that currently have inaccessible entrances. Other alterations required by the consent order include redesigning dining areas to accommodate wheelchair users; striping parking areas to include accessible spaces; and altering bathrooms by widening doorways, increasing unobstructed floor space, and installing grab bars and accessible door hardware. In addition, the consent order required the company to pay a civil penalty of $50,000.

Waiting Lines will be Accessible at Wendy's Restaurants -- Nearly 1,700 Wendy's restaurants will become more accessible to their customers with disabilities under a 1998 agreement reached with the Department of Justice and nine State attorneys general. The out-of-court agreement stems from a joint nationwide investigation of the restaurant chain by the Department of Justice and nine States -- the first time the Department has teamed up with States to launch an investigation under the ADA. Wendy's International, Inc. agreed to either widen the queues in which customers wait to order food, or remove the railings or other dividers marking the queues to accommodate customers who use wheelchairs. Prior to the agreement, customers who use wheelchairs had to cut to the front of the line or stand outside the customer queue and wait to be recognized by a restaurant employee because

the queues were too narrow. The agreement resolved a two-year investigation into access issues at Wendy's restaurants by the Department of Justice and State attorneys general from Arizona, California, Florida, Illinois, Kansas, Massachusetts, Minnesota, Pennsylvania, and West Virginia. The joint task force visited newly constructed and older Wendy's restaurants in 12 States, which include the nine States, as well as Louisiana, Ohio, and Washington.

Under the agreement, the Ohio-based chain agreed to --

- Either remove or widen the customer queues at all of its nearly 1,700 corporate-owned or leased restaurants in 39 States;
- Modify its prototype architectural plans for future restaurants, both corporate-owned and franchised, to incorporate accessible customer queue designs;
- Notify all franchisees of the agreement and their obligations under the ADA, and provide them with technical assistance;
- Allow the task force to conduct spot checks of restaurants covered by the agreement to ensure that customer queues have been removed or widened;
- Remove various other barriers found at the 17 newly constructed restaurants visited by members of the joint task force;
- Pay the joint task force $50,000; and
- Pay a total of $12,000 in damages to five individuals or entities who filed complaints with the Department of Justice or State attorney generals' offices, regarding accessibility at Wendy's.

Florida Convenience Store Chain Agrees to Access Modifications -- The owners of Swifty Mart Convenience Stores agreed to remedy access violations at 53 stores. Swifty Mart will provide accessible parking spaces with appropriate signage; curb ramps where an accessible route crosses a curb; refueling assistance to any person with a disability who specifically requests refueling assistance when more than one employee is on duty and no security risk will result; and ADA training for employees. It also agreed to pay a civil penalty of $5,000 and to ensure that any stores that it purchases or leases in the future will meet the requirements of the ADA Standards for Accessible Design.

Commercial Real Estate Firm Pays $560,000 in Damages, Penalties for Discrimination in Leasing -- Under an agreement with the Department of Justice, TrizecHahn Corporation, a commercial real estate corporation that refused to lease space to a nonprofit organization that serves persons with disabilities will no longer discriminate against people with disabilities and will take corrective action to ensure that it does not happen in the future. TrizecHahn owns, manages, and develops retail and office properties throughout the United States, including a facility in Rosslyn, Virginia. The ENDependence Center, based in Arlington, Virginia, attempted to lease office space in TrizecHahn's Rosslyn, Virginia, building, but the leasing agent refused to enter into any negotiations with the center and refused to lease the space to the center because the center serves persons with disabilities. TrizecHahn agreed to no longer discriminate against individuals with disabilities when leasing commercial real estate; pay $550,000 to the center and $10,000 in civil penalties to the United States; and train employees in the Washington, D.C. area on the requirements of the ADA that pertain to the leasing of commercial real estate.

Safeway Settlement has Nationwide Impact -- Safeway Stores, Inc., entered an agreement with the Department of Justice requiring it to create at least one 32-inch opening between the security bollards or cart corrals used at the entrances to many of its stores so that customers who use wheelchairs can have greater access. Safeway will also launch a nationwide compliance plan where it will survey all of its 835 stores, determine the areas throughout the stores that do not meet ADA requirements, and take steps to ensure compliance. The agreement resolved a complaint filed with the Department regarding a Safeway store in Washington, D.C. Other parties to the agreement include two individuals with disabilities and the Disability Rights Council of Washington, D.C., which sued the chain under the ADA, as well as the Disability Rights Education and Defense Fund, which had received several complaints about Safeway's California stores.

2. Increasing Access to Recreational Activities

Empire State Building Removes Barriers to Observation Decks -- The Justice Department alleged that the owners of the Empire State Building failed to remove architectural barriers where it was readily achievable to do so. An agreement mandated changes to the lobby, entrance, observation decks, restrooms and telephones, but does not cover any privately leased office space in the building.

An accessible observation area atop the Empire State Building

South Dakota County Fair Made Accessible -- Minnehaha County agreed to a wide range of measures to ensure accessibility at the Sioux Empire Fair. The South Dakota county agreed to renovate several bathrooms, install two TTY's at pay phones, create an accessible path of travel through areas of the Fairgrounds, upgrade accessible parking, make the vending and ticketing counters and booths accessible, provide materials to Fair volunteers and patrons regarding the accommodations available for people with disabilities, and adopt a policy that allows patrons with mobility impairments to buy the same number of companion tickets to Fair concerts that other patrons are able to buy.

Disney Agrees to Interpreters, Captioning, Assistive Listening Systems -- The Department and Walt Disney World reached a comprehensive agreement resolving complaints that Disney had failed to provide auxiliary aids for effective communication for persons who are deaf or hard of hearing. Disney agreed to --

- Provide oral and sign language interpreters at numerous specified attractions at Walt Disney World in Florida and at Disneyland in California, upon notice two weeks in advance of an individual's planned visit;
- Make captioning systems available without reservation at the entrance to specified rides or shows, at both Disney resorts;
- Provide transcripts to persons who are deaf or hard of hearing at attractions and allow these individuals an opportunity to ride an attraction promptly a second time in order to better understand the written text;
- Schedule interpreters at specified shows, performances, and rides on a rotating basis so that guests can attend all interpreted

attractions in one day at one of the three parks at Walt Disney World in Florida and Disneyland in California;

- Provide closed captioning on video monitors in queues for attractions and other arcades throughout the parks;

- Make interpreter schedules available from Walt Disney World and Disneyland Guest Services;

Sign language interpreters at Walt Disney World.

- Provide assistive listening systems and written transcripts for most attractions for hard of hearing guests who desire them;

- Train employees to improve services for guests who are deaf or hard of hearing; and

- Advertise its services for guests who are deaf or hard of hearing.

"The interpreters were out of this world! They couldn't have been better. Our experience was wonderful."
-- Shirley Krueger, who returned with her family to Disneyworld and was able to fully enjoy the visit.

MGM Grand Hotel, Casino, and Theme Park to Become Fully Accessible to People with Disabilities -- Under an agreement reached with the Department of Justice, people with disabilities will be able to fully enjoy the entertainment and attractions at the MGM Grand Hotel, Casino and Theme Park in Las Vegas, Nevada, the world's largest hotel and casino complex. MGM Grand will--

- Increase the number of accessible guest rooms for individuals with disabilities by adding 36 rooms during the course of renovations, including rooms with roll-in showers, bringing the total number of fully accessible guest rooms to 112;

- Increase the number of accessible guest rooms for individuals with hearing impairments by adding 15 rooms with visual alarms during the course of renovations, bringing the total number of fully accessible rooms for individuals with hearing impairments to 46, and making available 15 additional kits containing visual notification devices, TTY's, and door knockers;

- Make restrooms throughout the facility fully accessible to persons with disabilities by adding stalls for people who use crutches or walkers, adding grab bars, and relocating doors;

- Ensure that the casinos are fully accessible to persons with disabilities by adding more lowered gaming tables and accessible service counters and improving access to the high roller gaming areas;

- Install visual alarms throughout the facility for individuals who are deaf or hard of hearing;

- Improve access in the Grand and Hollywood Theaters and in the MGM Grand Garden, which host major sporting events and concerts, by adding accessible wheelchair and companion seating locations, lowering ticket and box office counters, and providing assistive listening devices for people who are hard-of-hearing;

- Provide full access for people with disabilities at restaurants and retail establishments within the facility by adding handrails in entrances, lowering cashier counters, and providing accessible dressing rooms and adequate knee space in dining booths;

- Make pool and spa areas fully accessible to people with disabilities; and
- Pay $165,000 in compensation to the three complainants.

Major Racing Facility Agrees to Comprehensive Barrier Removal -- Under a consent decree, Dover Downs, a 100,000-seat horse and auto racing facility located in Dover, Delaware, agreed to bring the new and altered portions of the facility into compliance with the ADA Standards for Accessible Design and to remove architectural barriers to access in the existing portions of the facility. The facility, which features the Dover Downs International Speedway, will make the grandstands accessible by providing more than 300 accessible wheelchair seating locations with companion seating and accessible routes and ramps to these seating areas. It will provide designated accessible parking areas adjacent to grandstand entrances and develop a policy for the transportation of people with disabilities between the accessible parking areas and the gates serving the Speedway's grandstand seating. Restrooms will be made accessible, service counters and betting windows will be lowered, and other steps will be taken to make the Dover Downs Slots facility fully accessible. Dover Downs also agreed to provide annual employee training regarding nondiscriminatory service to individuals with disabilities and to pay $20,000 in compensatory damages to the complainant.

Radio City Installs Accessible Seating -- The U.S. Attorney for the Southern District of New York filed, and resolved by consent decree, a lawsuit against the owners and operators of Radio City Music Hall, a historic theater dating from the 1930's. The theater has nearly 6,000 seats, with over 3,400 on the orchestra level, and the remainder on three mezzanine levels. Radio City agreed to install 59 wheelchair and companion seating locations and 60 aisle seats with removable armrests. It will also modify its ticketing policies to reserve accessible seats for persons with disabilities until all other seats are sold. To compensate for the lack of wheelchair seating on upper levels, Radio City agreed to discount a portion of the orchestra wheelchair seating so that persons with disabilities will be able to purchase tickets at a range of prices comparable to the general public. Radio City also agreed to remove barriers affecting exterior and interior routes, doors, and elevators; service areas such as restrooms, telephones, drinking fountains, concession areas, and a ticket window; dressing rooms and adjacent shower/toilet rooms; and tour routes. Radio City will make available 240 assistive listening devices and install visual alarms that comply with the ADA. It will also provide signage throughout the public areas directing patrons with disabilities to accessible routes and service areas.

Yankee Stadium Increases Accessible Seating -- A consent decree entered into by the U.S. Attorney for the Southern District of New York, the New York Yankees, and the City of New York will vastly increase the number of accessible wheelchair seating locations at Yankee Stadium. In the past, a total of only 44 pairs of wheelchair and companion seating locations were available at the stadium, 12 of which were sold at the highest ticket price level and none of which were sold at any of the lowest three ticket price levels. Under the agreement, the Yankees and the city agreed to increase the number of wheelchair and companion seating locations to up to 400 pairs of seating locations and disperse those seating locations throughout the lower levels of the stadium. These areas include infield and outfield seating on the field level, in the main level boxes, the main reserve section, the bleachers, the loge, and in two entirely new seating sections to be constructed in an area near Monument Park in left field and in an area behind right center field. The consent decree also requires the defendants to provide at least 300 designated aisle transfer seats in the stadium. In addition, the defendants agreed to sell tickets to both regular season and post-season games for all but 18 of the wheelchair

seating locations at the three lowest ticket price levels (there are eight ticket price levels for the 2000 season), provide persons with disabilities the opportunity to purchase regular season and postseason tickets through all of the same methods afforded to persons without disabilities, and make components within Yankee Stadium, such as exterior and interior routes, signs, restrooms, telephones, drinking fountains, concession areas, elevators, ticket windows, restaurants, luxury suites, and press areas accessible to persons with disabilities. The Yankees also agreed to pay a $25,000 civil penalty and to make $10,000 in charitable contributions.

Renaissance Fair Removes Barriers -- The Department entered into a agreement with Mid-America Festivals, operator of the Minnesota Renaissance Festival in Shakopee, Minnesota, the largest renaissance festival in the country. The agreement resolved a complaint filed by a wheelchair user who alleged that he was unable to visit many of the shops and booths at the festival because they were not accessible and because some shops had ramps that were dangerously steep. Mid-America agreed to provide an accessible ticket window, as well as remove all barriers to access at several food booths and shops. They also agreed to provide accessible portable restroom facilities and accessible telephones, and pay a civil penalty of $4,000.

