

The Department of Justice Office of the Inspector General today released *A Review of the Operations of the Voting Section of the Civil Rights Division*. At the request of several members of Congress, the Office of the Inspector General's (OIG) review examined several facets of the operations of the Voting Section over time. A primary focus of the review was to determine how the enforcement priorities of the Voting Section have changed over time and to determine whether the voting rights laws have been enforced in a non-discriminatory fashion under the past and present administrations. The report also examined several incidents of harassment and marginalization of employees and managers, as well as the unauthorized disclosure of confidential information. Additionally, the report analyzed allegations of partisanship in both the hiring of experienced attorneys to work in the Voting Section under the current administration and in the prioritization of responses to records requests about voting matters.

The OIG's review of this matter involved the review of over 100,000 pages of documents, and interviews with more than 135 individuals, including more than 80 currently or previously employed by the Department of Justice (Department), up to and including the Attorney General and others at the highest levels of past and current leadership of the Department. As detailed in the report and summarized below, our extensive investigation revealed that there were, in fact, significant differences in enforcement priorities over time, but we did not uncover evidence – whether through the review of documents, interviews, or our analysis of numerous case decisions -- sufficient to conclude that enforcement decisions were made under the past or current administrations based on race or partisan considerations. We did, however, raise questions about the handling of some of those cases, including the New Black Panther Party (NBPP) matter, that we believe contributed to the appearance of politicization of the work of the Voting Section. We also found numerous and troubling examples of harassment and marginalization of employees and managers, as well as the unauthorized disclosure of confidential information, that appeared to result from ideological divisions within the Section. We did not find sufficient evidence to substantiate the allegations of recent politicization in the hiring of career attorneys or responses to records requests, though we did make recommendations for improvements to avoid such perceptions in both areas.

Enforcement of the Voting Rights Laws

The OIG's examination of the mix and volume of enforcement cases brought in the Voting Section revealed some changes in enforcement priorities over time, but we did not find sufficient evidence to conclude that the decisions made in a variety of cases under the prior and current administrations were based on racial or partisan concerns. We also found insufficient support for a conclusion that Division leadership in either the prior or current administration improperly refused to enforce the voting rights laws on behalf of any particular group of voters, or that either administration used the enforcement of the voting laws to seek improper partisan advantage. Although we had concerns about particular decisions in a few cases as detailed in the report, we found insufficient evidence to conclude that the substantive enforcement decisions by Civil Rights Division (Division) leadership in Voting Section cases were made in a discriminatory manner. This conclusion encompasses the OIG's review of some of the more controversial enforcement decisions made in Voting Section cases from 2002 through 2011, by Division leadership in both the prior and current administrations.

As part of the OIG's review of the enforcement of the voting rights laws over time, we examined the NBPP matter, in which a complaint was filed at the end of the outgoing administration, and then dismissed as to three of the four defendants months later under the new administration. We found that the decisions that were reached in the case under both administrations were ultimately supportable on non-racial and non-partisan grounds. However, we also found that the manner in which the outgoing

administration filed the case without following usual practice and the new administration's dismissal of one of the individual defendants at the eleventh hour, particularly viewing the latter in the context of the contemporaneous discussions about removing the Section Chief, Christopher Coates, who had occupied that position before the change in administrations, both risked undermining confidence in the non-ideological enforcement of the voting rights laws.

Harassment and Marginalization of Employees and Managers

The OIG's investigation also examined several incidents in which deep ideological polarization fueled disputes and mistrust that harmed the functioning of the Voting Section. The report details a number of examples of harassment and marginalization of employees and managers, as well as the unauthorized disclosure of confidential information, that we found to be incompatible with the proper functioning of a component of the Department of Justice. While we were not able as part of our comprehensive review of the operations of the Section to trace such polarization to a single event or decision, we did find that accelerated hiring of attorneys during the transition of administrations in December 2000 and January 2001, at a minimum, created a perception that it was done for ideological reasons and generated mistrust that carried over and provided context for perceptions that affected subsequent actions. Polarization and suspicion within the Voting Section manifested itself in various ways detailed in the report, including:

- Harassment of Section Employees

We found that the high partisan stakes associated with some of the statutes that the Voting Section enforces have contributed to polarization and mistrust within the Section, and that people on different sides of internal disputes about particular cases have been quick to suspect those on the other side of partisan motivations. We also found that polarization has been exacerbated by the debate that has arisen in recent years about whether voting rights laws that were enacted in response to discrimination against Blacks and other minorities also should be used to challenge allegedly improper voting practices that harm White voters.

