Testimony of

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November 16, 2006

My name is Joe Rich. Since May, 2005 I have been Director of the Housing and Community Development Project at the Lawyers' Committee for Civil Rights Under Law. Previously I worked for the Department of Justice's Civil Rights Division for almost 37 years. The last six years - from 1999-2005 - I was Chief of the Division's Voting Section. Prior to that I served as Deputy Chief of the Housing and Civil Enforcement Section for twelve years and Deputy Chief for the Education Section for ten years. During my almost 37 years in the Division, I served in Republican administrations for over 24 years and Democratic administrations for slightly over 12 years.

I want to thank the Committee for the opportunity to testify at this oversight hearing. Enforcement of our nation's civil rights laws is one of the Department of Justice's most important, and sensitive responsibilities, and careful oversight of this work is crucial. For too long, there has been virtually no Congressional oversight during a time that the Division has strayed seriously from its historic mission and traditions.

Since its creation in 1957 under President Eisenhower, the Civil Rights Division has been the primary guardian for protecting our citizens against illegal racial, ethnic, religious and gender discrimination. Through both Republican and Democratic Administrations, the Division developed a well-earned reputation for expertise and professionalism in its civil rights enforcement efforts.

Civil rights enforcement has historically been highly sensitive and politically controversial. It grew out of the tumultuous civil rights movement of the 1960's, a movement which generated great passion and conflict. Given the passions that civil rights enforcement generates, there has always been potential for conflict between political appointees of the current administration, who are the ultimate decision makers within the Division and the Department, and the stable ranks of career attorneys who are the nation's front line enforcers of civil rights and whose loyalties are to the department where they work. Over my long career, I and other career staff in the Division experienced inevitable conflicts with political appointees in both Republican and Democratic administrations. These conflicts were almost always resolved after vigorous debate between career attorneys and political appointees, with each learning from the other. Partisan politics was rarely injected into decision-making, in large measure because decisions usually arose from career staff and, when involving the normal exercise of prosecutorial discretion, were generally respected by political appointees. In a similar fashion, the hiring process for new career employees began with the career staff, who made recommendations to the political appointees that were generally respected.

But in the last four years of my working in the Division, and particularly during the period from 2003-2005, this changed dramatically. During this Administration, unlike in the past, the political appointees have made it quite clear that they did not wish to draw on the expertise and institutional knowledge of career attorneys. Instead, there appeared to be a conscious, unprecedented effort to remake the Division's career staff. Political appointees often assumed an attitude of hostility toward much of the career staff and exhibited a general distrust for recommendations made by them. It was extremely frustrating and demoralizing because the political appointees were very reluctant to meet with the career staff to discuss their recommendations. The impact of this on staff morale has resulted in an alarming exodus of career attorneys -- the longtime backbone of the Division that had historically maintained the institutional knowledge of how to enforce our civil rights laws tracing back to the passage of our modern civil rights statutes.

Compounding this problem was a major change in hiring procedures which virtually eliminated any career staff input into the hiring of career attorneys. This has led to the perception and reality of new staff attorneys having little if any experience in or commitment to the enforcement of civil rights laws and, more seriously, injecting political factors into the hiring of career attorneys. The overall damage caused by losing a large body of the committed career staff and replacing it with persons with little or no interest or experience in civil rights enforcement has been severe and will be difficult to overcome.

Moreover, vigorous enforcement of civil rights laws has suffered, especially in maintaining a proper balance of enforcement priorities. The Civil Rights Division was formed in 1957 to attack the racial caste system that existed in this country. Since then, its responsibilities have steadily grown into other a wide variety of other areas, but combating racial discrimination remains a core mission of the Division. Although every administration will differ as to precisely how it balances enforcement priorities, it is clear from the record that this administration made race discrimination against African-Americans a very low enforcement priority.