Movie Theater Chain Agrees to Nationwide Settlement -- Cineplex Odeon Corporation, one of the nation's largest operators of motion picture theaters, agreed to increase significantly the number of receivers it provided for assistive listening systems in its more than 800 motion picture theater auditoriums throughout the United States. Prior to the 1996 agreement, Cineplex provided four receivers for each auditorium, regardless of its size. The company will now provide receivers at the rate of two percent of seats in all auditoriums that opened prior to January 26, 1993. It will also provide receivers at a rate of four percent of seats in all auditoriums where audio-amplification systems have been replaced since January 26, 1992, in order to comply with ADA provisions governing alterations to existing places of public accommodation. (The company already provided receivers at the rate of four percent of seats in new theaters, in strict compliance with the ADA Standards for Accessible Design.) Cineplex Odeon also agreed to provide one neck loop per screen in theaters with six or fewer screens and one for every two screens in theaters with more than six screens. Neck loops facilitate the use of assistive listening systems by people who use hearing aids. Additionally, the company will monitor use of assistive listening systems at all theaters and purchase additional receivers where necessary to meet additional demand, even at theaters where receivers will be provided at the rate of four percent of seats.

National Movie Theater Chain Agrees to Accessible Wheelchair Spaces, Companion Seats -- The Department entered into a formal agreement and consent decree with United Artists Theatre Circuit, Inc. (UATC), one of the nation's largest exhibitors of motion pictures, that will ensure compliance with the ADA's barrier removal and new construction provisions at more than 400 theater locations with approximately 2,300 screens throughout the United States. The 1996 consent decree, which was filed simultaneously with the Department's intervention in Arnold v. United Artists Theatre Circuit, Inc., resolved that suit. The Arnold case was a private class action suit brought on behalf of California residents with mobility impairments who encountered barriers at UATC theaters. The agreement required UATC to take the following actions in almost all of its existing theaters throughout the country —

- Provide parking spaces that comply in design and number with the requirements of the ADA Standards for Accessible Design;
- Provide an accessible path of travel from parking spaces to an accessible theater entrance;

- Provide in each auditorium the number of wheelchair seating spaces required in comparably-sized, newly-constructed auditoriums, with companion seating;

- Ensure that one percent of the total number of seats is aisle seats with folding or removable aisle-side armrests;

- Provide at least two dispersed wheelchair seating locations at a distance of from one-third to two-thirds of the way back from the screen in auditoriums with more than 300 seats; and

- Modify existing restrooms to make them accessible or construct unisex accessible restrooms that comply with the Standards.

UATC was also required to bring all theaters constructed for first occupancy after January 26, 1993, into full compliance with the Standards by no later than June 30, 1997, and to ensure that future construction complies with the Standards.

3. Removing Obstacles to Business and Leisure Travel

Avis to Provide Hand Controls for Rental Cars -- Under a formal settlement, Avis, Inc., the country's second largest car rental company, agreed in 1994 to provide rental cars with hand controls for persons with disabilities -- with as little as eight hours notice in most major airport locations. Avis also agreed to urge all existing licensees to adopt the same policy, require all new franchisees and those renewing their contracts to adopt the policy, train its staff at its corporate-owned rental locations, and allow persons who are unemployed due to a disability and who do not use credit cards, to substitute verifiable disability-related income in lieu of a verifiable employment history. Also, Avis agreed to allow persons who cannot drive due to a disability to rent cars in their own name and maintain financial responsibility for renting the car when accompanied by a licensed driver.

Hawaii Resort Hotels Agree to Accessibility Changes -- The Department sued Pleasant Travel Service, Inc., and its subsidiary, Hawaiian Hotels & Resorts, Inc., who own and operate several resort hotels in Hawaii and California. It alleged that the hotels failed to remove barriers to access and renovated the hotels in ways that did not comply with the ADA's standards. Under a consent decree, the Royal Lahaina Resort, the Royal Kona Resort, and the Kauai Coconut Beach Resort agreed to provide accessible parking; modify restrooms to make them accessible; provide access to restaurants, swimming pools and the luau areas; and offer between 12 and 14 accessible guest rooms at each hotel. Also, the defendants agreed to pay a total of $25,000 in compensatory damages to two individuals who use wheelchairs and $25,000 in civil penalties.

Holiday Inn and Crowne Plaza Hotels will Improve Access and Modify Reservation Policies -- The Department signed two settlement agreements in 1998 with Bass Hotels & Resorts (BHR) and 20 separate agreements with individual hotel franchise owners to resolve ADA violations throughout BHR's Holiday Inn and Crowne Plaza hotel chains. The agreement with BHR on reservations and rental policies required that each hotel in the two chains must --

- Guarantee reservations for accessible rooms as they guarantee other types of reservations;

- Hold all accessible rooms for persons with disabilities until 6 p.m., at which time they can release all but two (one in each of the two standard categories of single and double bed rooms), which must be held until all other rooms of that type are sold; and

- Compile a list of accessibility features to be kept at the hotel's front desk and made available to anyone who calls the hotel or the central reservations system.

The second agreement required BHR to make modifications in three hotels it currently owns or manages and to pay $75,000 to the Key Bridge Foundation to establish a mediation program for ADA complaints. BHR also agreed to pay a total of approximately $75,000 to the United States and the complainants to resolve all outstanding issues.

The Department also reached 20 agreements with Holiday Inn and Crown Plaza franchisees resolving accessibility complaints involving hotels in Alabama, Arizona, California, Colorado, Georgia, Illinois, Kansas, Louisiana, Massachusetts, Ohio, Tennessee, and Texas. The agreements require a wide range of modifications, including removal of barriers to access, provision of auxiliary aids, and staff training.

Avis Rent A Car will Improve Access to Airport Shuttle Systems for People with Disabilities -- The nation's second largest rental car company agreed to provide accessible airport shuttle buses at all of its airport locations nationwide. The 1999 agreement between Avis Rent A Car, Inc., and the Department of Justice resolved a complaint filed by a traveler who uses a wheelchair alleging that Avis violated the ADA by not providing access to the shuttle system that operates between the terminal at the Detroit Metro Airport and its offsite rental car facilities. During negotiations, Avis agreed to expand the settlement to cover all of its airport shuttle systems nationwide. Avis agreed to ensure that --

- Each of the 36 shuttle systems at airport locations that it owns and operates will have at least one accessible vehicle by December 2000; some locations will have several accessible vehicles;
- All newly acquired large shuttle vehicles will be accessible;
- Accessible curbside service, under which rented vehicles are delivered directly to the terminal where the customer with a disability is waiting, will be provided at all locations; and
- Barriers to access will be identified and removed at each airport location.

When the Department began its investigation, Avis had only six lift-equipped vehicles out of 286 in its fleet. When Avis is in full compliance with the agreement, it will have at least 153 accessible vehicles.

Guide Dogs Will No Longer Be Subject to Hawaii Quarantine -- Hawaii agreed to allow precertified, vaccinated guide dogs for persons with vision impairments immediate entrance to the State, no longer requiring them to stay in a 120-day quarantine. The agreement resolved Crowder v. Kitagawa, in which the Department of Justice intervened to challenge the quarantine under the ADA. The quarantine, established as a rabies prevention measure, required all dogs -- including guide dogs -- to stay at the State's quarantine facility. Although travelers with vision impairments could visit their dogs at specified times, they could not remove the dogs from the quarantine facility or otherwise use their dogs to travel in Hawaii during the quarantine period.

Tourists who are blind can now enjoy Hawaii with their guide dogs.

Under the agreement, Hawaii agreed to establish regulations to permit guide dogs with proper documentation and testing to enter the State immediately upon arrival. Under new regulations adopted by Hawaii, a guide dog owner is required to demonstrate that the dog is free of rabies through documentation of rabies vaccinations and serological testing. The owner must also have a certification of training from a recognized guide dog school.

"Oh, I could have gone to Hawaii without my guide dog, but part of traveling for me, and feeling comfortable in a place, is having the independence my dog provides. The ADA has allowed me ... to feel included in society, rather than cared for by it. I have choices. Choice is not always as available to people with disabilities as to others in our society."
-- Jenine Stanley

Greyhound to Improve Bus Service to Passengers with Disabilities -- An agreement between the Department and Greyhound Lines Inc., will improve the availability and quality of accessible bus service for persons with disabilities. The 1999 agreement resolved a wide range of complaints including the denial of passage or boarding assistance to persons with mobility or vision impairments, injuries to passengers while being physically carried on and off buses, and verbal harassment. It required Greyhound to pay more than $17,500 in damages, which included individual payments to 14 complainants ranging from $500 to $4,000. Current Department of Transportation (DOT) regulations permit carrying, but require Greyhound to provide lift-equipped bus service on 48 hours' notice beginning in October 2001. The agreement will minimize the need for carrying passengers with disabilities by phasing in accessible bus service in three stages, beginning two years before lift-equipped service is required by the DOT rules. Under the agreement, Greyhound will --

- (Through March 31, 2000 only) provide, with 48 hours' notice through its ADA Hotline, a lift-equipped bus or assistive device on scheduled departures to and from locations where these buses are operated (generally along major routes serving a large proportion of Greyhound passengers) or where assistive devices can be made available to passengers who request such accommodations;

- On 48 hours' notice, make reasonable efforts to provide an accessible bus between <u>any</u> of the approximately 2,600 points served by Greyhound; and

- (Beginning no later than April 1, 2000) guarantee accessible buses between any points served by Greyhound, on 48 hours' notice, except in a limited set of "excusable circumstances" defined in the agreement.

The agreement also requires Greyhound to --

- Provide training to employees assisting any person with a disability;

- Establish an internal dispute resolution procedure for addressing complaints by persons with disabilities within 90 days;

- Inform individuals with disabilities of their rights under the ADA and the agreement;

- Convene a meeting of a specially created advisory committee of representatives from organizations advocating the rights of persons with disabilities to advise Greyhound on its training programs and policies by September 30, 1999; and

- Continue systematically removing barriers to access in Greyhound facilities.

Although Greyhound only fulfilled 44% of requests made in October 1999, Greyhound steadily improved, ultimately fulfilling 94% of passenger requests for lift-equipped buses by February 2000. In this period alone, up to 251 people were saved the humiliation and risk of being physically carried onto a bus.

"Every half hour or so, I became overwhelmed with the full significance of what we have accomplished ... It was a great day for a magnificent, VICTORIOUS ride."

-- Kathleen Kleinmann, a wheelchair user, who was able to board an accessible bus for the first time for a trip from Harrisburg to Pittsburgh, Pennsylvania.

Airport Shuttle Service to Provide Access to Service Animals -- The Arizona Shuttle Service, which operates a fixed-route shuttle service between Tucson and Phoenix International Airport, agreed to operate and maintain wheelchair-accessible vans and to permit all types of service animals, not only "seeing eye" dogs, to ride the vans. The agreement reached by the Disability Rights Section, the United States Attorney's Office for the District of Arizona, two private plaintiffs, and Arizona Shuttle resolved two private lawsuits and two complaints filed with the Department of Justice. The two complaints investigated by the Department alleged that the Arizona Shuttle Service violated the ADA by refusing to transport an individual with her service animal because the animal was not a "seeing eye dog" and by purchasing two new vans that were not accessible to people with disabilities, including people who use wheelchairs. Just before entering the agreement, Arizona Shuttle purchased two accessible vans for its fleet. The agreement requires the company to maintain its accessible vans and to post and implement a service animal policy and a written reservations policy that meet the non-discrimination requirements of the ADA. The agreement required Arizona Shuttle to pay $10,000 in compensatory damages to the individual who was denied access because of her service animal. Another wheelchair user and a disability group in Arizona who jointly sued the company for having inaccessible buses and vans will each receive $2,500 in damages. Arizona Shuttle will also pay $5,000 in civil penalties to the United States.

A hotel refused to rent a room because the teenagers were wheelchair users with cerebral palsy.

DOJ Document — "Commonly Asked Questions about Service Animals in Places of Business," developed in cooperation with the National Association of Attorneys General, provides questions and answers on the rights of persons with disabilities who use service animals in places of public accommodation.

South Carolina Motel Pays Damages, Penalties for Refusing Room -- The Department resolved by consent decree a lawsuit challenging the outright exclusion of people with disabilities from a motel in South Carolina. The Ocean Plaza Motel in Myrtle Beach refused to rent a room to a group of two teenagers and their mothers because the two teenagers have cerebral palsy and use wheelchairs. Under the consent decree, the owner and operators agreed to implement and post a formal written policy that the motel will not deny persons with disabilities the services, facilities and accommodations of the motel; will train its employees in the equal and dignified treatment of guests with disabilities; remove architectural barriers at the motel over a two-year period, where such removal is readily achievable; pay $92,000 plus interest to the complainants over the two-year period; and pay civil penalties of $5,000 to the U.S. Treasury.

D. Ensuring an Accessible Future

To ensure that the future built environment is accessible to people with disabilities, the ADA requires all new construction and alterations to meet specific architectural design standards. The Department has taken a wide range of enforcement actions to ensure that owners, architects, and others involved in the design and construction process meet their ADA obligations.

1. Establishing Architect Liability

Future Stadium Designs to Include Line of Sight Over Standing Spectators -- The Ellerbe Becket architectural firm agreed that all of the new sports stadiums and arenas that it designs in the future will be designed to provide wheelchair seating locations with a line of sight over standing spectators. The 1998 agreement specifically applies to any facility with more than four fixed seats and in which spectators can be expected to stand for all or any part of an event .. The consent decree resolved the Department's lawsuit alleging that Ellerbe had violated the ADA by repeatedly designing new sports stadiums and arenas that violated the ADA new construction requirement for comparable lines of sight for wheelchair seating locations. Ellerbe argued that the court should dismiss the case because architects are not covered by the ADA and because lines of sight over standing spectators are not required. The court disagreed with both of these arguments.

