



Holding Fast to Justice

By: Adam Serwer
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Eric Holder's Revised Civil Rights Division

Earlier this month, the *New York Times* reported that the Obama administration had increased funding for the Civil Rights Division, encouraged stricter enforcement of anti-discrimination laws and removed the Bush-era practices of putting important decisions in the hands of political appointees rather than career lawyers.

Unfortunately, current and former Justice Department employees say much of the damage from the past administration remains—particularly in the staffing of the Justice Department. Under the Bush administration, the Department of Justice regularly considered “political or ideological affiliations” when hiring attorneys dismantled the apparatus for preventing such political hires and fostered an allegedly racially hostile atmosphere that culminated in analyst Joi Hyatte suing the Justice Department for discrimination, saying that Bush hires regularly overlooked African-American employees for promotions. (According to her lawyers, the case was settled “favorably,” and she is back in the Voting Rights Section with a promotion.)

According to a 2008 Inspector General’s report as well as former and current employees of the Voting Rights Section, political appointees regularly ignored recommendations from career attorneys when they didn’t suit the Bush administration’s political agenda. Traditionally, the agenda of the Voting Rights Section had been protecting the right to vote. Under Bush, critics contend, that agenda became ensuring that only the right people could vote. For eight years, the political appointees and some of their new, ideologically approved hires in the Voting Rights Section fostered what former career lawyers called an atmosphere of fear and retaliation, where the goal was to help the GOP win elections, not to protect the franchise.

At his confirmation hearings before the Senate, then-Attorney General designate Eric Holder described the Civil Rights Division of the Justice Department as “one of the jewels” of the department, and pledged to “return that division and the Department of Justice as a whole to its great traditions and the great traditions that it had under Democratic and Republican attorneys general and presidents.”

Ironically, those “great traditions” began under the auspices of a Republican administration. President Dwight D. Eisenhower created the Civil Rights Division under the Civil Rights Act of 1957, specifically to help ensure blacks would be able to vote.

Politicized hiring had affected all levels of the Justice Department, but nowhere was the politicization or hostility more evident than in the Voting Rights Section, critics charge. Under former section chief John Tanner, the part of the Justice Department charged with protecting the franchise for all Americans became a partisan operation. When Bush’s political appointees were staffing the Voting Rights Section, according to the report, they wanted to avoid hiring “lefties” or “big libs” whom he saw as “adherents to Mao’s little red book.” The report charges that Tanner, then-head of the Civil Rights Division Bradley Schlozman and Counsel to the Assistant Attorney General for Civil Rights Hans von Spakovsky made hiring decisions on a “consensus basis.” Schlozman in particular was allegedly looking for “ideological comrades” and “real Americans” who wouldn’t be “opposed to his agenda.”

For that kind of work, they’d need partisan hacks, not civil rights lawyers. (The Justice Department recently decided not to reopen perjury charges against Schlozman, despite the IG report’s conclusion that he had “violated civil service laws and made false statements about his activities to Congress.”)

The IG report described Tanner’s frustration with previous administration’s hiring practices—namely that getting hired in the Civil Rights Division back in the day meant having to be a “civil rights person.” Imagine that. As reported by WJLA-TV in 2007, Schlozman, Tanner and von Spakovsky had created a racialized climate so hostile it had driven almost all of the black lawyers out of the Civil Rights Division—along with a number of other career civil rights lawyers.

“The voting section couldn’t get cases, especially one alleging racial discrimination approved,” explained Jon Greenbaum, who worked in the Voting Rights Section between 1997 and 2003, and is now the legal director at the Lawyers’ Committee For Civil Rights. “So the whole purpose of being there went away.”