Finally, in my experience as chief of the voting section, it became apparent that unprecedented weight was given by political appointees to partisan political factors in several decisions related to enforcement of the Voting Rights Act. This, too, was an alarming departure from historic practices in the Division. The emphasis on avoiding such partisanship has been central to maintaining the confidence and trust of the public and courts in the Division's enforcement of these vital laws. There is no doubt that enforcement of the Voting Rights Act inevitably brings political pressures to bear on many of the Division's enforcement decisions. But, until this Administration, there had been a shared understanding between political appointees and career staff that these pressures must be vigorously resisted. In many instances, this was not the case during the Bush Administration.

Below, I discuss in more detail these areas of concern. It should be remembered that I left the Division about a year and a half ago, and I cannot speak to all that has occurred since then. However, I think it important to catalog these matters to demonstrate the state of the Division chiefly responsible for civil rights enforcement. It is hoped that increased oversight will help return the Division to its historic mission and restore the trust and confidence of the public in even-handed civil rights law enforcement.

RELATIONSHIP OF POLITICAL APPOINTEES AND CAREER STAFF

Brian K. Landsberg was a career attorney in the Civil Rights Division from 1964-86 during which he was chief of the Education Section for five years and then chief of the Appellate Section for twelve years. He now is professor of law at McGeorge Law School. In 1997, he published Enforcing Civil Rights: Race Discrimination and the Department of Justice (University Press of Kansas), a careful and scholarly analysis of the history and operation of the Division. Landsberg devoted a full chapter to the "Role of Civil Servants and Appointees." He summarizes the importance of the relationship between political appointees and career staff at page 156:

Although the job of the Department of Justice is to enforce binding legal norms, three factors set up the potential for conflict between political appointees, who represent the policies of the administration then in power, and civil servants, whose tenure is not tied to an administration and whose loyalties are to the department where they work and the laws they enforce: the horizontal and vertical separation of powers; the indeterminacy of some legal norms; and the lack of a concrete client. The vertical separation of powers was designed to enable both civil service attorneys and political appointees to influence policy. This design, as well as wise policy, requires cooperation between the two groups to achieve the proper balance between carrying out administration policy and carrying out core law enforcement duties. Where one group shuts itself out from influence by the other, the department's effectiveness suffers. (emphasis added)

Rather than making efforts to cooperate with career staff, it became increasingly evident during the Bush Administration that political appointees in the Division were consciously closing themselves off from career staff. Indeed, on several occasions there was hostility from political appointees toward those who voiced disagreement with their decisions and policies or were perceived to be disloyal. This was apparent in many ways:

? Shortly after the new Administration started, and continuing until after I left, longtime career supervisors who were considered to have views that differed from those of the political appointees were reassigned or stripped of major responsibilities. In April, 2002, the employment section chief and a longtime deputy chief were summarily transferred to the Civil Division. Subsequently, a career special litigation counsel in the employment section was similarly transferred. In 2003, the chief of the housing section was demoted to a deputy chief position in another section and shortly thereafter took retirement. Also in 2003, the chief of the special litigation section was replaced. In the voting section, my responsibilities in many of the section's enforcement areas were stripped and given directly to supervisors or other attorneys in the section who were viewed as loyal to political appointees. This was a primary factor in my decision to leave the Department after nearly 37 years. After I left the Department, the chief of the criminal section was removed and given a job in a new Division training program, and shortly after that, the deputy chief in the voting section for Section 5 of the Voting Rights Act was transferred to the same office. In my experience, on only one occasion in the past had political appointees removed career section chiefs, and on that occasion it was on a more limited basis. In short, it is rare for political appointees to remove and replace career section chiefs for reasons not related to their job performance. Never in the past had deputy section chiefs been removed by political appointees.

? Regular meetings of all of the career section chiefs together with the political leadership were discontinued from the outset of the Administration. Such meetings had always been an important means of communication in an increasingly large Division that was physically separated in several different buildings. In the four years of the Bush Administration that I was there, I can remember only a handful of such meetings between political appointees and section chiefs.

