

A Report by a Panel of the
NATIONAL ACADEMY OF PUBLIC ADMINISTRATION
for the U.S. Congress and the Department of Justice



Department of Justice Civil Rights Division
*A Strategic Management Framework for
Building on the Past, Moving to the Future*



January 2015



National Academy of
Public Administration®

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January 6, 2015

***Department of Justice
Civil Rights Division***

***A Strategic Management Framework for Building
on the Past, Moving to the Future***

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The views expressed in this report are those of the Panel. They do not necessarily reflect the views of the Academy as an institution.

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FOREWORD

July 2, 2014 marked the 50th anniversary of what is widely recognized as a watershed moment for civil rights—the signing of the Civil Rights Act of 1964 by President Lyndon B. Johnson. A second major milestone in civil rights history, the 50th anniversary of the Voting Rights Act, will be commemorated on August 6, 2015. These two laws are historic in the annals of civil rights actions as they advanced the promise of equal protection against discrimination and equal justice for all Americans—and in particular, the most vulnerable. Moreover, they were instrumental in setting the stage for the passage of additional laws protecting Americans’ civil and constitutional rights.

The agency responsible for enforcing our nation’s civil rights laws is the Department of Justice’s Civil Rights Division. As ensuring the protection of civil rights is vital to all Americans, it is critical that the agency charged with carrying out this mission does so effectively and is viewed by Americans as fair and impartial in the execution of its responsibilities. Given the division’s crucial role, Congress mandated (P.L. 113-76, “Consolidated Appropriations Act, 2014”) an independent assessment of the operations of the Civil Rights Division. The National Academy of Public Administration was chosen to conduct this broad review focusing on the division’s policies and management practices.

The Academy formed a six-member Panel of Fellows to conduct the nine-month study, identifying and examining management and operational issues and developing recommendations, with implementation steps, the division can take to address the issues. In carrying out this review, the Panel looked at the evolution of civil rights laws, as well as the history of civil rights enforcement, to inform the future. The Panel offers a series of recommendations to strengthen the management and operations of the Civil Rights Division, building on the past while positioning it for the future, set on a foundation of integrity and accountability. The division’s new leadership provides a unique opportunity to leverage the Panel’s recommendations by placing a renewed emphasis on operational management and institutionalizing successful practices.

As a congressionally chartered non-partisan and non-profit organization with nearly 800 distinguished Fellows, the Academy brings seasoned experts together to help public organizations address their most critical challenges. We are pleased to have had the opportunity to assist Congress and the Department of Justice by conducting this review. I appreciate the leadership and stakeholders of the Department and the Civil Rights Division (both current and former) who provided important insight and context needed to inform

the study. Also, I thank the members of the Academy Panel, chaired by Kristine Marcy, who provided invaluable expertise and thoughtful analysis to this effort, and the professional study team, led by Cynthia Heckmann, that provided critical support to the Panel.

A handwritten signature in black ink that reads "Dan G. Blair". The signature is written in a cursive, slightly slanted style.

Dan G. Blair
President and CEO
National Academy of Public Administration

ACRONYMS AND ABBREVIATIONS

AAG	Assistant Attorney General
Academy	National Academy of Public Administration
ADM	Administrative Management Section
ASG	Associate Attorney General
APP	Appellate Section
AUSA	Assistant United States Attorney
CAO	Complaint Adjudication Officer
CIGIE	Council of Inspectors General on Integrity and Efficiency
CRM	Criminal Section
CRT	Civil Rights Division
DAAG	Deputy Assistant Attorney General
DAG	Deputy Attorney General
DEA	Drug Enforcement Administration
DOE	Department of Energy
DOJ	Department of Justice
DRS	Disability Rights Section
EEO	Equal Opportunity Employment
EEOC	Equal Opportunity Employment Commission
ELS	Employment Litigation Section
EOS	Educational Opportunities Section
EOUSA	Executive Office for United States Attorneys
FBI	Federal Bureau of Investigation
FEVS	Federal Employee Viewpoint Survey
FCS	Federal Coordination and Compliance Section
FOIA	Freedom of Information Act
GAGAS	Generally Accepted Government Auditing Standards
GAO	Government Accountability Office
GPRA	Government Performance and Results Act
HCE	Housing and Civil Enforcement Section
HR	Human Resources
HUD	Department of Housing and Urban Development
ICM	Integrated Case Management System
IDP	Individual Development Plan
JMD	Justice Management Division
j-memo	Justification Memo
JOA	Job Opportunity Announcement
LGBTI	Lesbian, Gay, Bisexual, Transgender, and Intersex
MSPB	Merit Systems Protection Board
NBPP	New Black Panther Party
No FEAR Act	Notification and Federal Employee Anti-discrimination and Retaliation Act
OARM	Office of Attorney Recruitment and Management