DOJ Document -- "Common Errors and Omissions in New Construction and Alterations," first distributed at a conference cosponsored by the American Institute of Architects, assists architects and the construction industry in designing and constructing buildings that comply with the ADA.

2. Making Newly Constructed Buildings Accessible

Nationwide Restaurant Chain Agrees to Accessible New Construction -- Lone Star Steakhouse and Saloons, a nationwide restaurant chain operating 105 restaurants in 29 States, agreed to bring 97 new or altered facilities into full compliance with the ADA. This 1995 agreement was the first resulting from a compliance review, a process by which the Department reviews architectural plans to determine if new construction projects will comply with the ADA's standards. By reviewing the plans and visiting several sites, officials learned that Lone Star failed to provide accessible seating, restrooms, and parking, as well as accessible routes from parking areas. Lone Star also agreed to contribute a total of $5,000 to four disability advocacy groups.

New Olympic Stadiums Are Fully Accessible -- The Department entered into agreements to ensure full accessibility at five venues newly designed and constructed for the 1996 Olympic Games and Paralympic Games in Atlanta, Georgia. The agreements with the Atlanta Committee on the Olympic Games and the Metropolitan Atlanta Olympic Games Authority make the Olympic Stadium, the Aquatic Center, the Stone Mountain Tennis Center, and the field hockey stadiums at Morris Brown College and Clark Atlanta University models for accessible stadium design nationwide.

Under the agreements, the facilities --

- Provide accessible seating as an integral part of the seating plan;
- Have at least one percent of their total seating accessible for persons using wheelchairs;
- Disperse the accessible seating throughout the stadiums, including in specialty seating

areas, such as the suites and the club level of the Olympic Stadium;

- Provide a conventional seat next to each wheelchair space so that spectators with disabilities can sit next to family and friends;

- Ensure that virtually all wheelchair seats have a comparable "line of sight" so that wheelchair users can still see the playing surface even when spectators in front of them stand up during an event;

- Provide an accessible route from parking and transportation areas to the wheelchair seating locations that connects with all public areas of the stadiums; and

- Provide full accessibility at all concession stands, restrooms, parking areas (including parking for vans), automatic bank machines, locker rooms, portable toilets, and employee common-use areas.

After the conclusion of the Olympic and Paralympic Games, the five facilities were converted into smaller, permanent sports facilities. For example, the Olympic Stadium became the new home for the Atlanta Braves and the Aquatic Center became a swimming facility for the Georgia Institute of Technology. The agreements ensured that the post-Olympic configuration of the facilities will also be fully accessible.

DOJ Document -- "Accessible Stadiums" highlights key ADA accessibility requirements, including the provision of wheelchair seats that have a comparable "line of sight" allowing wheelchair users to see the playing surface even when other spectators stand up in front of them.

Three 1999 Lawsuits Challenge Stadium-style Theater Design --

United States v. AMC Entertainment, Inc. -- The Department filed suit against AMC Entertainment, Inc., and American Multi-Cinema, Inc., in the U.S. District Court for the Central District of California for violating the ADA in the design, construction, and operation of stadium-style movie theaters in the AMC chain. The two theaters named in the complaint are the Norwalk Theater in Norwalk, California, and the Promenade 16 Theater in Woodland Hills, California. The newly constructed AMC theaters have two types of seats -- stadium-style seats, which provide comfortable, unobstructed lines of sight to the screen, and traditional seating, which is located on the sloped floor at the front of the theater immediately in front of the screen. Although AMC marketed the theaters as providing stadium-style seating, it placed the wheelchair seating only in the less desirable traditional seating on sloped floors. Wheelchair users are therefore denied a movie viewing experience that is comparable to that afforded to other members of the general public. The complaint alleged other access violations including the failure to provide companion seating next to wheelchair seats; failure to provide handrails; inadequate space at wheelchair seating locations; and inaccessible concession counters, bathrooms, and telephones.

United States v. Cinemark USA, Inc. -- The Department filed suit against Cinemark USA, Inc., in the U.S. District Court for the Northern District of Ohio alleging that three of Cinemark's Ohio theaters, as well as its stadium-style seating theaters across the country, violated the ADA by failing both to provide comparable lines of sight to wheelchair users and to make wheelchair seating locations an integral part of the stadium-style seating.

Lonberg v. Sanborn Theaters, Inc. -- The Department intervened in an ongoing lawsuit in the U.S. District Court for the Central District of California brought by two wheelchair users against the Market Place Cinema in Riverside California, a facility that offers stadium-style seating. The suit alleges that Sanborn violated title III because it does

not provide adequate numbers of wheelchair seating locations, fixed companion seats next to wheelchair seating locations, aisle seats with removable armrests, and wheelchair seating locations with lines of sight comparable to those for other members of the general public.

Days Inns Will Promote Accessibility at New Hotels Nationwide -- The world's largest hotel chain agreed to undertake a nationwide initiative designed to make hundreds of its new hotels across the country more accessible to persons with disabilities. The 1999 consent decree resolved five lawsuits filed by the Department of Justice. The suits alleged that franchiser Days Inns of America, Inc, and its parent company, Cendant Corporation (formerly HFS, Inc), because of their significant role in the design and construction of new Days Inns hotels, violated the ADA by allowing franchisees to construct hotels that failed to comply with the ADA Standards for Accessible Design. Under the agreement, Days Inns will --

- Require new hotels to certify that they are in compliance with the ADA Standards before they open for business as Days Inns;
- Pay for an independent survey program designed to identify ADA problems at newly constructed hotels;
- Establish a $4.75 million revolving fund to provide interest-free loans to franchisees of newly constructed hotels to finance repairs and renovations required for ADA compliance; and
- Pay $50,000 to the United States.

The agreement ended four years of litigation that followed an 18-month investigation of newly constructed Days Inn hotels across the country. The investigation revealed that similar accessibility problems existed throughout the chain, including, for example, insufficient accessible parking, inaccessible entrances and walkways at the facilities; inadequate space for persons who use wheelchairs to maneuver in guestrooms and bathrooms; insufficient visual alarm systems for persons who are deaf or hard of hearing; inadequate signage for persons who are blind or have low vision; inaccessible routes throughout the hotels; and guestroom and bathroom doors that were not wide enough to allow wheelchairs to pass inside. Claims against the owners, construction contractors, and architects of the five hotels were resolved in other agreements.

DOJ Documents -- "Common ADA Problems at Newly Constructed Lodging Facilities," the "ADA Checklist for New Lodging Facilities," and "Five Steps to Make New Lodging Facilities Comply with the ADA" assist hotel owners, franchisers, architects, and contractors on ADA requirements.

E. Gaining Equal Access to Health Care

The ADA requires that people with disabilities have equal access to health care provided by both the public and private sectors and that the care be provided in the most integrated setting appropriate. The Department has acted forcefully to ensure compliance by 9-1-1 systems, dentists, doctors, hospitals, and State long-term care programs.

I. Receiving Emergency Services

Nationwide Initiative Spurs 9-1-1 Accessibility -- The Department undertook a nationwide initiative to ensure that 9-1-1 emergency services provide direct, equally effective access to TTY users, including people who are deaf, hard of hearing, or who have speech impairments. Compliance reviews were conducted in over 500 locations in all 50 States including Houston, Seattle, Miami, Washington, D.C., Chicago, Indianapolis and other major metropolitan

areas by U.S. Attorneys' Offices in consultation with the Civil Rights Division. Where problems were found, the U.S. Attorneys offered technical assistance and negotiated agreements to bring those 9-1-1 systems into compliance. Those agreements required 9-1-1 providers to --

- Install a text telephone, TTY, or computer with TTY capability at every single call taker's position, so that each call taker has immediate TTY access if a TTY call comes in;
- Instruct call takers to treat every "silent" call as a potential TTY call and send a TTY prompt;
- Develop and implement a public education program to promote the use of 9-1-1 by individuals who use TTY's;
- Conduct staff training and semiannual audits of the quality of service provided to TTY users.

DOJ Document -- "ADA Access for 9-1-1 and Telephone Emergency Services" outlines ADA requirements for providing direct access to emergency services for persons using TTY's or text telephones, including individuals who are deaf, hard of hearing, or who have speech impairments.

Philadelphia Addresses HIV Discrimination -- The City of Philadelphia entered an agreement resolving a complaint alleging that emergency medical technicians (EMTs) of the Philadelphia Fire Department refused to assist an individual when they learned that he had HIV. The City agreed to conduct mandatory training of the Department's 2,300 EMTs and firefighters regarding universal precautions to prevent the transmission of HIV/AIDS, as well as to provide HIV/AIDS sensitivity training. The City also agreed to develop and publicize a written policy stating that individuals with disabilities will be given the opportunity to benefit fully from its emergency medical services and to discipline any personnel who fail to follow the City's guidelines. In addition, the City agreed to pay $10,000 in compensatory damages and provide a written apology to the individual denied services.

2. Securing Access to Health Care

Maine Hospital Will Provide Auxiliary Aids for Deaf, Hard of Hearing -- The U.S. Attorney for the District of Maine, a private plaintiff, and the Maine Medical Center entered into a consent decree requiring the medical center to provide qualified sign language interpreters, assistive listening devices and TTY's, captioned televisions, and other similar aids and services to persons who are deaf or hard of hearing. Maine Medical Center, which is Maine's largest hospital, also agreed to publish and distribute a new written hospital policy directing its employees to offer an interpreter whenever staff has any reason to believe a patient is deaf or hard of hearing. The interpreter is to be made available by the medical center as soon as possible and no later than one hour after the receipt of a request for an interpreter. The hospital also agreed to provide the same services including interpreters to deaf family members, relatives, companions, and friends who visit or accompany a patient. The hospital will require all of its clinical directors and department heads, as well as its supervisors, nurses, and other patient-contact personnel, to participate in mandatory and comprehensive in-service training regarding the proper use and role of interpreters and other communication needs of persons who are deaf or hard of hearing. Maine Medical Center also agreed to produce an educational video and distribute materials to all physicians with hospital privileges regarding the ADA rights of persons who are deaf and hard of hearing and to pay a civil penalty of $10,000 and $25,000 in damages to the plaintiff.

Connecticut Agreement Establishes Statewide Interpreter System -- The Department intervened in Connecticut Association of the Deaf v. Middlesex Memorial Hospital, a lawsuit brought by the Office of Protection and Advocacy in Connecticut against 10 acute care hospitals for failing to provide sign language and oral interpreters for persons who are deaf or hard of hearing. In a consent decree joined by all of the parties and 22 other acute care hospitals, the hospitals agreed to --

- Set up a state-wide on-call system to provide interpreters 24 hours a day, seven days a week, for persons who are deaf or hard of hearing (the system will respond to most requests in urban areas within an hour, and in rural areas within one hour and fifteen minutes);
- Use sign language pictogram flash cards that will be developed by the Department of Justice to assist in communication when sign language interpreters are not available;
- Provide TTY's through-out the hospitals' public areas and in patient rooms, when requested:
- Install visual alarms where audible alarms are provided;
- Provide other auxiliary aids and services when necessary for effective communication, including computer assisted real-time transcription services, closed caption decoders for televisions, captioning of hospital-generated videos, qualified notetakers, assistive listening devices and systems, and written materials; and
- Train employees and volunteers about issues relating to communication with persons who are deaf or hard of hearing, including special training for emergency department personnel, psychiatric personnel, social workers, and other key personnel; offer training to all affiliated physicians; and pay $333,000 in compensation to the named plaintiffs and individuals who filed complaints with the Department of Justice.

For years, Rachel Spillane had to interpret for her family in many emergency medical situations. "... with the [Connecticut] consent decree I was relieved of this dilemma and was once again allowed to be a family member. I wish that each State had such a system in place so that the deaf community truly has equal access to the health care system."

Supreme Court Rules Asymptomatic HIV-infected Patient is Person with a Disability -- The Supreme Court decided in Bragdon v. Abbott that asymptomatic HIV-status is a disability under the ADA. Plaintiff, a dental patient in Bangor, Maine, infected with HIV, but who had no outward symptoms of the disease, was denied treatment by a dentist. The patient filed suit under the ADA, alleging that, as a result of the virus, she was "disabled" and therefore protected by the Act. The U.S. Court of Appeals for the First Circuit ruled that the patient's asymptomatic HIV status constituted a disability because it was a physical impairment that substantially limited the "major life activity" of reproduction. The Supreme Court agreed with the amicus brief filed by the Department of Justice and upheld the court of appeals in a 5-4 decision, finding that asymptomatic HIV status met all the requirements under the statutory definition of a disability -- it is a physical impairment (from the moment of infection), it impairs the major life activity of reproduction, and it "substantially limits" that

activity. The court also emphasized that its conclusion was consistent with the Department of Justice's views on this issue as expressed in its regulations and technical assistance manual.

DOJ Document -- "Questions and Answers: The ADA and Persons with HIV/AIDS" explains the ADA's requirements for employers, State and local governments, businesses, and nonprofit agencies serving the public.