The OIG and the Department's Office of Professional Responsibility previously reported on improper hiring practices during the period that Bradley Schlozman served as Principal Deputy Assistant Attorney General and Acting Assistant Attorney General for the Civil Rights Division, and the OIG's report released today found that polarization and suspicion became particularly acute during the period from 2003 to 2007 when Schlozman supervised the Voting Section in those capacities. In the Georgia Voter ID preclearance matter in 2005, we found that it was problematic to add an inexperienced attorney to the case team because of his perceived ideology and that of the other members of the team. This assignment, and subsequent direct communications between Division leadership and the inexperienced attorney, created the perception among other team members that the attorney had been placed on the team for political or ideological reasons. However, we found that these circumstances did not excuse the conduct that followed, in which the new attorney was ostracized and ridiculed, and had his work product copied from his computer files and distributed without his knowledge or permission, at least in part because of the perception that he was conservative and because of the legal positions he advocated while working on the submission.

We also found that in 2007, some career employees made offensive and racially charged comments to and about a student intern who volunteered to assist the trial team in the first case brought under Section 2 of the Voting Rights Act against minority defendants on behalf of White voters arising out of

Noxubee County, Mississippi. Division leadership reprimanded one career attorney and counseled two others for this conduct. We also found that some Voting Section employees criticized and mocked the trial team in e-mails to each other at work, sometimes using inappropriate and intemperate language.

- Unauthorized Disclosures of Confidential Information and Inappropriate Public Comments

We found other instances in which the functioning of the Voting Section and the relationship between political appointees in the Division's leadership and career employees was further undermined by unauthorized disclosures of confidential information about internal deliberations in several controversial matters, including reviews under Section 5 of the Voting Rights Act involving redistricting in Mississippi and Texas, as well as the Georgia Voter ID matter. Our review also disclosed that, during a period of high tension in the Section in 2007, at least three career Voting Section employees posted comments on a widely read political website concerning Voting Section work and personnel. Some of the postings included a wide array of inappropriate remarks and attacks, as well as highly offensive and potentially threatening statements. The postings included non-public information about attorneys, managers, and internal Department matters. They reflected exceptionally poor judgment and may have constituted a violation of Department regulations or policies. We were especially troubled that a non-attorney Voting Section supervisor, who knew of a subordinate's improper conduct, not only suggested that the employee disregard counseling and admonishment from Section leadership, but also encouraged the subordinate to continue the improper conduct.

- Discussions about Removing the Section Chief following the Change of Administrations

We found that the polarization in the Voting Section continued after the change in administrations, as evidenced by several matters detailed in the report, including serious discussions among senior leadership in the Division and the Department about removing Christopher Coates as Section Chief, at least in part because of a belief that he had a "very conservative view of civil rights law" and wanted to make "reverse-discrimination" cases such a high priority in the Voting Section that it would have a negative impact on the Section's ability to do "traditional" cases on behalf of racial and language-minority voters. However, we found no evidence that Coates had declined to implement the decisions or policies of the new administration at the time of these discussions, despite his admittedly conservative views and his acknowledged willingness to pursue "reverse-discrimination" cases. We found that Division leaders also believed, based in part on complaints from career employees, that Coates was a flawed manager and a divisive figure whose removal would improve the functioning and morale of the Voting Section. After career officials in the Justice Management Division told Division leadership that the then-existing record would not support a performance-based removal, an effort was then undertaken by Division leadership to document Coates's performance deficiencies. Ultimately, however, Coates requested and was granted a transfer out of the Division. We found the manner in which the Coates matter was handled further increased the appearance of politicization of the Voting Section.