OEC	Office of Employment Counsel
OIG	Office of the Inspector General
OMB	Office of Management and Budget
OPA	Office of Public Affairs
OPM	Office of Personnel Management
OPR	Office of Professional Responsibility
OSC	Office of Special Counsel for Immigration-Related Unfair Employment Practices
PASS	Professional and Administrative Support Staff
PD	Position Description
PDO	Professional Development Office
POL	Policy and Strategy Section
SES	Senior Executive Service
SPL	Special Litigation Section
USAM	United States Attorneys' Manual
USAO	United States Attorney's Office
VOT	Voting Section
VRA	Voting Rights Act

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EXECUTIVE SUMMARY

“The heart of the Department of Justice’s (DOJ’s) mission is to enforce federal laws and represent the rights and interests of the American people.”¹

In enforcing these laws, the department strives to protect the rights of the vulnerable by reducing the threat, incidence, and prevalence of violent crimes and upholding the constitutional rights of all Americans. The latter goal is expounded in the DOJ *Strategic Plan: Fiscal Years 2014-2018*, under strategic objective 2.5: Promote and protect American civil rights by preventing and prosecuting discriminatory practices². As DOJ states, “federal civil rights statutes reflect some of the highest ideals and aspirations—equal treatment and equal justice under the law.”³

The DOJ agency responsible for carrying out this weighty mission is the Civil Rights Division (CRT). First established in 1957, the division’s role and responsibilities have grown over time as authorities have expanded through the passage of numerous civil rights laws providing added protections against discrimination. Given the nature of the division’s mission and its reach—which affects virtually all Americans—it is not surprising that CRT actions, and how it executes its responsibilities, can at times evoke public criticism, not to mention increased Congressional attention. Being at the receiving end of such criticism is not a new experience for CRT, however. CRT has historically operated in a challenging environment where it has had to defend its actions against allegations of improper political influence affecting the decision-making processes and general concerns over whether federal civil rights laws were being enforced fairly.

The National Academy of Public Administration (the Academy) was asked to address a number of issues that had been identified in a 2013 DOJ Office of Inspector General report⁴ that examined CRT’s Voting Section enforcement; hiring and human resource practices, including unauthorized disclosure of information; and the handling of Freedom of Information (FOIA) requests to determine whether partisan, ideological, or discriminatory considerations affected decisions. The Academy’s charge was broadened beyond the Voting Section to include a division-wide review to identify steps CRT could take to improve public confidence that federal civil rights laws are fairly and impartially enforced. In addition, the Academy was tasked to assess the efforts CRT had taken to address the work environment and prevent unauthorized disclosure of information and to determine if additional hiring policies and practices were needed to ensure merit-based hiring. Accordingly, the Academy

¹ U.S. Department of Justice, *FY 2013 Annual Performance Report and FY 2015 Annual Performance Plan*. (Washington, DC: March 2014), II-12.

² U.S. Department of Justice, *U.S. Department of Justice Strategic Plan: Fiscal Years 2014-2018*. (Washington, D.C.: 2014), 10.

³ U.S. Department of Justice, *FY 2013 Annual Performance Report*, II-27.

⁴ U.S. Department of Justice, Office of the Inspector General, *A Review of the Operations of the Voting Section of the Civil Rights Division*. (Washington, DC: March 2013).

Panel and study team focused on the management and operations of CRT including policies, protocols, and practices related to enforcement actions and decision-making, hiring, and other human resource practices. Based on the management and operational issues identified, the Panel developed a series of recommendations that include managerial, policy, and procedural changes.