Hospital Center Pays Damages, Agrees to Nondiscriminatory Treatment of Patients with HIV -- The Department reached an agreement with The George Washington University, The George Washington University Medical Center, The George Washington University Hospital (GWUH), and District Hospital Partners, L.P., to resolve a complaint that cardiothoracic surgeons at GWUH violated the ADA by denying open heart surgery to a patient because he has HIV. The agreement required GWUH to pay $125,000 to the complainant; to issue a hospital policy establishing that patients cannot be denied, or discouraged from seeking, surgery or other medical treatment because of infection with HIV or AIDS; to conduct annual training for staff on this new nondiscrimination policy; to amend its bylaws and regulations to provide for discipline of hospital staff who violate this nondiscrimination policy; to conduct a grand rounds symposium for local area cardiothoracic surgeons that addresses nondiscrimination against persons with HIV and AIDS who need open-heart surgery; to advise patients of GWUH's nondiscrimination policy; and to establish an internal mechanism for responding to patients' concerns that they have been denied treatment, or discouraged from seeking treatment, because of HIV, AIDS, or any other disability.

"The ADA has heightened medical and dental professionals' awareness that discrimination is against the law ... and has given ... doctors the ability to persuade their colleagues not to discriminate."

-- Daniel Brunner, Whitman-Walker Clinic, Washington, D.C.

New Orleans Dentist Liable for Refusal to Treat Patient with HIV -- A Federal court in Louisiana ruled that a dentist violated the law by referring persons with HIV or AIDS to another dentist solely on the basis of the patient's HIV positive status. Under a consent order the dentist, Dr. Morvant, agreed to pay $60,000 in damages to the family of one deceased patient, Ismael Pena, and $60,000 to another patient, and to no longer discriminate against persons with HIV or AIDS. Morvant may refer such patients to another dentist only when the dental treatment being sought or provided is outside his area of expertise. The order also requires Morvant and his staff to undergo training on the treatment of persons with HIV or AIDS, infection control in the dental workplace, and the ethical duty to treat persons with HIV or AIDS.

Mississippi Medical Center will Provide Interpreters for Child Birth Classes -- The U.S. Attorney's Office for the Southern District of Mississippi reached an agreement with Central Mississippi Medical Center resolving a complaint that the Center denied a request for an interpreter by a deaf individual wishing to attend child birth classes. The Center, located in Jackson, will institute a policy to ensure that individuals will receive the auxiliary aids and services needed for effective communication, including sign language interpreters. For courses or seminars offered by the Center, no more than 48 hours prior notice will be required to receive an interpreter. The Center will also provide ADA training to its employees and pay $1,000 in damages to the complainant.

Oregon Obstetrician Pays Damages in Interpreter Suit -- The Disability Rights Section and the U.S. Attorney for the District of Oregon intervened in and, at the same time, settled a lawsuit, Drew v. Merrill, challenging a Portland obstetrician's refusal to provide a sign language interpreter for medical consultations with a nondisabled, expectant mother and a deaf father. The suit was resolved through a consent decree reached through formal mediation under which Perinatal Associates agreed to institute a policy of providing sign language interpreters for deaf patients or their partners who are deaf to ensure effective communication; provide training for doctors and staff on the requirements of the ADA; and pay $25,000 in damages to the plaintiffs.

3. Being Free from Unnecessary Institutionalization

Supreme Court Declares that Unjustified Isolation Is Discrimination -- In Olmstead v. L.C., the Supreme Court ruled that the ADA's "most integrated setting appropriate" mandate required States to avoid undue institutionalization of people with disabilities. As urged by the Department in its amicus brief, the Court upheld the ruling of the U.S. Court of Appeals for the Eleventh Circuit that Georgia may have violated the ADA by confining two individuals with mental disabilities in an institution rather than providing services through a community-based program as recommended by the State's treating professionals. In finding that unjustified isolation is a form of discrimination under the ADA, the Court pointed to the stigma of unworthiness, and the unequal access to family and social interaction, employment, education, and cultural enrichment that result from unnecessary institutionalization. According to the Court, an institutional placement is unjustified when the State's treatment professionals have determined that community placement is appropriate, the transfer is not opposed by the individual, and the placement can be accomplished without fundamentally altering the State's program. In applying the fundamental alteration defense, courts are to consider not only the expense of providing community-based care to the plaintiffs in a particular case, but also the "need to maintain a range of facilities for the care and treatment of persons with diverse disabilities" and "the States' obligation to administer services with an even hand."

F. Enjoying Equal Access to Child Care

The ADA protects children with disabilities from discrimination in admission to child care and guarantees reasonable modifications in policies, practices, and procedures to allow full participation in child care programs. The Department has pressed for an end to HIV discrimination and for reasonable efforts by child care providers to accommodate children with diabetes, asthma, food allergies, and other disabilities requiring monitoring, medication, or other assistance.

Child Care Chain Agrees to Glucose Testing -- The Department reached an agreement with KinderCare, the nation's largest proprietary child care provider, that will allow children with diabetes to enroll at any of KinderCare's 1100 centers nationwide. The 1996 agreement required KinderCare to perform finger-stick tests at the request of parents in order to monitor the blood sugar level of their children and to take appropriate action. It does not require that KinderCare administer insulin injections. KinderCare also agreed to engage in a three-year ADA training initiative for its employees and to appoint a disability services coordinator. The agreement resolved a Department of Justice investigation and a private lawsuit brought by the American Diabetes Association, its Ohio affiliate, and the next friend of Jesi Stuthard. Jesi had been denied the opportunity to attend a KinderCare Learning Center near Columbus, Ohio, because of his diabetes and KinderCare's refusal to perform glucose monitoring.

California Law Accommodates Glucose Testing by Child Care Centers -- A 1997 California law exempts blood glucose testing from the category of "incidental medical procedures" that cannot be done outside the presence of a licensed health care professional. The legislation followed a finding by the Department of Justice that California was violating the ADA by maintaining a licensing program that made it illegal for child care providers to perform blood glucose finger-stick tests for children with diabetes in their care, unless the tests were done under the direct supervision of a licensed nurse or physician. Such tests are required under the ADA as a reasonable policy modification necessary to integrate children with diabetes into mainstream day care centers. This restriction came to the Department's attention after it reached a settlement agreement with KinderCare Learning Centers. KinderCare was told by the California Department of Social Services that if it complied with the agreement, its child care licenses would be revoked.

Nationwide Child Care Agreement Accommodates Children with Food Allergies, Diabetes, other Disabilities -- The Department reached an agreement with La Petite Academy, Inc., the nation's second largest child care provider, protecting the rights of children with severe food allergies and other disabilities, including diabetes and cerebral palsy. La Petite Academy, Inc., which operates over 750 day care centers nationwide, has agreed to administer epinephrine, a form of adrenaline, to those children who experience life-threatening allergic reactions to certain foods, such as peanuts, or bee stings. If authorized by parents and a physician, La Petite staff will use a small pen-like device (sold as Epipen, Jr., or under other names) that carries a premeasured dose of epinephrine to alleviate a reaction. The staff person simply removes a safety cap and presses the pen against the thigh of the child, discharging the epinephrine. The 1997 agreement awards damages of $55,000 to five children who were allegedly affected by La Petite's lack of reasonable modifications for children with disabilities. Three were children whose food allergies prevented them from enrollment without the availability of the Epipen, Jr. Two were children with cerebral palsy, who were denied reasonable modifications in policies, practices, and procedures that would enable them to continue in child care. La Petite also adopted a policy for administering finger stick tests to measure the blood glucose levels of children with diabetes.

DOJ Document — "Commonly Asked Questions About Child Care Centers and the ADA," released in conjunction with the 1997 White House Conference on Child Care, provides a broad range of information about the ADA obligations of child care programs.

Wisconsin Child Care Center Will Assist with Leg Braces, Diapering -- The Department reached an agreement resolving a complaint filed by the mother of a child with cerebral palsy against the Sunshine Child Center in Gillette, Wisconsin. The complainant alleged that the center refused to put on and remove leg braces that her daughter needed to walk. The complaint also stated that the center, which provides separate services to children three years old and younger and children ages four through 12, intended to keep her child with the younger group of children even after her fourth birthday, because, due to her disability, she required diaper-changing at a later age than other children at the center. The agreement required the Sunshine Child Center to offer to readmit the girl, who was removed by her mother following the center's alleged discrimination. It also required the center to put on and remove the child's leg braces, if necessary, and to provide the same service to other children with the same need for assistance. In addition, the center agreed to provide diaper changing to children who require the service more frequently and/or at a later age than other children due to disabilities, without segregating them from

children in their age group; to publish a policy of nondiscrimination on the basis of disability at the center and in printed advertisements of its services; to remove certain barriers to access discovered during the Department's investigation; and to ensure that a newly-constructed facility built to house the center complied fully with the ADA Standards for Accessible Design.

After-School Program Reinstates Nine-year-old with Multiple Disabilities -- The Department participated as amicus curiae in this suit against a major daycare provider challenging the exclusion of a nine-year old boy because of his disabilities. KinderCare had decided to terminate Jeremy Orr, a child who has developmental disabilities, low vision, and a mild seizure disorder, from its after-school program. He needed assistance in eating, walking, diapering, and interacting with other persons. After six months of serving Jeremy in its two-year-old room, KinderCare argued that it could not meet Jeremy's individualized needs in "a group care setting." KinderCare also refused to modify its procedures to accommodate an aide for Jeremy proposed by his parents. This aide would be provided by a third party with full State support. The Department argued that Jeremy's presence had not fundamentally altered KinderCare's program and that accommodating an aide for Jeremy in the future also would not fundamentally alter KinderCare's program. The court entered a preliminary injunction that ordered KinderCare to retain Jeremy pending trial. Under a consent decree resolving the lawsuit, KinderCare agreed to retain Jeremy Orr in its after-school program and allow him to be accompanied by an aide funded by the State. He was also to be allowed to attend the program in an age-appropriate classroom when the aide was present, and the two-year olds' room when the aide was not present. KinderCare agreed to mandatory staff training and periodic conferences with Jeremy's parents regarding how best to include him in program activities. Without admitting liability, KinderCare agreed to pay damages and attorney's fees to the Orrs.

Jeremy at his after-school program

"As a parent, the biggest benefit I received was in the day to day observation of his inclusion and acceptance by other children ... I know Jeremy has made an impact on the children in his community because when we go to the store or public events or when he is attending public school, some child will yell out "Hey Jeremy! How are you?" I usually don't know or recognize the child, but it's enough for me to know that they know Jeremy."

-- Sherry Johnstone, Jeremy's mother.

Three Wisconsin Centers Will Admit Children with HIV -- The U.S. Attorney for the Western District of Wisconsin entered into a consent decree resolving a lawsuit filed against ABC Nursery, Inc., in Beloit, Wisconsin, for allegedly refusing to admit a three-year-old boy because he had tested positive for HIV. Earlier, consent decrees were filed involving two other Beloit child care centers, resolving similar allegations of discrimination against the same child. All three centers agreed that a child with HIV infection is disabled under the ADA and that such a child cannot be refused admission to child care programs because of his or her HIV-positive status. The three centers agreed to sponsor, with the participation of the U.S. Attorney's Office, an informational meeting in Beloit for interested child care providers, parents, and staff to discuss the ADA and HIV.

Child Care Center Ordered to Admit Child with Asthma -- The U.S. District Court for the Northern District of California in Alvarez v. Fountainhead, Inc., ordered a California child care center to modify its "no medications" policy and enroll a child who has asthma and uses an inhaler. It also ordered the center to provide a one-hour training session for its staff on the nature of asthma and the supervision of children who use albuterol inhalers. Fountainhead Child Care Center prohibited teachers from assisting in the administration of any medication to children enrolled in its program and required parents to either come to the facility to administer any necessary medication, forgo medication while the child is at preschool, or not enroll the child. Jeremy Alvarez, the four-year-old child in this case, was able to use the inhaler himself, but required monitoring for signs of wheezing and supervision while he used the inhaler. The Department argued in an amicus brief in support of the child that the minimal monitoring and supervision required in this case would be reasonable and not fundamentally different from the responsibilities that all child-care operators have for the safety and well-being of their students.

Jeremy Alvarez is now free to use his inhaler at the child-care center.

"I was really happy that the ADA was there. It helped us and will prevent others like Jeremy from having to go through such an ordeal."
-- Jeremy Alvarez's mother, who worried that her son would not be able to go to the child care center because no one would take her complaint seriously.

G. Protecting the ADA and Making it Work

The Department seeks every opportunity to maintain and expand the effectiveness of the ADA. The Department has fought nationwide to uphold the constitutionality of ADA suits against States. It has also actively pursued alternative dispute resolution to increase ADA compliance.