? Communication between the direct supervisors of sections at the Deputy Assistant Attorney General level and section staff also virtually disappeared. In the voting section, for instance, section management was initially able to take disagreements in decisions made at the Deputy Assistant Attorney General level to the Assistant Attorney General for resolution. But it became increasingly evident that such debate, which is so important to the healthy development of policy, was frowned on. By 2003, it was made plain to me that efforts to raise issues on which there was disagreement with the Assistant Attorney General were discouraged. In past administrations, section chiefs had access to the Assistant Attorney General to raise issues of particular importance. This for the most part was the case until 2003 at which time, when such a meeting was sought, section staff were usually met with a hostile reception and never provided a true chance to debate policy differences. This discouraged me from seeking other meetings of this kind. Similarly, my efforts to hold periodic management meetings with political appointees were usually rebuffed. This resulted in political appointees not receiving the expertise and institutional knowledge of career staff on many matters. Indeed, a political special counsel in the front office was assigned to work solely on voting matters and often assumed many of my responsibilities as the chief of the section.

? Communication between sections was also discouraged. This was especially true when the appellate section was handling the appeals of trial section cases or amicus briefs in the subject matter of a trial section. When drafting briefs in controversial areas, appellate staff were on several occasions instructed not to share their work with the trial sections until shortly before or when the brief was filed in court. This was extremely frustrating for career staff in both the trial and appellate sections and hindered the adequate development of briefs and full debate of issues in the briefs.

? Political appointees have inserted themselves into section administration to a far greater level than I had ever experienced in the past. For example, assignments of cases and matters to section attorneys were made by political employees on many occasions, a rarity in the past. Moreover, assignment of work to sections and attorneys limited the civil rights work being done by career staff. This was especially true of attorneys in the appellate section, where over 60% of resources were being devoted to deportation appeals during 2005. Similarly, selected career attorneys in that Section were informed that they would no longer receive assignments to civil rights cases, and disfavored employees in other sections were assigned the deportation appeal cases. Political appointees also intruded into the attorney evaluation process, something that did not happen in the past.

IMPACT ON MORALE OF CAREER EMPLOYEES

It is hard to overemphasize the negative impact that this type of administration of the Division has had on the morale of career staff. The best indicator of this impact is in the unprecedented turnover of career personnel. It should be noted that the impact has been greater in some sections

than others, and often attorneys in the sections most directly affected by the hostility of political appointees transferred to other sections in which the impact was less. Based on the information that I am aware of, the sections most deeply affected have been voting, employment, appellate, and special litigation. I am aware of the following:

? In the voting section, in the eighteen plus months since I left the Department on April 30, 2005, 19 of the 35 attorneys in the section (over 54%) have either left the Department, transferred to other sections (in some cases involuntarily) or gone on detail. At the time I left, there was a section chief and four deputy section chiefs. Only one of the five persons in section leadership remains in the section today.

? In the employment section, the section chief and one of four deputy chiefs were involuntarily transferred to the Civil Division in April, 2002. Shortly after that, a special counsel was involuntarily transferred to the Civil Division. Since then, two other deputy chiefs left the section or retired. Overall, since 2002, the section chief and three of the four deputy chiefs have been involuntarily reassigned or left the section. Overall in that period, 21 of the 32 attorneys in the section in 2002 (over 65%) have either left the Division or transferred to other sections.

? Loss of professionals - paralegals and civil rights analysts in both the voting and employment sections -- has also been significant. In the employment section alone, twelve professionals have left, many with over 20 years of experience.

? In the appellate section, since 2005, six of the 12-14 line attorneys in the section transferred to other sections or left the Department. Two of the transfers were involuntary.

There has always been normal turnover in career staff in the Civil Rights Division, but it has never reached such extreme levels and never has it been so closely related to the manner in which political appointees have administered the Division. It has stripped the division of career staff at a level not experienced before.