Part of the reason for the exodus of black lawyers was Tanner’s record of racially charged remarks. Tanner famously referred to Mary Frances Berry, former chair of the U.S. Commission on Civil Rights, as “black and bitter.” When investigating the uneven distribution of polling machines in Ohio in 2004, Tanner explained away the long lines at polling precincts in black neighborhoods by saying that black people tend to vote “later in the day.” This was of a piece with other bizarre arguments Tanner made as head of the Voting Rights Section, such as his conclusion that restrictive voter ID laws hurt the elderly most of all, since, as Tanner put it in a speech he gave to the National Latino Congreso in October 2007 “minorities don’t become elderly the way white people do. They die first.” Tanner stepped down a month later, after his remarks caused then–Sen. Barack Obama and others to call for his resignation.

Instead of protecting the right to vote, critics say, the Bush administration focused on bogus “voter fraud” cases—sometimes against voter registration groups like ACORN—that were meant to be a pretext for stricter voting laws that would depress the turnout of likely Democratic voters, namely, minorities. While the Republicans pushed for voting laws and practices that disenfranchised minorities, they had a compliant political staff running the Voting Rights Section in Washington that looked the other way, according to former Justice Department officials.

As a result of politicization in the department, during the 2008 election, the Voting Rights Section often fell short in its commitment to protect voting rights, forcing independent voting rights groups to step into the breach.

“There have been numerous complaints to the Justice Department over the last several years involving intimidation and suppression directed against minority voters,” says Kristen Clarke, a former employee in the Voting Rights Section, now working at the NAACP Legal Defense Fund. “Those complaints have gone unaddressed.” Clarke said the Voting Rights Section has brought two voter intimidation cases—both on behalf of white voters, one of them being the infamous case involving the New Black Panther Party, which was recently dismissed and is now the subject of an internal investigation.

“There have been only three cases, in the history of the Voting Rights Act, since 1965, brought to enforce the anti-intimidation provisions. And two of them were brought on behalf of white people [during the Bush administration],” says Gerry Hebert, a former acting chief of the Voting Rights Section. “We all know there’s been rampant intimidation of blacks and Latinos for the past few years, and the Justice Department can’t find a single case?”

Even though Tanner has left the Civil Rights Division, and according to current employees in the Justice Department interviewed by *The Root*, taken with him the climate of “vindictiveness” that defined his tenure, other Bush-era hires remain. These hires were handpicked by political appointees looking for partisans instead of civil rights lawyers, critics charge. Because Holder has reinstated protections for career attorneys so that their jobs aren’t subject to political whim, they’ll be hard to cut loose.

“Having seven, six and half years of politicization in the hiring and personnel decisions will take a real toll on any institution,” said Joe Rich, a former chief of the Voting Rights Section. Despite that, Rich said, there remains a “nucleus” of dedicated attorneys and analysts in the division.

This is particularly true as long as Republicans continue to hold up Thomas Perez, Obama’s choice to head of the Civil Rights Division, in the Senate. Nominally, Perez is being held up because of concerns about “politicization” at the Justice Department. But as I see it, it’s just as likely they’re frustrated that Perez actually has a record of enforcing civil rights laws as a former prosecutor and deputy assistant attorney general in the Civil Rights Division. Speaking to the *New York Times*, Bush-era Justice official Robert Driscoll complained that depoliticizing the hiring process would simply mean more

liberals in the division, because career civil rights lawyers are “overwhelmingly left-leaning,”

“I always laugh when I see the criticism from conservatives, saying now that the career people are taking over they’ll get a lot of liberal and left-leaning people,” says Hebert. “That’s how conservatives look at the enforcement of civil rights, as a liberal agenda, instead of a law enforcement agenda.” The last thing many Republicans want, Hebert says, is for the Voting Rights Section to do its job.

During Holder’s tenure, hope has welled up in the formerly distraught Voting Rights Section, according to current employees at Justice. Earlier this year, at a celebration for Holder’s confirmation, one of the attorneys from the section approached the attorney general and identified herself. Holder looked her in the eye and put his hands on her shoulders.

“Help is on the way,” he said. And not a moment too soon.

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