Chapters 1 and 2 set the stage for the report by providing detail on the Academy's mandate and methodology; background on the history of CRT, the civil rights statutes it enforces, and the complexity of the environment in which it operates; and an overview of CRT's organizational structure, responsibilities, and staffing. Chapters 4 and 5 summarize the study team's analysis of the current state of CRT's mission-related work and operational management, and describes the changes CRT has made to address issues delineated in OIG and OPR reports. The recommendations in Chapters 4 and 5 speak to these actions and provide recommendations to strengthen and add to existing policies and practices.

A key overriding Panel finding was that CRT focuses its attention on cases and law enforcement and pays less attention to operational management and its mutually-supportive relationship with mission management. This management approach has an impact on all of the issues the Academy was asked to examine. The Panel recommends that CRT implement a more integrated management approach, described in Chapter 3. This integrated management approach incorporates best practices and is designed to strengthen an organizational culture of integrity and accountability within CRT, which, in turn, can help assure Congress and the American people that civil rights laws are being enforced fairly and impartially. In addition, by focusing on management policies and processes, strategic planning, communication practices, employee engagement, performance management, and staff and leadership development, this management approach can improve employee morale, teamwork, and productivity. Overall, the Panel found that CRT has a workforce deeply committed to the division's mission. The Panel believes that implementing a strategic, integrated management framework can build on this staff commitment and provide a solid foundation for CRT moving forward while helping to ensure that successful management practices will survive changes in administrations and division leadership.

However, instituting an integrated management approach is not enough; a mechanism for assessing and validating management practices is needed to institutionalize them and position the division to make continual improvements. Moreover, evaluating management policies and practices in a transparent manner can help ensure that policies are being implemented as intended and build the confidence of staff and external stakeholders that these policies are free of manipulation or bias. Accordingly, the Panel wraps up the report in Chapter 6 by presenting a management review process that draws on best practices of other federal agencies with formal review programs, including other DOJ components. The entirety of Chapter 6 is a recommendation that defines the key elements to include in designing a review program, along with specific implementation steps.

PANEL RECOMMENDATIONS

The specific recommendations below appear in chapters 3 through 5. In addition, the Panel recommends that CRT institute the integrated management framework described in Chapter 3 and establish a management review process focused on continuous improvement described in Chapter 6.

To implement the integrated management framework:

3.1 CRT should adopt a comprehensive change management approach to design and implement an integrated management framework.

3.2 CRT should seek approval from DOJ and the Congress for authorization to establish a non-political, career Deputy Assistant Attorney General (SES) position dedicated to operational management.

To better ensure public confidence that CRT is enforcing civil rights laws fairly and impartially:

4.1 CRT should produce written policies on the enforcement decision-making process and develop and publish procedures manuals.

4.2 CRT should engage in strategic planning, following Government Performance and Results Act (GPRA) and DOJ internal guidelines.

4.3 CRT should engage in more open and transparent communication, balancing what can be communicated more openly consistent with the open government initiative and what rightly needs to be protected.

4.4 CRT should make significant improvements to the division and section web presence to ensure that information is useful, current, and easy to find.

To foster and maintain a professional, collegial, and teamwork-oriented work environment, to stop or prevent unauthorized disclosure of non-public information, and ensure merit-based hiring:

5.1 CRT should establish a process for routinely evaluating the implementation of division hiring policies and practices put in place to ensure merit system principles, identify necessary adjustments, and share both the evaluation process and results with staff.

5.2 CRT should boost human resources capacity in recruitment, revise the current approach in developing job opportunity announcements and interview guides, and review its outreach announcement lists.

5.3 CRT should formally establish employee relations support in human resources to administer a CRT employee relations program and related activities, coordinating with the

Office of Employment Counsel and the Professional Development Office, and establish an ombudsperson role to help facilitate the informal resolution of employee relations issues between staff and managers.

5.4 The Voting Section should immediately take steps to improve communication and information-sharing.

5.5 CRT should hold staff accountable for standards of conduct and take action as appropriate when those standards are violated.