1. Defending the ADA's Constitutionality

Supreme Court Will Review Constitutionality of ADA Damages Suits Against States -- The Supreme Court will review the decision of the U.S. Court of Appeals for the Eleventh Circuit in Garrett v. University of Alabama at Birmingham, which upheld the constitutionality of lawsuits brought by individuals seeking damages awards from States. The Department intervened to defend the ADA in numerous suits nationwide, including Garrett. Most appellate courts have agreed with the Department and upheld the ADA suits against States. Garrett is a consolidation of two employment suits against Alabama State agencies. One involves the alleged discriminatory demotion of an individual with breast cancer by the University of Alabama, and the other a claim that the Alabama Department of Youth Services failed to reasonably accommodate an individual with chronic asthma. States have argued that, because the ADA's protections go beyond the equal protection rights guaranteed by the Fourteenth Amendment, Congress lacks authority to subject them to lawsuits under the ADA. The Department, however,

believes that the ADA is constitutionally appropriate legislation to remedy the history of pervasive discrimination against people with disabilities, and almost all of the appellate courts have agreed.

2. Building a Mediation Option

Expanded Mediation Gets Results -- The Department's voluntary ADA Mediation Program provides an efficient, effective, voluntary alternative way to resolve complaints under the ADA. Increased funding has allowed the Department to refer over 1,000 complaints to mediation in virtually every rural and urban area of the country. Over 80% of the cases in which mediation has been completed were successfully resolved.

The ADA Mediation Program has resulted in the elimination of architectural, communication, and attitudinal barriers for hundreds of people with all types of disabilities throughout the country, while allowing the Department to achieve meaningful compliance with the law without the expense and delay frequently associated with formal investigation and litigation.

The ADA Mediation Program is focused on the local community where people live, work, and play. After determining a complaint is appropriate for mediation, the Department formally contacts both parties, offering the opportunity to resolve the complaint through mediation. Under a contract with the Key Bridge Foundation, the complaints are then referred for mediation locally by the more than 450 experienced professional mediators participating in the program, all of whom have been trained in the legal requirements of the ADA. Mediators are supervised by the Key Bridge Foundation in consultation with the Department of Justice to assure quality of service and compliance with the ADA.

"I had been skeptical of using mediation. I am now convinced that it has great value. The mediator was a very capable person and played a major role in the successful conclusion."
A person who is a wheelchair user

Mediation places responsibility on the shoulders of both parties who control, with the assistance of the mediator, both the process and the outcome of the mediation. This cooperative approach requires parties to talk with each other and work cooperatively; gives an opportunity for both sides to begin to understand each other; and can preserve, rather than sever, the relationship between the parties. The very structure of mediation helps alter perceptions and change attitudes. Successful mediations produce win-win results.

"This has been a very educational experience. I now have an insight on disabilities and want to do what I can to comply."
A business owner

The following are examples of results reached through mediation in the areas of barrier removal, provision of effective communication, and modification of policies, practices and procedures --

A wheelchair user complained that a Virginia condominium sales office did not have an accessible entrance. The condominium builder agreed to renovate the sales office entrance to make it accessible. The builder agreed to display a sign stating the policies they have created to comply with the ADA. The policies include providing auxiliary aids and services upon request as needed to ensure effective communication, making informational videos available upon request, and providing a method of requesting other accommodations. The builder agreed to donate $2,500 to a disability rights organization and to pay the complainant $1,000.

In Arkansas, wheelchair users complained that a restaurant did not have an accessible entrance. The owner agreed to install a ramp and to properly mark accessible parking spaces and the paths of travel. The owner also agreed to work with the complainants when planning any major renovations in the future and to provide disability awareness training for all employees.

A person who is deaf complained that a Nebraska dentist's office refused to provide effective communication during an office visit. The dentist agreed to institute a policy ensuring compliance with the ADA and to attend training on both the requirements of the ADA and disability awareness. She agreed to join with a disability rights lawyer in conducting four presentations for professional organizations on the ADA and dentists, wrote a letter of apology to the complainant, and agreed to pay the complainant $100.

A person with a vision impairment complained that a Mississippi restaurant denied her access and service because she used a service animal. The owner agreed to display a sign in the establishment stating that service animals are welcome and agreed to instruct all his employees that people who use service animals are to be welcomed, seated, and served in the same manner as all customers.

In New York, a wheelchair user complained that the accessible door to the lobby housing a bank's ATM machine was locked after business hours, leaving only an inaccessible revolving door for access after business hours. The bank agreed to keep the accessible entrance door open 24 hours a day and to install directional signage.

II. Certification Highlights

The ADA specifically recognizes the importance of the built environment in enabling people with disabilities to participate in the mainstream of American life. The ADA requires new or altered places of public accommodation and commercial facilities to comply with the Department's ADA regulations, including the ADA Standards for Accessible Design. In many cases, these facilities are also subject to accessibility requirements established under State or local laws. To facilitate compliance with both Federal and local laws, the ADA authorizes the Justice Department, upon request of State or local officials, to certify that State or local accessibility laws meet or exceed the requirements of the ADA.

Eleven States have now requested code certification. The Department has certified the accessibility codes of Washington, Texas, Maine, and Florida. Requests from California, Indiana, Minnesota, New Jersey, New Mexico, North Carolina, and Maryland are under review.

Certification has several advantages, including --

- Facilitating compliance by putting the Federal and local requirements in a single, readily available document. Rather than searching both local codes and the Federal regulations for the requirements for each element of a building, designers and builders need only refer to a single certified code;

- Ensuring that accessible design is part of each plan — not an afterthought. This enables designers and builders to provide accessibility in the most cost-efficient manner. The cost of compliance in the early stages of design and construction is minimal. However, the cost of problems discovered after construction is completed can be significant;

- Shifting the burden of reconciling differences between local and Federal requirements from the builders and designers to the Department of Justice and the responsible local building authority. By resolving conflicts between State and Federal laws, certification lets builders and designers focus on building, rather than on deciding what to do when the Federal and local requirements conflict; and

- In an enforcement proceeding, compliance with a certified code will constitute rebuttable evidence of compliance with the ADA.

In implementing its authority to certify codes, the Department works closely with State and local officials, providing extensive technical assistance to enable them to make their codes equivalent to the ADA. In addition, the Department responds to requests for review of model codes and provides informal guidance to assist private entities that develop model accessibility standards to make those standards equivalent to the ADA.

III. Technical Assistance Highlights

The ADA mandated the establishment of an unprecedented technical assistance program to educate businesses, government agencies, and people with disabilities about their rights and responsibilities under the Act. Educating entities covered by the Act about their obligations and educating people with disabilities about their rights have been top priorities for the Department of Justice.

In the past ten years, the Department --

- Established the toll-free ADA Information Line in 1994 that averages 110,000 calls each year from the public;

- Established the ADA Home Page in 1996 that received over 6 million visits last year;

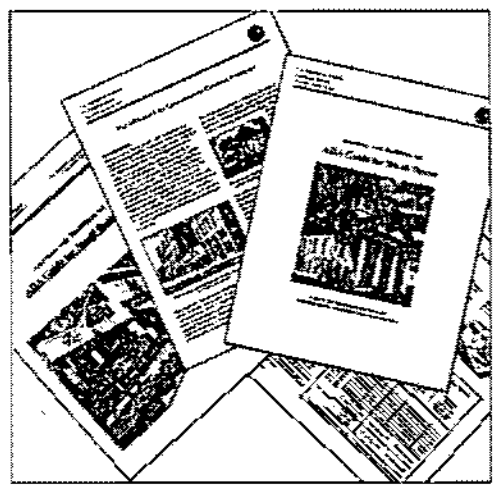
- Published more than 40 technical assistance publications, and disseminated several million copies, including technical assistance manuals, an *ADA Guide for Small Businesses*, an *ADA Guide for Small Towns*, *A Guide to Disability Rights Laws*, and a series of question-and-answer publications on a wide variety of issues;

- Developed public service announcements about the ADA featuring President Clinton and Attorney General Reno and disseminated them to TV and radio stations across the country;

- Provided $12 million to trade associations, disability rights groups, and other organizations to develop and disseminate 130 guides and fact sheets and 20 educational videotapes aimed at educating hotels and motels, grocery stores, restaurants, retail stores, dry cleaners, travel agents, medical professionals, child care providers, small businesses and other service providers, builders and contractors, town and city officials, courts, law enforcement, emergency response centers, people with disabilities, and other groups that are affected by the ADA;

- Developed *My Country*, a documentary on people with disabilities' struggle for equality that aired on public television stations across the country in 1997 and 1998;

- Placed a collection of 94 ADA publications developed by the Department, its grantees, and other federal agencies in 15,000 local public libraries, and sent a selection of 33 publications to 6,000 Chambers of Commerce around the country;



A sampling of ADA technical assistance publications

- Each year for the past seven years, notified six million businesses through IRS mailings of their ADA responsibilities and how to obtain information about specific ADA concerns or issues;

- Translated and reproduced ADA publications in Spanish, Cambodian, Chinese, Hmong, Japanese, Korean, Laotian, Tagalog, and Vietnamese for language-minority communities;

- Conducted training seminars, answered questions, disseminated information, and promoted awareness of the ADA nationwide at over 1000 meetings of minority, disability, and professional organizations, and trade organizations representing business and government; and

- Reviewed hundreds of ADA publications, scripts, and videos developed by other agencies, grantees, and Disability and Business Technical Assistance Centers to ensure their legal and technical accuracy.

ADA Home Page

An ADA home page is operated by the Department on the Internet's World Wide Web (**www.usdoj.gov/crt/ada/adahom1.htm**). The home page provides information about:

- the toll-free ADA Information Line;

- the Department's ADA enforcement activities;

- the ADA technical assistance program;

- certification of State and local building codes;

- proposed changes in ADA regulations and requirements; and

- the ADA mediation program.

The home page also provides direct access to:

- ADA regulations, the ADA Standards for Accessible Design, and technical assistance materials (which may be viewed online or downloaded for later use);

- Freedom of Information Act (FOIA) ADA materials; and

- Links to the Department's press releases, and Internet home pages of other Federal agencies that contain ADA information.

ADA Information Line

The Department of Justice operates a toll-free ADA Information Line to provide information and publications to the public about the requirements of the ADA. Automated service, which allows callers to order publications, is available 24 hours a day, seven days a week. ADA specialists are available on Monday, Tuesday, Wednesday, and Friday from 10:00 a.m. until 6:00 p.m. and on Thursday from 1:00 p.m. until 6:00 p.m. (Eastern Time). Spanish language service is also available.

To obtain general ADA information, get answers to technical questions, order free ADA materials, or ask about filing a complaint, call:

800-514-0301 (voice)
800-514-0383 (TTY)

A State university administrator did not know how to accommodate a student who uses a wheelchair -- so he called the ADA hotline. An ADA specialist suggested moving courses to accessible sites as well as setting up meetings with students and staff to identify possible obstacles that limit campus access. Two weeks later, the administrator called back to say that the first meeting was a success, not only for the students, but for the school because it dispelled the myth that providing program access would be too costly.

ADA Fax On Demand

The ADA Information Line Fax Delivery Service allows the public to obtain free ADA information by fax 24 hours a day, seven days a week. By calling the number for the ADA Information Line and following the directions, callers can select from among 32 different ADA technical assistance publications and receive the information, usually within minutes, directly on their fax machines or computer fax/modems. A list of available documents and their code numbers may also be ordered through the ADA Information Line.

Publications and Documents

Copies of the Department's ADA regulations, ADA Standards for Accessible Design, and technical assistance publications, including the Technical Assistance Manuals for titles II and III, can be obtained by calling the ADA Information Line, visiting the ADA Home Page, or writing to the address listed below. All materials are available in standard print as well as large print, Braille, audiotape, or computer disk for persons with disabilities.

Disability Rights Section
Civil Rights Division
U.S. Department of Justice
P. O. Box 66738
Washington, D.C. 20035-6738

Copies of the legal documents and settlement agreements mentioned in this publication can be obtained by writing to:

Freedom of Information/
Privacy Act Branch
Administrative Management Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 65310
Washington, D.C. 20035-5310
Fax: 202-514-6195

Currently, the FOI/PA Branch maintains more than 10,000 pages of ADA material. The records are available at a cost of $0.10 per page (first 100 pages free). Please make your requests as specific as possible in order to minimize your costs.

The FOI/PA Branch also provides access to ADA materials on the World Wide Web at **www.usdoj.gov/crt/foia/records.htm**. A link to search or visit this website is provided from the ADA Home Page.

IV. Other Sources of ADA Information

The **Equal Employment Opportunity Commission** offers technical assistance to the public concerning the employment provisions of title I of the ADA.

ADA documents
800-669-3362 (voice)
800-800-3302 (TTY)

ADA questions
800-669-4000 (voice)
800-669-6820 (TTY)

www.eeoc.gov

The **Federal Communications Commission** offers technical assistance to the public concerning the communication provisions of title IV of the ADA.

ADA documents and questions
888-225-5322 (voice)
888-835-5322 (TTY)

www.fcc.gov/cib/dro

The **U.S. Department of Transportation** through the **Federal Transit Administration** offers technical assistance concerning the transportation provisions of title II and title III of the ADA.

ADA Assistance Line for
information or complaints
888-446-4511 (voice/relay)

www.fta.dot.gov/office/civ.htm

The **U.S. Architectural and Transportation Barriers Compliance Board**, or **Access Board**, offers technical assistance to the public on the ADA Accessibility Guidelines.