HIRING PROCEDURES

Compounding the impact of the extraordinary loss of career staff in recent years has been a major change in the Division's hiring practices. Since 1954, the primary source of attorneys in all divisions in the Department has been the attorney general's honors program. This program was instituted by then Attorney General Herbert Brownell in order to end perceived personnel practices "marked by allegations of cronyism, favoritism and graft." Enforcing Civil Rights at p. 157. Since its adoption, the honors program has been consistently successful in drawing the top law school graduates to the Department.

Until 2002, career attorneys in the Civil Rights Division played a central role in the process followed in hiring attorneys through the honors program. Each year career line attorneys from each section were appointed to a honors hiring committee which was responsible for traveling to law schools to interview law students who had applied for the program. Because of the tremendous number of applications for the honors program, committee members generally would limit their interviews to applicants who had listed the Civil Rights Division as their first choice when applying. The Civil Rights Division had earned a reputation as the most difficult of the

Department's divisions to enter through the honors program because only a few positions were open each year and so many highly qualified law students desired to work in civil rights.

After interviewing was completed, the hiring committee would meet and recommend to the political appointees those who they considered the most qualified. Law school performance was undoubtedly a central factor, but a demonstrated interest and /or experience in civil rights enforcement and a commitment to the work of the Division were the qualities that interviewers sought in candidates selected to join the career staff of the Division. Political appointees rarely rejected these recommendations.

Hiring of experienced attorneys followed a similar process. Individual sections with attorney vacancies would review applications and select those to be interviewed. They would conduct initial interviews and the section chief would then recommend hires to Division leadership. Like recommendations for honors hires, these recommendations were almost always accepted by political appointees.

These procedures have been very successful over the years in maintaining an attorney staff that was of the highest quality - in Republican as well as Democratic administrations. A former Deputy Assistant Attorney General in the Reagan Administration, who was interviewed for a recent Boston Globe article about Division hiring practices, said that the system of hiring through committees of career professionals worked well. The article quoted him as saying: "There was obviously oversight from the front office, but I don't remember a time when an individual went through that process and was not accepted. I just don't think there was any quarrel with the quality of individuals who were being hired. And we certainly weren't placing any kind of litmus test on . . . the individuals who were ultimately determined to be best qualified."

But, in 2002, these longstanding hiring procedures were abandoned, not only in the Civil Rights Division but throughout the Department. The honors hiring committee in the Division was disbanded and all interviewing and hiring decisions were made directly by political appointees with no input that I was aware of from career staff or management. As for non-honors hires, the political appointees similarly took a much more active roll in selecting those persons who received interviews, and almost always participated in the interviewing process.

Not surprisingly, these new hiring procedures have resulted in the resurfacing of the perception of favoritism, cronyism, and political influence which the honors program had been designed to eliminate in 1954. Indeed, information that has come to light recently indicates that in many instances, this is more than perception. In July, 2006, a reporter for the Boston Globe obtained pursuant to the Freedom of Information Act the resumes and other hiring data of successful applicants to the voting, employment, and appellate sections from 2001-2006. His analysis of this data indicated that:

? "Hiring of applicants with civil rights backgrounds - either civil rights litigators or members of civil rights groups - have plunged. Only 19 of the 45 [42 percent] lawyers hired since 2003 in those [the employment, appellate, and voting] sections were experienced in civil rights law, and of those, nine gained their experience either by defending employers against discrimination

lawsuits or by fighting against race-conscious policies." By contrast, "in the two years before the change, 77 percent of those who were hired had civil rights backgrounds."

? "Meanwhile, conservative credentials [of those hired] have risen sharply. Since 2003, the three sections have hired 11 lawyers who said they were members of the conservative Federalist Society. Seven hires in the three sections are listed as members of the Republican National Lawyers Association, including two who volunteered for Bush-Cheney campaigns."

