

Transcript: “Podcast: The DOJ Civil Division’s Handling of Sexual Harassment and Misconduct Allegations,” June 2017

Yvonne Garcia: Welcome to the latest podcast from the Department of Justice Office of the Inspector General. I’m Yvonne Garcia, Counsel to the Inspector General.

With me is Rob Storch, the Deputy Inspector General, to discuss the findings of a new report issued today, which examines the DOJ Civil Division’s handling of sexual harassment and misconduct allegations, as well as a Management Advisory Memorandum that the OIG sent to Justice Department leadership on related issues. Thanks for taking the time to be here today, Rob.

Robert P. Storch: It’s an important topic. I’m happy to be here.

YG: Let’s start by talking about the reasons for launching this review. Why was this an important topic for the OIG to examine?

RS: Sexual harassment and misconduct is unacceptable and has serious consequences for victims and the workplace. Today’s report cites some of those negative consequences– it can create a hostile work environment, lower productivity and morale, and diminish an agency’s reputation and credibility.

YG: Those are serious concerns that could apply to any workplace, but did we have additional concerns that were specific to the Department or the Civil Division?

RS: We did. In this case, there were a few other factors that went into the decision to launch this review. For one, we had previously seen issues in prior reviews with how DOJ law enforcement components and the Executive Office for U.S. Attorneys handled sexual harassment and misconduct allegations, as well as discipline for substantiated misconduct. And more specifically to the Civil Division, we had received a complaint alleging that the Civil Division’s Office of Immigration Litigation had failed to properly discipline an attorney who had committed sexual misconduct, and that there was a larger pattern of inadequate responses to such conduct by the office. The OIG did a preliminary review of those allegations and we didn’t substantiate the allegation of a pattern of inadequate responses by the office. However, we did identify concerns about the sufficiency of discipline imposed against the attorney and the Civil Division’s failure to report the alleged misconduct to the OIG.

YG: Can you give an example of a misconduct allegation that was reported to and handled by the Civil Division?

RS: Actually, we describe three of these Civil Division cases in our report. In one of those cases, a senior attorney admitted to stalking a fellow attorney and hacking into her personal email account. The senior attorney then engaged in what’s known as “catfishing” the victim, trying to lure the victim into a relationship through a fictional online identity. The discipline imposed on that senior attorney included a written reprimand and a diminution of title, a transfer to a different section within the Civil

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Division, and a restriction preventing the senior attorney from entering the building in which the victim worked for one year. However, he received no suspension or loss in pay or grade for this misconduct. And, of course, such behavior raises serious potential criminal concerns, but we found no evidence that a referral was made to the OIG or to any other law enforcement entity for further investigation.

YG: Today’s report is also broader than those three cases. What was the scope of the review?

RS: Our review looked at the Civil Division’s policies, procedures, and guidelines for reporting, investigating, and adjudicating allegations of sexual harassment or misconduct from the start of fiscal year 2011 through the first two quarters of fiscal year 2016.

YG: What did the OIG conclude?

RS: Well overall, we concluded that there were significant weaknesses in the Civil Division’s tracking of allegations and although the Civil Division’s handling of those allegations conformed to most applicable regulations and policies, it was not consistent among cases or with the DOJ’s zero tolerance policy.

YG: Can you provide more details about some of the most important findings in today’s report?

RS: Sure. A central finding was that the Civil Division does not consistently or effectively track, record, or maintain adequate information on allegations of sexual harassment and misconduct. For example, case files were maintained only in hard copy, the content of those files was inconsistent, and the Civil Division relied on the memory of one Human Resources officer to track all allegations of misconduct. The Civil Division also does not have guidance to ensure that all allegations are reported to Human Resources, and it lacks a consistent standard for reporting sexual harassment and misconduct allegations to the OIG, and to its own leadership as a management matter.

YG: Were there any findings related to the process for disciplining offending employees?

RS: Yes, there were. Another finding was that for cases where sexual harassment or misconduct is substantiated, the Civil Division does not have penalty guidelines, which we believe impedes their ability to impose consistent penalties.

Additionally, we found that Civil Division employees received performance awards in public ceremonies despite the fact that they were the subject of an ongoing sexual harassment or misconduct investigation, or had been disciplined for misconduct. We believe that this sends the wrong message to employees. It may lead to the perception that sexual harassment or misconduct is not taken seriously by the

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Department and will not result in any meaningful consequence for offenders. We also believe this practice could deter the reporting of future allegations.

YG: Let’s speak briefly about the Department’s zero tolerance policy for sexual harassment. The report reflects an exchange of views between the OIG and the Department on this issue. Can you elaborate?

RS: In response to a working draft of this report, the Civil Division expressed concern that the OIG’s use of the term “zero tolerance” was overly broad. The Civil Division explained that they have a zero tolerance policy in the sense that they will not tolerate their employees engaging in sexual harassment, that they will take whatever measures are necessary to stop such misconduct when they are informed of it, and that they will make sure that appropriate remedies are available for the victims of such misconduct. They also stated that this does not mean that the agency will apply a zero tolerance approach to taking discipline for every substantiated allegation, but rather will undertake an individualized assessment of discipline in each case, after consideration of all the relevant factors, as required by law. In contrast, the OIG believes that a zero tolerance policy means that all substantiated allegations should be addressed consistently and appropriately, including consistent discipline across cases, which we found did not occur during the period of our review.

YG: The OIG also released another document today, which is a Management Advisory Memorandum to the Justice Department’s leadership. Why did the OIG feel this document was necessary, and what will happen as a result?

RS: Well, based on today’s report, as well as several prior OIG reports to which I referred earlier, we were concerned about systemic issues present across the DOJ. If the Department relies on individual components to address these issues, then the changes we can expect to see will be too narrowly focused and may well result in inconsistent treatment of these critical issues. We believe that DOJ leadership is in the best position to implement positive, coordinated, high-level action across the Department in this area, which is why we issued the Memorandum. So while today’s report includes four recommendations that are specifically directed at the Civil Division, the Memorandum identifies issues for consideration that are directed at the Department as a whole. The Department has 60 days under the Memorandum to consider corrective action and report back to the OIG about any corrective action that it implements.

YG: Thanks for joining us today, Rob.

RS: It’s my pleasure.

YG: To read our report and the Management Advisory Memorandum, please visit our website, oig.justice.gov.

Thank you for joining us.

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