ADA documents and questions
800-872-2253 (voice)
800-993-2822 (TTY)

www.access-board.gov

The **Disability Rights Education and Defense Fund ADA Hotline** is funded by the Department of Justice to provide technical assistance to the public on all titles of the ADA.

ADA technical assistance
800-466-4232 (voice & TTY)

www.dredf.org

The **Disability and Business Technical Assistance Centers** are funded by the U.S. Department of Education through the National Institute on Disability and Rehabilitation Research (NIDRR) in ten regions of the country to provide resources and technical assistance on the ADA.

ADA technical assistance
800-949-4232 (voice & TTY)

www.adata.org

Project ACTION is funded by the U.S. Department of Transportation to provide ADA information and publications on making transportation accessible.

Information on accessible transportation
800-659-6428 (voice/relay)
202-347-3066 (voice)
202-347-7385 (TTY)

www.projectaction.org

The **Job Accommodation Network (JAN)** is a free telephone consulting service funded by the President's Committee on Employment of People with Disabilities. It provides information and advice to employers and people with disabilities on reasonable accommodation in the workplace.

Information on workplace accommodation
800-526-7234 (voice & TTY)

http://janweb.icdi.wvu.edu/english

V. How to File Complaints

Title I

Complaints about violations of title I (employment) by units of State and local government or by private employers should be filed with the Equal Employment Opportunity Commission. Call 800-669-4000 (voice) or 800-669-6820 (TTY) to reach the field office in your area.

Titles II and III

Complaints about violations of title II by units of State and local government or violations of title III by public accommodations and commercial facilities should be filed with --

Disability Rights Section
Civil Rights Division
U.S. Department of Justice
Post Office Box 66738
Washington, D.C. 20035-6738

If you wish the complaint to be resolved through the Department's ADA Mediation Program, please mark "Attention: Mediation" on the outside of the envelope.

PREPARED STATEMENT
OF
ERIC H. HOLDER, JR.
DEPUTY ATTORNEY GENERAL
BEFORE THE
COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES
CONCERNING
HATE CRIMES

PRESENTED ON
AUGUST 4, 1999

Mr. Chairman, Members of the Committee, thank you for the opportunity to testify today on the important and troubling issue of hate crimes. The Administration very much appreciates your decision to hold this hearing. President Clinton and the Attorney General have remained deeply committed to prosecuting and preventing hate crimes since the 1997 White House Conference on Hate Crimes. We continue to dedicate significant time and resources to this issue. The battle against hate crimes has always been bipartisan, and this Committee has always been at the forefront of that battle. Members of this Committee have long recognized that hate crimes have no place in a civilized society, whether based on the race, religion, ethnicity, sexual orientation, gender, or disability of the victims. In 1990 and 1994, the Committee strongly supported the enactment of the Hate Crimes Statistics Act and the Hate Crimes Sentencing Enhancement Act. In 1996, the Committee responded in a time of great national need by quickly endorsing the Church Arson Prevention Act. I am hopeful that you will respond once again to the call for a stronger federal stand against hate crimes, and that you will join law enforcement officials and community leaders from across the country in support of H.R. 1082, the Hate Crimes Prevention Act of 1999. The bill enjoys bipartisan support in both the House and the Senate. If enacted, this legislation will continue the tradition of forceful Congressional action to eradicate hate crimes.

Unfortunately, recent events have only reemphasized the devastation that hate crimes can bring to a community. This past February, in Sylacauga, Alabama, the body of 39-year-old Billy Jack Gaither was found bludgeoned with an ax handle and charred on a pile of burned tires; killed, as one paper described it, "for being himself." Last October, in Laramie, Wyoming, Matthew Shepard, an openly gay young man, was found badly beaten and tied to a fence. He died five days later from 18 blows to the head. The state charged two men with the murder; one defendant has pled guilty to the murder, and the second awaits trail on first-degree murder charges. And last June, the nation was horrified by the dragging death of James Byrd, Jr., an African-American man.

Just in the weeks since I testified on these issues before the Senate Judiciary Committee in May, a young man linked to a white supremacist organization allegedly shot several people in Illinois and Indiana. They included a group of Jewish men walking home from Sabbath services in Chicago. Two others died from their injuries: Won-Joon Yoon, a young man

who came to Indiana University from South Korea for graduate school, and who was shot as he stood outside of a Korean United Methodist Church; and Ricky Byrdsong, an African American male, who was walking with his daughters near his home in Skokie, Illinois. In California, three synagogues in Sacramento erupted in flames on the same morning, and Winfield Scott Mowder and Gary Matson, a gay couple, were brutally murdered in their Redding home. We, as a nation, are stunned and horrified at the hatred and brutality of these crimes.

Preventing hate crimes and eliminating bigotry and bitterness are among our most important challenges. There is never an excuse for violence against an innocent person. But these attacks, committed because the victims look different, practice a different faith, or have a different sexual orientation, threaten America's most cherished ideals. They represent an attack not just on the individual victim, but on the victim's community. And their impact is broader because they send a message of hate. They are intended to create fear and dissension.

These incidents and other hate crimes like them are not just a law enforcement problem. They are a problem for the entire community: for our schools, for our religious institutions, for our civic organizations and for each one of us as an individual. And when we come together to respond to these crimes, we help build communities that are safer, stronger and more tolerant. All of us working together -- at the federal, state, local, and community levels -- must redouble our efforts to rid our society of hate crimes.

I. The Problem & Current Efforts

A. Inadequate Reporting

First, we must gain a better understanding of the problem. The data we have now are inadequate. As a result of the Hate Crimes Statistics Act, enacted in 1990, the FBI began collecting information from law enforcement agencies around the country. In 1991, the first year that the FBI reported its findings, 2,700 law enforcement agencies reported 4,560 hate crimes. In 1997, the last year for which we have statistics, 11,211 law enforcement agencies participated in the data collection program and reported 8,049 hate crime incidents.

8,049 hate crime incidents represent almost one hate crime incident per hour. But we know that even this disturbing number significantly underestimates the true level of hate crimes. Many victims do not report these crimes. Police departments do not always recognize hate crimes. Many don't collect any hate crime data. And about 80 percent of those that do, even some in large metropolitan areas, report few or no hate crimes in their jurisdictions, even when most observers conclude a larger problem exists.

B. Training

There are many ways to improve our data collection. First and foremost, increased hate crime training for law enforcement officials is essential. Police officers must know how to identify the signs of a hate crime. What might appear to some as a crime like so many others, can turn out, upon investigation, to be motivated by bias.

Some of you may know that, about a year and a half ago, President Clinton

launched, at a first-ever White House Conference on Hate Crimes, a multi-faceted Hate Crimes Initiative. The Department of Justice is a integral part of this effort, which includes improving data collection and enhancing law enforcement training. To meet these goals, we recently commissioned a study by Northeastern University to survey some 2,500 law enforcement agencies in order to better understand and improve police reporting practices; and we brought together state police academies, police chiefs, state attorneys general and others around the country to develop uniform curricula for hate crime training. As a result of these efforts, the Department now has available three law enforcement training curricula on hate crimes -- for patrol officers, investigators, and a mixed audience. Since December 1998, more than 500 law enforcement officers have been trained with Department of Justice curricula. We also work with communities in their own training and outreach efforts.

C. Prosecutions: Current Law

Identification and reporting are, of course, not a complete answer. We must also ensure that potential hate crimes are investigated thoroughly, prosecuted swiftly and punished soundly. Our long term goal must be to prevent hate crimes by addressing bias before it manifests itself in violent criminal activity. In the meantime, however, it is imperative that we have the law enforcement tools necessary to ensure that, when hate crimes do occur, the perpetrators are identified and swiftly brought to justice.

We know that we are most effective when we work together. The centerpiece of the Administration's Hate Crime Initiative is the formation of local working groups in United States Attorneys' districts around the country. These task forces are hard at work bringing together the FBI, the U.S. Attorney's office, the Community Relations Service, local law enforcement, community leaders and educators to coordinate our response to hate crimes. The groups are assessing the hate crime problem in their local areas and developing specific strategies to respond to the problem. While local law enforcement has the primary role in responding to and pursuing these crimes, federal law enforcement can provide additional resources and can assist with training. And by involving community organizations in these working groups, we are enhancing our ability to prosecute these crimes. Quite simply we are more effective when we enjoy the trust and support of the community. Community support makes it easier to uncover information, enlist witnesses to testify, and solve cases.

The principal federal hate crimes statute, 18 U.S.C.§245, prohibits certain hate crimes committed on the basis of race, color, religion, or national origin. It prohibits the use of force, or threat of force, to injure, intimidate, or interfere with (or to attempt to injure, intimidate, or interfere with) "any person because of his race, color, religion or national origin," and because of his participation in any of six "federally protected activities" specifically enumerated in the statute. The six enumerated "federally protected activities," written into the law 30 years ago when Congress first enacted the statute, are: (A) enrolling in or attending a public school or public college; (B) participating in or enjoying a service, program, facility or activity provided or administered by any state or local government; (C) applying for or enjoying employment; (D) serving in a state court as a grand or petit juror; (E) traveling in or using a facility of interstate commerce; and (F) enjoying the goods or services of certain places of public accommodation.

State and local officials are on the front lines and do an enormous job in

investigating and prosecuting hate crimes that occur in their communities. In fact, most hate crimes are investigated and prosecuted at the state level. But we want to make sure that federal jurisdiction to prosecute hate crimes covers everything that it should. Concurrent federal jurisdiction is needed to authorize the federal government to share its law enforcement resources, forensic expertise, and civil rights experience with state and local officials. And in rare circumstances where state or local officials are unable or unwilling to bring appropriate criminal charges in state court, or where federal law or procedure is significantly better suited to the vindication of the federal interest - the United States must be able to bring federal civil rights charges. In these special cases, the public is served when, after consultation with state and local authorities, prosecutors have a federal alternative as an option.

D. Federalism

The most important benefit of concurrent state and federal criminal jurisdiction is the ability of state and federal law enforcement officials to work together as partners in the investigation and prosecution of serious crimes. When federal jurisdiction does exist in the limited hate crimes contexts authorized by 18 U.S.C. §245, the federal government's resources, forensic expertise, and experience in the identification and proof of hate-based motivations often provide an invaluable investigative complement to the familiarity of local investigators with the local community and its people. It is by working together cooperatively that state and federal law enforcement officials stand the best chance of bringing the perpetrators of hate crimes swiftly to justice.

Such cooperative efforts have recently been reinforced by the July, 1998, Memorandum of Understanding (MOU) between the National District Attorneys Association and the Department of Justice. This MOU was signed by the Attorney General and William Murphy, President of the NDAA, on behalf of district attorneys offices. The MOU is intended to foster a more cooperative approach by local, state and federal authorities in the investigation and prosecution of color of law and hate crimes cases. It requires early communication among local, state and federal prosecutors to explore the most effective way to investigate these cases and to utilize the best investigative resources or combination of resources available. There are many benefits to such an approach: it encourages the use of coordinated or joint local, state and federal investigations in those instances where coordinated or joint investigation is in the best interest of justice; it decreases time delay between local, state and federal authorities about these important cases; and it increases public confidence in the criminal justice system. It is this type of cooperative effort, endorsed by the Department of Justice and the National District Attorneys Association, that maximizes all of our law enforcement capabilities in these important cases.

It is useful in this regard to consider the work of the National Church Arson Task Force, which operates pursuant to jurisdiction granted by 18 U.S.C.§247 and other federal criminal statutes that have no limitations analogous to the "federally protected activity" requirement of 18 U.S.C.§245. Created almost three years ago to address a rash of church fires across the country, the Task Force's federal prosecutors and investigators from ATF and the FBI have collaborated with state and local officials in the investigation of each and every church arson that has occurred since January 1, 1995.

The foundation for this coordinated effort was laid when Congress, led in

large part by this Committee, passed the Church Arson Prevention Act of 1996. Before the enactment of the Church Arson Prevention Act of 1996, section 247 prohibited the intentional defacement, damage, or destruction of any religious real property because of the religious character of the property if, in committing the offense, the defendant either traveled in interstate or foreign commerce or used a facility or instrumentality of interstate or foreign commerce in interstate or foreign commerce. Confronted with a rash of arsons at houses of worship in early 1996, the Department and the Congress concluded that section 247 had proven totally ineffective because of these restrictive interstate commerce requirements. Even jurisdiction over crimes where the defendant crossed state lines didn't cover very many of these arsons. In fact, between its enactment and the 1996 amendments, only one case was brought under section 247.

Recognizing this problem, Congress enacted the Church Arson Prevention Act of 1996, which amended section 247 to eliminate the interstate commerce element entirely for racially motivated arsons and to cover other offenses that are "in or affect interstate commerce." Thus it is no longer necessary to establish as a jurisdictional prerequisite that the defendant moved in interstate commerce or used a facility in interstate commerce. The "affects" standard is more in line with existing criminal statutes outlawing, for example, the possession of certain weapons, e.g. 18 U.S.C.922(g), 924, or the use of fire or explosive devices, e.g. 18 U.S.C. 844(i).