- Other Conduct Giving the Impression of Continued Polarization and Politicization

Other conduct discussed in the report, such as consideration of political or ideological leanings in communications about membership in an Honors Program hiring committee and remarks in 2009 by Deputy Assistant Attorney General Julie Fernandes about enforcement priorities under the Voting Rights Act and the National Voter Registration Act reveal that the politically charged atmosphere and polarization within the Voting Section continued even after the change in the Division's leadership under

the new administration. Such incidents gave the impression of continued polarization within the Section and politicization of its important work.

Hiring in 2010

Our report did not find sufficient evidence to substantiate allegations that the Voting Section considered applicants' political or ideological affiliations when hiring experienced trial attorneys in 2010. We did find that the primary criterion used in assessing the qualification of the 482 applicants, namely prior voting litigation experience, resulted in a pool of 24 candidates selected to be interviewed (9 of which were ultimately hired) who had overwhelmingly liberal or Democratic affiliations. Of the 482 applicants, only 10 had identifiably conservative or Republican affiliations, and none of those 10 had any voting litigation experience. In light of the Section's loss of experienced personnel and need for attorneys who could lead complex voting rights cases immediately, we found that emphasizing voting rights litigation experience was a legitimate and neutral criterion, and was not used as a pretext for hiring candidates with a particular ideology. Although we found that the composition of the selected candidates was the result of the application of objectively neutral hiring criteria, the methodology employed during this hiring effort resulted in the rejection of candidates with strong academic backgrounds and with significant valuable work experience.

Processing of Requests for Information

The report also found no support for allegations that partisan allies of the current administration received preferential treatment in the Voting Section's responses to requests for records, including FOIA requests. As detailed in Chapter Six, we found that differences in the time it took for the Voting Section to respond to records requests were attributable to variance in the time-sensitivity of the requests, the complexity and size of the requests, and the difficulty of locating responsive documents. We found that the Voting Section regularized and strengthened its procedures for responding to records requests in 2003 and since 2006, and that these procedures have helped protect against favoritism in responding to records requests. Nevertheless, we expressed concern about the substantial increase in the backlog of requests in the Voting Section in recent years, and recommended that additional resources be temporarily devoted to reducing it.

Conclusions and Recommendations

The OIG's report concluded by finding that the conduct discovered and documented in this review reflected a disappointing lack of professionalism by some Department employees over an extended period of time, during two administrations, and across various facets of the Voting Section's operations. We expressed the belief that, in the Department, professionalism means more than technical expertise – it means operating in a manner that consciously ensures both the appearance and the reality of even-handed, fair and mature decision-making, carried out without regard to partisan or other improper considerations. We found it particularly troubling that conduct such as we describe in the report would occur within and with regard to the work of the Voting Section, as it is precisely because of the political sensitivity of its work that it is essential that Division leaders and Voting Section managers be particularly vigilant to ensure that enforcement decisions – and the processes used to arrive at them – are, and appear to be, based solely on the merits and free from improper partisan or racial considerations. As referenced in the report and the Division's memorandum submitted in response and attached to it, the Division indicated that it has made substantial efforts under the current

administration to improve the operations of the Voting Section in order to address the problems of polarization and the impression of politicization that have plagued the Section for years.

We made several recommendations in the report, including a recommendation on how the Voting Section could take steps to avoid creating perceptions of ideologically biased hiring. The Division disagreed with our recommendations as to how to accomplish this goal, and we will address this through the Department's resolution process. The Division agreed with the rest of our recommendations, which included recommendations to assign additional resources on at least a temporary basis to help address the backlog in processing requests for information, and to take steps consistent with the findings in the report to ensure that the actions and decisions of the Section and its employees meet the standards of professionalism and impartiality that are rightly expected and demanded by the public of the Department of Justice.

The report released today can be found on the OIG's website at: <http://www.justice.gov/oig/reports/2013/s1303.pdf>.