The reporter noted that current and former Division staffers "echoed to varying degrees" that this pattern was what they observed. For example, a former deputy chief in the Division who now teaches at the American University Law School testified at an American Constitution Society panel on December 14, 2005 that several of his students who had no interest in civil rights and who had applied to the Department with hopes of doing other kinds of work were often referred to the Civil Rights Division. He said every one of these persons was a member of the Federalist Society.

In the voting section, while most of the hiring occurred after I left the Department in April 2005 and after the extraordinary exodus of career staff that followed, my experience also confirms this analysis. To the extent there was hiring, the new procedures in which the section chief and career staff were almost totally frozen out of the process were clearly evident. For instance, shortly before I left, I was informed on two occasions by the political appointee with responsibility for the voting section that he was interviewing a candidate for an attorney staff position the same or next day. I attended the interviews, but was never asked my views of the candidates. Nor was I aware of any other candidates for these positions. Shortly after the interviews, I learned both candidates received offers almost immediately. There was also an occasion when, without prior consultation, I was informed of the hiring of a new attorney who would be arriving in the office in a matter of days. Similarly, without prior consultation with me and without the normal process of advertising for supervisory positions, I was informed of the appointment of a special counsel to the section only a few days before his arrival in the section.

Early on in the Bush Administration, the hiring in the voting section was overtly political. In March, 2001, after the contested 2000 election, Attorney General Ashcroft announced a Voting Rights Initiative. An important part of this Initiative was the creation of a new political position - Senior Counsel for Voting Rights - to examine issues of election reform. Two voting section career attorney slots were filled as part of this initiative to help this appointee. The decision to create these new positions was made with no input from me or other career staff and, once the new hires were on board, they operated separately from the voting section on election reform legislation. The person named as the Senior Counsel for Voting Rights was a defeated Republican candidate for Congress. The two line attorneys who filled career attorney slots assigned to the voting section were hired with no input from the section and were active Republican party attorneys. One of those "career" attorneys was promoted to a political position in 2003 - special counsel to the Assistant Attorney General. For the two and a half years that this attorney held this position, he spent virtually all his time reviewing voting section work. Although he was clearly in a political supervisory position, he continued to be listed as a voting section line attorney and enjoyed career status until his recess appointment to the Federal Election Commission in December.

ENFORCEMENT PRIORITIES

Changes in administrations have always been accompanied by changes in enforcement priorities and policies. In this Administration, it is clear that high priority has been given to religious discrimination. A new special counsel for religious discrimination was created to assist in implementing this priority. As is evident from the number of case filings, very high priority has also been placed on enforcement of those parts of the Voting Rights Act that require that adequate language assistance be provided to limited English speaking citizens when voting; and on enforcement of human trafficking criminal statutes.

Until this Administration, elimination of discrimination against African-Americans has always been the central priority of the Division's enforcement program. The Civil Rights Division was formed to eradicate race discrimination against African-Americans and, for most of its first fifteen years, it devoted all its resources to this goal. Over the years, the mission of the Division expanded as new civil rights laws were passed and new areas of civil rights enforcement were pursued by a variety of groups and organizations. But historically, combating discrimination against African-Americans has remained a central priority of the Division through both Republican and Democratic administrations.

A review of the enforcement record of the Civil Rights Division during the Bush Administration indicates this traditional priority has been downgraded significantly. For example, in the voting section, until July, 2006, no cases were initiated alleging discrimination against African-Americans pursuant to Section 2 of the Voting Rights Act, the primary non-discrimination provision in the Act. In fact, only nine Section 2 cases have been brought during the six years of the Bush Administration and one of them alleged discrimination against white voters. By comparison, in the last year and a half of the Clinton Administration, fifteen Section 2 cases were filed, four alleging discrimination against African-Americans.