These amendments and the expanded Federal jurisdiction have contributed to the success of the Church Arson Task Force, which has worked with State and local investigators and prosecutors to investigate 785 fires that occurred after January 1995, with 340 total defendants arrested. The vast majority of these cases have been prosecuted in State courts under State law.

The results of these state-federal partnerships have been extraordinary. Thirty-four percent of the joint state-federal church arson investigations conducted during the life of the Task Force have resulted in arrests of one or more suspects on state or federal charges. The Task Force's 34% arrest rate is more than double the normal 16% rate of arrest in all arson cases nationwide, most of which are investigated by local officials without federal assistance. More than 80% of the suspects arrested in joint state-federal church arson investigations during the life of the Task Force have been prosecuted in state court under state law.

Because the Department of Justice has not maintained statistics regarding the outcomes of the joint state-federal hate crimes investigations in which it has participated, we are unable to provide similarly stark statistical information regarding arrest rates in hate crimes cases. Nevertheless, we are confident that additional state-federal partnerships would result in an increase in the number of hate crimes solved by arrests and successful prosecutions analogous to that achieved through joint state-federal investigations in the church arson context. We certainly know, from example, that these joint efforts have been extremely successfully.

We have a particularly effective example of these partnerships in South Carolina, where a team of agents from federal, state, and local law enforcement agencies worked hand-in-hand to bring to justice a group of Ku Klux Klansmen responsible for wave of crimes across the north-eastern part of that state. Representatives from the Justice Department and several state district attorneys offices met to chart the course the investigation would take. These meetings were not without issues of turf, but eventually

the agents worked together to compare the relative strength of the statutes involved, the available resources, and the potential terms of imprisonment for state vs. federal prosecutions. In the end, they decided it made sense to use both sources of jurisdiction. So they formed a joint federal-state task force.

Both the federal and state governments devoted agents, prosecutors, and supporting resources to the joint investigative team, which used the nationwide subpoena power of a federal grand jury sitting in Charleston, South Carolina. Federal agents from the FBI and ATF rode together as partners with agents of the South Carolina State Law Enforcement Division (SLED) and the fire departments from the counties affected. Their investigation led to five Klansmen being charged with two church arsons, the assault with intent to kill a black mentally retarded man, arsons of several migrant camps, and various firearms offenses. To date, these are the only convictions of members of an organized white supremacist group arising out of the rash of church fires. Those five Ku Klux Klansmen stand convicted on both state and federal offenses and have been sentenced to serve real time prison terms of between 15 and 21 1/2 years.

Another example can be found in the National Church Arson Task Force, where a defendant has been indicted for 12 fires in Indiana and Georgia, and for conspiring in 17 additional fires in six other states - California, Kentucky, Missouri, Ohio, South Carolina, and Tennessee. This is the largest number of fires charged to any one defendant during the life of the Task Force. One of the Georgia fires resulted in the death of a volunteer firefighter, and injuries to three others. It was a local officer in Indiana involved with that district's church arson task force that first recognized the name of the defendant when he heard a report on an ambulance pickup for severe burns. He questioned the suspect at the hospital and called federal officials. The hard work of investigators from the FBI, the ATF, and the local arson and law enforcement offices led to charges in other fires in Indiana, and ultimately to charges in Georgia and the conspiracy covering the other states. The investigation continues, supported by federal investigators and prosecutors.

II. Gaps in Current Law

The current federal hate crimes law has two serious deficits. First, even in the most blatant cases of racial, ethnic, or religious violence, no federal jurisdiction exists unless the federally protected activity requirement is satisfied. This unnecessary, extra intent requirement has led to acquittals in several of the cases in which the Department of Justice has determined a need to assert federal jurisdiction and has limited the ability of federal law enforcement officials to work with state and local officials in the investigation and prosecution of many incidents of brutal, hate-motivated violence. Second, 18 U.S.C.§245 provides no coverage whatsoever for violent hate crimes committed because of bias based on the victim's sexual orientation, gender, or disability. Together, these limitations have prevented the federal government from working with state and local law enforcement agencies in the investigation and prosecution of many of the most heinous hate crimes.[1]

H.R. 1082, the Hate Crimes Prevention Act of 1999, would amend 18 U.S.C.§245 to address each of these jurisdictional limitations. In cases involving racial, religious, or ethnic violence, the bill would prohibit the intentional infliction of bodily injury without regard to the victim's participation in one of the six specifically enumerated "federally protected activities." In cases involving violent hate crimes based on the victim's sexual orientation, gender, or disability, the bill would

prohibit the intentional infliction of bodily injury whenever the incident involved or affected interstate commerce. These amendments to 18 U.S.C.§245 would permit the federal government to work in partnership with state and local officials in the investigation and prosecution of cases that implicate the significant federal interest in eradicating hate-based violence.

The Hate Crimes Prevention Act is a good fix. In May, President Clinton joined with a bipartisan group of legislators to urge its swift passage. I am pleased to join him in offering my strong support of this bill.

It must be emphasized that, even with enactment of the bill, state and local law enforcement agencies would continue to play the principal role in the investigation and prosecution of all types of hate crimes. From 1993 through 1998, the Department of Justice brought a total of only 32 federal hate crimes prosecutions under 18 U.S.C.§245 -- an average of fewer than six per year. We expect that the enactment of H.R. 1082 would result in a modest increase in this number but would significantly help in our ability to assist local and state prosecutions. Our partnership with state and local law enforcement would continue, with state and local prosecutors continuing to take the lead in the great majority of cases.

A. The Federally Protected Activity Requirement

In several cases in recent years, the Department of Justice has sought to satisfy the federally protected activity requirement by alleging that hate crimes occurred on public streets or sidewalks -- i.e., while the victims were using "facilities" provided or administered by a State or local government.[2] The Department has used this theory successfully to prosecute the stabbing death of Yankel Rosenbaum in Brooklyn (Crown Heights), New York and the racially-motivated shooting of three African-American men on the streets of Lubbock, Texas.[3] Although the "streets and sidewalks" theory has enabled the Department to reach some bias crimes that occur in public places, these prosecutions remain subject to challenge. In the Lubbock case, for example, the defendants appealed their convictions, arguing that public streets and sidewalks are not "facilities" that are "provided or administered" by a state subdivision within the meaning of 18 U.S.C.§245(b)(2)(B). The United States Court of Appeals for the Fifth Circuit upheld the Lubbock convictions in a short, unpublished opinion. But an appeal on similar grounds in the Crown Heights case is now pending before the Second Circuit.

In some cases, this jurisdictional problem has undermined the vindication of the federal interest in fighting hate-based violence. Let me briefly tell you about three cases where the Department of Justice brought federal hate crimes prosecutions under 18 U.S.C.§245 after state and local prosecutors were unsuccessful at or declined to bring prosecutions under state law. In each case, the Department lost at trial due to the statute's "federally protected activity" requirement:

- In 1994, a federal jury in Fort Worth, Texas acquitted three white supremacists of federal criminal civil rights charges arising from unprovoked assaults upon African-Americans, including one incident in which the defendants knocked a man unconscious as he stood near a bus stop. Some of the jurors revealed after the trial that although the assaults were clearly motivated by racial animus, there was no apparent intent to deprive the victims of the right to participate in any "federally protected activity." The government's proof that the defendants went out looking for African-Americans to assault was

insufficient to satisfy the requirements of 18 U.S.C.§245.

- In 1982, two white men chased a man of Asian descent from a night club in Detroit and beat him to death. The Department of Justice prosecuted the two perpetrators under 18 U.S.C.§245, but both were acquitted despite substantial evidence to establish their animus based on the victim's national origin. Although the Department has no direct evidence of the basis for the jurors' decision, it appears that the government's need to prove the defendants' intent to interfere with the victim's exercise of a federally protected right -- the use of a place of public accommodation -- was the weak link in the prosecution.

- In 1980, a notorious serial murderer and white supremacist shot and wounded an African-American civil rights leader as the civil rights leader walked from a car toward his room in a motel in Ft. Wayne, Indiana. The Department of Justice prosecuted the shooter under 18 U.S.C.§245, alleging that he committed the shooting because of the victim's race and because of the victim's participation in a federally protected activity, i.e. the use of a place of public accommodation. The jury found the defendant not guilty. Several jurors later advised the press that although they were persuaded that the defendant committed the shooting because of the victim's race, they did not believe that he also did so because of the victim's use of the motel.

Each of these cases involved a heinous act of violence clearly motivated by the race, color, religion, or national origin of the victim. In these cases, state prosecutors sought federal assistance due to inadequate state laws or prosecutions, or they did not bring state criminal charges at all. Yet in each case, the extra intent requirement of 18 U.S.C.§245 -- that a hate crime be committed because of the victim's participation in one of the federally protected activities specifically enumerated in the statute -- prevented the Department of Justice from vindicating the federal interest in the punishment and deterrence of hate-based violence.

The murder of James Byrd is an important example in this regard. The collaboration between local, state and federal investigators was essential in that case; the FBI aided a relatively small jurisdiction in Texas with its forensic and laboratory expertise, while the U.S. Attorneys office assisted in the trial and death penalty phase regarding one of the defendants. We can offer much to these localities but, in most circumstances, only if we have jurisdiction in the first instance. The level of collaboration in Jasper was possible only because we had a colorable claim of federal jurisdiction in that matter.

The Department has also filed charges against defendants after determining that the state response was inadequate to vindicate the federal interest, or that the state could not respond as effectively as the federal government because of less severe state penalties differences in applicable procedure. For example:

- U.S. v. Lee and Jarrard(11/3/94)(S.D. Ga.), involved two defendants who were convicted at trial of conspiracy and housing interference, and related firearms offenses, stemming from a drive-by shooting into several homes of African-American residents. Although there were no injuries in the incident, one bullet struck the headboard of one victim's bed and the other hit the bedroom wall below which one of the victim's daughters was sleeping. The State did not prosecute Lee because of insufficient evidence. Jarrard pled guilty to a state charge, but received only 5 months jail time and 5 years probation. In federal court, both defendants were sentenced to 81 months

imprisonment, to be followed by three years supervised release.

- In U.S. v. Black and Clark(12/12/91)(E.D. Calif.), two white supremacists were charged federally in the assault of a black man at a convenience store/gasoline station. The victim received multiple stab wounds and required hospital treatment. The county sherif did not have the resources to devote to an investigation, and ceded its investigatory authority to the FBI. The local prosecutors did not consider the matter a priority case. After indictment on federal charges, Clark pled guilty to violating Section 245 and was sentenced to serve seven years and 10 months in prison, to be followed by three years supervised release.Black was convicted at trial and sentenced to serve 10 years in prison. Under 18 U.S.C. Section 245, the federal government would have lacked jurisdiction to prosecute the defendants if the convenience store had not been considered a place of entertainment due to the presence of a pinball machine in the store.

- In U.S. v. Bledsoe(2/17/83)(W.D. Kan.), the defendant was convicted of clubbing to death a 26 year old Black jazz musician with a baseball bat in a Kansas City park. The victim, Steven Harvey, frequently visited the park late at night to practice his music. A local homicide prosecution of Bledsoe resulted in acquittal. Bledsoe was sentenced to life imprisonment on the federal charges. Under 18 U.S.C. Section 245, the federal government would have lacked jurisdiction to prosecute Bledsoe if he had been, for instance, across the street from the park at the time of the attack.

- In U.S. v. Mungia, Mungia, and Martin (N.D. Texas), the Department successfully brought federal charges against three defendants in a racially motivated shooting of three African-American men in Lubbock, Texas. Federal and local prosecutors, who worked closely together throughout the investigation, determined together that federal prosecution was preferable to state charges for two reasons. First, all three defendants could be tried jointly in federal court. Second, because of overcrowding in the state prisons, prosecutors were concerned that even if sentenced to life, the defendants would not serve their full terms. The defendants were sentenced to terms of life plus 50 years.

- In U.S. v. Lane and Pierce (D. Col. 11/17/87), the Department obtained convictions against two defendants following the fatal shooting of Mr. Alan Berg. The defendants were members of a neo-Nazi group, and evidence indicated that they hoped the shooting would spark a race war. Because most of the critical witnesses were in federal custody in several different states, local prosecutors agreed the case was best pursued in federal court. The defendants received sentences of 150 years.

B. Violent Hate Crimes Based on Sexual Orientation, Gender, or Disability

Under current law, section 245 provides no federal jurisdiction for violent attacks that occur because of sexual orientation, gender, or disability.

1. Sexual Orientation

From statistics gathered by the federal government and private organizations, we know that a significant number of hate crimes based on the sexual orientation of the victim are committed every year in this country. Data collected by the FBI pursuant to the Hate Crimes Statistics Act indicate that 1,102 bias incidents based on the sexual orientation of the victim were reported to local law enforcement agencies in 1997; that

1,256 such incidents were reported in 1996; 1,019 such incidents were reported in 1995; and that 677 and 806 such incidents were reported in 1994 and 1993, respectively. The National Coalition of Anti-Violence Programs (NCAVP), a private organization that tracks bias incidents based on sexual orientation, reported 2,445 such incidents in 1997; 2,529 in 1996; 2,395 in 1995; 2,064 in 1994; and 1,813 in 1993.

