

July 9, 2007

Responses from Brian K. Landsberg
To questions from Chairman Patrick Leahy
Civil Rights Division Oversight Hearing

Q. I am troubled by the significant drops in these areas of civil rights enforcement [employment and voting] and I am concerned that the current Civil Rights Division has not made a high priority the process of actively seeking out anti-discrimination cases, rather than merely wait for such cases to emerge on its radar screen. Do you share my concern?

A. I believe the historic mission of the Civil Rights Division since 1960 has been to actively seek to identify violations of the civil rights laws. In the period 1957-1959, the policy was to wait for complaints before investigating. When Assistant Attorney General Harold Tyler and his deputy, John Doar, came to the Division in 1960 they began field trips to areas where there was reason to believe that voting rights were being denied because of race. They converted the legal staff from desk lawyers to proactive litigators. That model has served the country well, and I would be concerned about any departure from it.

Q. What resources could the Civil Rights Division tap into for further investigation of civil rights violations and allegations?

A. In the area of employment, the Equal Employment Opportunities Commission has been an important partner, which has access to extensive information regarding employment patterns. It is also essential to maintain relations with civil rights groups and encourage them to inform the Division of areas of concern. Study of statistical patterns may also reveal possible discrimination. For example, after Congress expanded Title VII to cover employment practices of public school districts in 1972, the Division compared census data regarding the number of African American teachers in selected Standard Metropolitan Statistical Areas with data showing the number of African American teachers in school districts in the SMSA. We found that in the St. Louis SMSA there were several school districts that had hired almost no African American teachers, despite the high proportion of teachers in the SMSA who were African American. This information triggered an investigation, which led to several successful employment discrimination cases.

Q. Historically, have the Division attorneys developed relationships in local communities so that they could be more successful in uncovering violations of federal civil rights laws?

A. Yes. Of course, given the size of the country and the number of Division attorneys, they cannot develop such relationships in every community. However, using information such as described in my previous answer, they can and should target possible

problem communities and cultivate relationships in them. At times United States Attorneys have been helpful in helping the Division to develop such relationships.

Responses from Brian K. Landsberg
To questions from Senator Dianne Feinstein
Civil Rights Division Oversight Hearing

Q. Are there any steps you believe the Department should take to ensure that the views of career staff receive respectful consideration?

A. I believe there are two types of steps the Department should take. First, it should ensure that there are formal, regularized procedures for staff to make recommendations and for the leadership to act on those recommendations. Those procedures should include a requirement that staff draft justification memoranda that explain the factual, legal and policy reasons for the staff recommendation. The procedures should then require that at any level where a higher official overrules recommendations from below, the official must explain in writing the factual, legal, or policy basis for doing so. Second, the Attorney General and/or Assistant Attorney General should orally discuss the competing recommendations of career staff and political appointees prior to making a final decision. Career staff should be given the opportunity to explain their position. The Attorney General and Assistant Attorney General should set an example for the political staff. If they treat career staff with respect, their political staff will be more likely to do so as well.

Q. What indicators can this Committee use to find out whether a front office decision to overrule career staff is the result of politicized decisionmaking rather than good-faith disagreement about the law?

A. One indicator is whether the procedures described above have been followed. As Justice Powell explained in *Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252 (1977), “Departures from the normal procedural sequence also might afford evidence that improper purposes are playing a role.” Justice Powell’s decision also noted that “substantive departures too may be relevant....” In addition, subsequent action of courts may indicate that the front office decision either had a solid legal rationale or that it did not. If the front office does give reasons for overruling the staff recommendation and the reasons are weak, it becomes more likely that the staff was overruled by politicized decisionmaking. Evidence of improper political pressure from outside the Division could also indicate the presence of politicized decisionmaking.