An examination of the enforcement record of the employment section reveals a similar pattern. Since the beginning of the Bush Administration 34 Title VII cases have been filed, of which ten are pattern or practice cases, the most important employment discrimination cases brought by the Department both in their impact and complexity. Only two of the pattern or practice cases brought by the Division allege discrimination against African-Americans and these were not filed until February and July, 2006, more than five years into the Bush Administration and after considerable attention had been brought to the failure to bring such cases. In its first two years alone, the Clinton Administration filed thirteen pattern or practice cases, eight of which raised race discrimination claims. Moreover, two of the ten employment pattern or practice filings - filed before the recent cases alleging discrimination against African-Americans -- are "reverse" discrimination cases, alleging discrimination against whites.

The pattern of filings in the employment and voting areas indicate that the Bush Administration's enforcement priorities have downgraded the need to ensure that African Americans are not the victims of race-based discrimination. It also seems apparent from the fact that as many "reverse" discrimination cases have been filed as cases attacking discrimination against African-Americans, that increased priority has been given to seeing that whites are not discriminated against. While all citizens are entitled to the protections of our civil rights laws, African Americans have historically been and remain the primary victims of employment discrimination.

For that reason alone, the Department has always placed high priority on fighting race-based discrimination against African Americans. African Americans have greater difficulty than whites in obtaining legal representation and access to justice. Whites, therefore, may not need the Department to champion their cause, while African Americans usually do. In such circumstances, it is incongruous that greater priority would be given to "reverse" discrimination than what historically has been the mission of the Division - fighting discrimination against African-Americans.

Another aspect of employment discrimination enforcement should also be noted. In two Title VII cases that recently reached the Supreme Court, the Bush Administration has sought to have the courts endorse a very restrictive view of Title VII. In an amicus curiae brief filed in Burlington Northern and Santa Fe Railway Co. v. White, 2006 U.S. LEXIS 4895 (June 22, 2006), the Solicitor General advocated for a narrow interpretation of Title VII's anti-retaliation provision, 42 U.S.C. § 2000e-3(a), that was rejected by the Supreme Court. The Solicitor General joined with the employer in that case in arguing that the anti-retaliation provision confines actionable retaliation only to employer action and harm that concerns employment and the workplace. The Supreme Court held in an 8-1 decision that such a narrow interpretation of Title VII is inconsistent with the language of Title VII and inconsistent with the primary objective of the anti-retaliation provision: to provide broad protection to employees who participate in Title VII enforcement. In rejecting the Solicitor General's interpretation, the Court noted that "[a]n employer can effectively retaliate against an employee by taking actions not directly related to his employment or by causing him harm outside the workplace." (original emphasis). The Administration should be seeking to expand Title VII's coverage, and not the other way around. More recently, in Ledbetter v. Goodyear the civil rights community was forced to advocate for the EEOC's position regarding the statute of limitation in Title VII disparate pay cases, because of DOJ's failure to support EEOC regulations.

POLITICIZATION OF DECISION-MAKING ON VOTING MATTERS

Historically, the Civil Rights Division has been extremely successful in keeping politics out of such decision-making. This has been a significant accomplishment given that its decisions can directly affect who gets elected to office, particularly its decisions regarding redistrictings, election method changes, and annexations.

My experience in the voting section, however, indicated that the Bush Administration failed to maintain this standard of conduct. In a series of high profile Section 5 submissions regarding voting changes of great importance to minority voters, the Division's actions indicated that partisan political factors had improperly been brought into the Section 5 decision-making calculus. Political factors also seemed to play an inappropriate role in another series of filings shortly before the 2004 election.

First, in 2002, the Justice Department used the Section 5 process to enable the Republican Party in Mississippi to obtain implementation of a congressional redistricting plan that had been drawn at the Party's behest. The state legislature had failed to enact a plan following the 2000 Census, and the Republican-favored plan had been tentatively approved by a federal district court as a back-up in case a previous plan approved by a state court did not gain Section 5 preclearance in a timely manner. The State had submitted the state court plan in December, 2001 in ample time to

obtain preclearance by the date specified by the federal court. It is crystal clear that the plan had no adverse impact on minority voters. Yet, the Justice Department extended the review period by asking the State to provide additional written information about a novel procedural issue - whether state law permitted a court to draw a redistricting plan. There was no evidence that such a procedure had any negative impact on minority voters which would have legitimately led to seeking additional information. The decision to request additional information was made by the Division's political staff without making a decision on the submission of the state court plan. The only fair assessment of this decision is that, by seeking such information, it was understood by the decision-makers that the Division's Section 5 review of the state court plan would be delayed and the federal court would proceed to order into effect the plan drawn by the Republican party -- which is exactly what happened.