Even the higher statistics reported by NCAVP may significantly understate the number of hate crimes based on sexual orientation that actually are committed in this country. Many victims of anti-lesbian and anti-gay incidents do not report the crimes to local law enforcement officials because they fear that their sexual orientation may be made public or they fear that they would receive an insensitive or hostile response or that they would be physically abused or otherwise mistreated. According to the NCAVP survey, 45 percent of those who reported hate crimes to the police in 1997 labeled their treatment by police as "indifferent to hostile."

Despite the prevalence of violent hate crimes committed on the basis of sexual orientation, such crimes are not covered by 18 U.S.C.§245 unless there is an independent basis for federal jurisdiction, such as race-based bias. Accordingly, the federal government is without authority to work in partnership with local law enforcement officials, or to bring federal prosecutions, when gay men or lesbians are the victims of murders or other violent assaults <u>because of</u> bias based on their sexual orientation.

2. <u>Gender</u>

Although acts of violence committed against women traditionally have been viewed as "personal attacks" rather than as hate crimes, many people have come to understand that a significant number of women "are exposed to terror, brutality, serious injury, and even death because of their gender."[4] Indeed, Congress, through the enactment of the Violence Against Women Act (VAWA) in 1994, has recognized that some violent assaults committed against women are bias crimes rather than mere "random" attacks. The Senate Report on VAWA stated:

- The Violence Against Women Act aims to consider gender-motivated bias crimes as seriously as other bias crimes. Whether the attack is motivated by racial bias, ethnic bias, or gender bias, the results are often the same. The victims are reduced to symbols of hatred; they are chosen not because of who they are as individuals but because of their class status. The violence not only wounds physically, it degrades and terrorizes, instilling fear and inhibiting the lives of all those similarly situated. "Placing this violence in the context of the civil rights laws recognizes it for what it is -- a hate crime. "

Senate Report (No. 103-138 91993) (quoting testimony of Prof. Burt Neubome).

VAWA provides private parties a broad civil remedy for violence against women motivated by gender-based bias.[5] However, VAWA's two criminal provisions regarding violence against women provide extremely limited coverage. Specifically, VAWA's prohibition on interstate domestic violence, 18 U.S.C.§2261, is limited to violence against a defendant's "spouse or intimate partner" and requires that the defendant travel across a state line. VAWA's other criminal provision, 18 U.S.C.§2262, prohibits

the violation of a "protection order" if the defendant travels across state lines with the intent to engage in conduct that violates that order.

The structure of VAWA's criminal provisions gives rise to at least two important concerns. First, because of VAWA's victim-based limitation -- the requirement that the victim be a "spouse or intimate partner" -- VAWA does not give the Department of Justice adequate authority to address a significant number of violent gender-motivated crimes. Serial rapists, for example, fall outside the reach of VAWA's criminal provisions even if their crimes are clearly motivated by gender-based hate and even if they operate interstate. Second, because VAWA's criminal provisions contain no requirement that the violence be motivated by gender-based bias, a conviction under VAWA may not fully vindicate the interest in punishing gender-based crimes.

The federal government should have jurisdiction to work together with state and local law enforcement officials in the investigation of violent gender-based hate crimes. And, in rare circumstances, the federal government should have jurisdiction to bring federal prosecutions aimed at vindicating the strong federal interest in combating the most heinous gender-based crimes of violence.[6]

I want to emphasize that including gender in 18 U.S.C.§245 would not result in the federalization of all sexual assaults or acts of domestic violence. The language of the bill itself, together with the manner in which the Department of Justice would interpret that language, would strictly limit federal investigations and prosecutions of violent gender-based hate crimes, especially since federal prosecutors will have to prove not only that the perpetrator committed the act, but also that the perpetrator did so because of gender-based bias. We would rely on this authority only in cases where federal jurisdiction is needed to achieve justice in a particular case. Just as with other categories of hate crimes, state and local authorities would continue to prosecute virtually all gender-motivated hate crimes.

We would expect courts deciding gender-bias cases under an amended 18 U.S.C.§245 to consider the same types of evidence that they consider in analogous contexts in which motive must be proved. This evidence could include: (i) statements of motive the defendant made before, during, or after the offense that tend to indicate the defendant's motive; (ii) the absence of any evidence of an alternative motive; (iii) the defendant's use of epithets during the offense; (iv) other aspects of the offense itself, such as mutilation of the victim's genitals other acts of extreme violence, that may indicate hatred based on gender; and (v) other related or similar biasmotivated conduct of the defendant. As indicated elsewhere, we expect that most gender based crimes would continue to be prosecuted by state and local prosecutors.

3. Disability

Congress has shown a sustained commitment over the past decade to the protection of persons with disabilities from discrimination based on their disabilities. With Section 504 of the Rehabilitation Act of 1973, the 1988 amendments to the Fair Housing Act,[7] and the Americans with Disabilities Act of 1990, Congress has extended civil rights protections to persons with disabilities in many traditional civil rights contexts.

Concerned about the problem of disability-based hate crimes, Congress also

amended the Hate Crimes Statistics Act in 1994 to require the FBI to collect information about such hate-based incidents from state and local law enforcement agencies. The information we have available indicates that a significant number of hate crimes committed because of the victim's disability are not resolved satisfactorily at the state and local level. For example, in Denver in 1991, a paraplegic died from asphyxiation when a group of youths stuffed him upside down in a trash can. Calling the incident a "cruel prank," local police declined to investigate the matter as a bias-related crime.

The Department of Justice believes that the federal interest in working together with state and local officials in the investigation and prosecution of hate crimes based on disability is sufficiently strong to warrant amendment of 18 U.S.C.§245 to include such crimes when they result in bodily injury and when federal prosecution is consistent with the Commerce Clause.

C. Federalization and Jurisdiction

The Department of Justice has carefully reviewed H.R. 1082 and concluded that its enactment would neither result in a significant increase in federal hate crimes prosecutions nor impose an undue burden on federal law enforcement resources. The language of the bill itself, as well as the manner in which the Department would interpret that language, would ensure that the federal government would strictly limit its investigations and prosecutions of hate crimes -- including those based on gender -- to the cases where jurisdiction is needed to achieve justice in a particular case. The decision to use this authority would only be made after consultation with state and local officials.

The Department's efforts under the proposed amendments to 18 U.S.C.§245 would be guided by Department-wide policies that would impose additional limitations on the cases prosecuted by the federal government. First, under the "backstop policy" that applies to all of the Department's criminal civil rights investigations, the Department works with state and local officials and would generally defer prosecution in the first instance to state and local law enforcement. Only in highly sensitive cases in which the federal interest in prompt federal investigation and prosecution outweighs the usual justifications of the backstop policy would the federal government take a more active role. Under this policy, we are available to aid local and state investigations as they pursue prosecutions, as we did in the Jasper case. Under this policy, we are also in a position to ensure that, in the event a state can not or will not vindicate the federal interest, we can pursue prosecutions independently. Second, under the Department's formal policy on dual and successive prosecutions, the Department would not bring a federal prosecution following a state prosecution arising from the same incident unless the matter involved a "substantial federal interest" that the state prosecution had left "demonstrably unvindicated."

The express language of the bill also contains several important limiting principles. First, the bill requires proof that an offense was motivated by hatred based on race, color, national origin, religion, sexual orientation, gender, or disability; as it has in the past, this requirement would continue to limit the pool of potential federal cases to those in which the evidence of hate-based motivation is sufficient to distinguish them from ordinary state law cases. Second, the bill excludes misdemeanors and limits federal hate crimes based on sexual orientation, gender, or disability to those involving bodily injury (and a limited set of attempts to cause bodily injury); these limitations would narrow the

set of newly federalized cases to truly serious offenses. Third, the bill's Commerce Clause element requires proof of a nexus to interstate commerce in cases involving conduct based on bias covered by any of the newly protected categories; this requirement would limit federal jurisdiction in these categories to cases that implicate interstate interests. Finally, 18 U.S.C.§245 already requires a written certification by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or a specially designated Assistant Attorney General that "in his [or her] judgment a prosecution by the United States is in the public interest and necessary to secure substantial justice" before any prosecution under the statute may be commenced.[8] This statutory certification requirement, which would extend to all prosecutions authorized by H.R. 1082, would ensure that the Department's new areas of hate crimes jurisdiction would be asserted in a properly limited fashion.

Finally, the Hate Crimes Prevention Act is fully consistent with constitutional requirements regarding the scope of Congressional powers. Proposed subsection (c)(1), the provision which essentially eliminates the "federally protected activity" requirement, is authorized by the Thirteenth Amendment, which permits Congress to regulate violent hate crimes motivated by race, color, religion or national origin. Proposed subsection (c)(2), which would prohibit the intentional infliction of bodily injury (or an attempt to inflict bodily injury through the use of fire, a firearm, or an explosive decide) on the basis of religion, gender, sexual orientation, or disability, requires proof of a Commerce Clause nexus as an element of the offense. Specifically, the government would have to prove "that (i) in connection with the offense, the defendant or the victim travels in interstate or foreign commerce, uses a facility or instrumentality of interstate or foreign commerce, or engages in activity affecting interstate or foreign commerce; or (ii) the offense is in or affects interstate or foreign commerce." The government would bear the burden at trial of proving the interstate commerce nexus beyond a reasonable doubt. We believe that the interstate commerce element contained in H.R. 1082 for hate crimes based on sexual orientation, gender, or disability would fully satisfy Congress' obligation to comply with the Commerce Clause. The interstate commerce nexus required by the bill is analogous to that required in many other federal criminal statutes, including the Church Arson Prevention Act, the Hobbs Act, and the Racketeer Influenced and Corrupt Organizations Act (RICO). Accordingly, the interstate commerce element would ensure that hate crimes prosecutions brought under the new statute would not be mired in constitutional litigation concerning the scope of Congress' power.

Conclusion

We must look at the root causes of hate crime. Intolerance often begins not with a violent act, but with a small indignity or bigoted remark. To move forward as one community, we must work against the stereotypes and prejudices that spawn these actions. We must foster understanding and respect in our homes and our neighborhoods, in our schools and on our college campuses.

We also realize that legislation, while an important part of the solution, will not solve this problem alone. We must look at the root causes of hate crime. Intolerance often begins not with a violent act, but with a small indignity or bigoted remark. To move forward as one community, we must work against the stereotypes and prejudices that spawn these actions.

Hate is learned. It can be unlearned. We must engage our schools in the crucial task of teaching our children moral values and social

responsibility. Educators can play a vital role in preventing the development of the prejudice and stereotyping that leads to hate crime. I am pleased that the Department will be assisting a new partnership announced last month by the President in its efforts to develop a program for middle school students on tolerance and diversity. Also, over the past few years, through an interagency agreement, the Departments of Justice and Education helped publish the curriculum called "Healing the Hate, a National Bias Crime Prevention Curriculum for Middle Schools" and have conducted 3 regional training and technical assistance conferences throughout the nation. In addition to the regional training, we have provided Training and Technical Assistance to a dozen or more national juvenile prevention groups and organizations, including the National Council of Juvenile Court Judges and various local communities in which churches were burned.

Where does hatred start? Hatred starts oftentimes in someone who feels alone, confused and unloved. I look at a young perpetrator and I know that at so many points along the way, we could have intervened and helped him take a better path. We have to invest in our children. We have to help them grow in strength, in positive values, and in respect and love for others.

We also believe, however, that law enforcement has a significant role to play. The enactment of H.R. 1082 would significantly increase the ability of state and federal law enforcement agencies to work together to solve and prevent a wide range of violent hate crimes committed because of bias based on the race, color, national origin, religion, sexual orientation, gender, or disability of the victim. This bill is a thoughtful, measured response to a critical problem facing our Nation.

I look forward to answering any questions that you might have.

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1. Roughly two-thirds of the hate crimes prosecuted under federal law are pursued as criminal violations of the Fair Housing Act, which protects the rights of all persons to live wherever they choose free from violence because of their race, religion, national origin, family status, gender, or handicap. While this statute broadly protects interference with the housing process, it is limited to residential property and thus has significant limitations.

2. See 18 U.S.C.§245(b)(2)(B)

3. The Department of Justice brought federal civil rights charges against two defendants in the Crown Heights case after the state failed to charge one of the defendants in state court and the state's case against the second defendant ended in acquittal. The Department brought federal charges against three defendants in the Lubbock case when federal and local prosecutors, who had collaborated throughout the investigation, agreed that the procedures and sentences available in federal court were significantly better suited to the interests of law enforcement, of the victims of the crime, and of the entire affected community than were those available in state court.

4. Statement of Helen R. Neuborne, Executive Director, NOW Legal Defense and Education Fund, Women and Violence: Hearing Before the Senate Judiciary Committee, 101" Congress, 2 nd Sess. 62 (1990).

5. See 42 U.S.C. § 13981,

6. Although all 50 states have statutes prohibiting rape and other crimes typically committed against women, only 19 states and the District of Columbia have hate crimes statutes that include gender among the categories of prohibited bias motives.

7. Congress amended the Fair Housing Act in 1988 to grant the Attorney General authority to prosecute those who use force or threats of force to interfere with the right of a person with a disability to obtain housing.

8. See 18 U.S.C.§245(a)(1).