In 2003, partisan factors also appeared to affect its decision-making in deciding to preclear the State of Texas's controversial second post-2000 congressional redistricting plan. This was the plan that had been adopted by the state legislature at the urging of then House Majority Leader Tom DeLay. It was designed solely to increase the voting strength of the Republican party in Texas, and eventually resulted in the gain of five Congressional districts. The Department overrode a unanimous recommendation of the career staff, which had concluded in a detailed, lengthy memorandum that the plan retrogressed minority election opportunity. The rejection of a unanimous staff recommendation to interpose an objection is historically rare. In both Democratic and Republican Administrations, the political staff almost always has agreed with staff recommendations to interpose an objection.

In 2004, shortly before the Presidential election, the Division filed a series of briefs as amicus curiae in three cases addressing a contentious political issue raising legal questions about the provisional ballot provisions of the Help America Vote Act. In each case, the brief supported the position of the Republican party on this issue. Career attorneys in the voting section were not informed of these briefs until shortly before filing and had no input into them. The government's participation in these cases was not necessary or required. These filings were of significant concern to career attorneys because inserting itself unnecessarily into such a sensitive partisan political issue on the eve of a national election was unprecedented and sent a clear political message.

Most recently, in August, 2005, after I had left the Department, the Division precleared a Georgia law requiring voters to present a government-issued photo identification in order to vote at the polls on election day. The enactment represented one of the leading examples of legislation advocated by a number of Republicans across the country to deal with alleged problems of fraudulent voting at the polls, but which would erect barriers to voting of particular harm to minority voters. The voting section staff prepared a detailed memorandum recommending an objection on August 25. But, the very next day, on August 26, apparently without forwarding this memo to the Assistant Attorney General, the present section chief approved preclearance even though new information had just been received from the state and even though there was additional time before the deadline - which was September 30 -- for the Section 5 decision to be made.

In previous administrations, the Division historically has been able to avoid partisan application

of the preclearance requirement in part because of the bottom-up nature of the Section 5 decision-making process. The nonpolitical career staff of the Civil Rights Division is solely responsible for investigating all Section 5 submissions, and the staff's analyses frame each preclearance determination in terms of the law of Section 5 and the facts pertinent to the specific submitted change. This has had the effect of steering the political staff to correctly make Section 5 decisions based on the law and the facts, and not based on partisan interests. However, it has been reported that after the Georgia decision, a new rule was instituted by the Division which prohibits career staff from making recommendations on submitted voting changes. This is a major change of policy in administration of Section 5, and it undermines the bottom-up decision process and increases the likelihood of politically-motivated preclearance decisions in the future.

CONCLUSION

It was evident to me that while I was in the Civil Rights Division during the Bush Administration, there was a conscious effort to attack and change career staff. This has resulted in a major loss of career personnel with many years of experience in civil rights enforcement and in the valuable institutional memory that had always been maintained in the Division until now - in both Republican and Democratic administrations. Replacement of this staff through a new hiring process resulted in the perception and reality of politicization of the Division, and high profile decisions in voting matters have added significantly to this. The overall impact has been a loss of public confidence in fair and even-handed enforcement of civil rights laws by the Department of Justice.

The damage done is deep and will take time to overcome. I am hopeful that the new Division leadership will work diligently to start to repair this damage. Most importantly, careful and continuous oversight, now and in the future, is required to restore the Division to its historic role in leading the enforcement of civil rights laws.