5.6 CRT should initiate a CRT-wide employee engagement effort and expand section-specific efforts.

5.7 CRT leadership should build a management/leadership corps that (1) promotes teamwork and employee involvement; (2) assures that section managers/leaders are held accountable for employment engagement actions; and (3) provides active support for supervisor and leadership development with a focus on techniques and practices that promote an inclusive and collaborative work environment.

CHAPTER ONE: INTRODUCTION

Department of Justice (DOJ) publications often refer to the Civil Rights Division (CRT) as the “conscience of the federal government” and Attorney General Eric Holder has called it the “crown jewel” of the department.⁵ This rather evocative language telegraphs the importance the department places on the mission of the Civil Rights Division—to enforce a wide range of civil rights laws designed to give the promise of equal protection and equal justice under the law to all individuals. The choice of words is also a testament to the passion and commitment of the staff who carry out that mission.

The Civil Rights Division was created by the enactment of the Civil Rights Act of 1957. The division is charged with upholding the civil and constitutional rights of all Americans—and in particular, some of the most vulnerable members of our society. CRT enforces federal statutes prohibiting discrimination on the basis of race, color, sex, disability, religion, familial status, and national origin. It carries out these responsibilities through litigation, prevention efforts, outreach initiatives, and technical assistance—and through legislative, regulatory, and policy development as documented in the DOJ annual performance plan.

Three basic principles guide its efforts:⁶

- expanding opportunity for all people by advancing opportunity to learn, earn a living, live where one chooses, and worship freely
- safeguarding the fundamental infrastructure of democracy by protecting the right to vote and access to justice by ensuring effective and accountable policing and protecting those who protect us
- protecting the most vulnerable by ensuring all in America can live free from fear of exploitation, discrimination, and violence

July 2, 2014 marked the 50th anniversary of the Civil Rights Act of 1964, signed into law by President Lyndon B. Johnson. Since the passage of this landmark legislation, CRT’s scope and enforcement responsibilities have grown substantially with the enactment of additional civil rights statutes—such as the Voting Rights Act of 1965, the Fair Housing Act of 1968, and the American with Disabilities Act of 1990—and anti-discrimination protections extended to education, employment, credit, housing, public accommodations and facilities, voting, and certain federally funded and conducted programs. In addition, CRT’s role in prosecuting actions under criminal civil rights statutes to preserve personal liberties and safety has expanded considerably.

Not surprisingly, CRT responsibilities routinely thrust it into the public eye. And, in executing its role, the division and the department have not been without challenges—and criticisms—on how it carries out these responsibilities.

⁵ U.S. Department of Justice, *The Civil Rights Division*. (Washington, D.C.: September 2010), 4, 6.

⁶ U.S. Department of Justice, *U.S. Department of Justice, Civil Rights Division: Selected Accomplishments, 2013*. (Washington, D.C.: 2013), 3.

THE ACADEMY CHARGE

The “Consolidated Appropriations Act, 2014” (P.L. 113-76) mandated that the DOJ Office of Inspector General (OIG) contract for an independent assessment of CRT. The National Academy of Public Administration (the Academy) was chosen to carry out this congressionally mandated review and asked to examine multiple issues dating from December 2000 and identified in the March 2013 OIG report, “A Review of the Operations of the Voting Section of the Civil Rights Division.”

That report addressed a range of activities in the Voting Section from the perspective of whether they were carried out without regard to partisan, ideological, or discriminatory considerations. Specifically, OIG examined the type of enforcement cases brought by the Voting Section and whether changes had occurred over time; whether the Voting Section had enforced civil and voting rights laws in a non-discriminatory manner; whether Voting Section employees had been harassed for participating in investigation or prosecution of particular matters; whether the processing of Freedom of Information (FOIA) requests was handled promptly without regard to partisan or discriminatory considerations; and whether attorney hiring and promotion decisions were made on the basis of merit and without regard to political or ideological considerations. The time period covered by the OIG analysis was FY 2001 through 2012 although the review of hiring practices was through 2011. (DOJ instituted a department-wide hiring freeze in 2011.)

While noting a change in the mix and volume of enforcement cases during the period studied, OIG found that allegations about partisan, racial, or ideological motivations for the change were not supported; similarly, OIG did not find support for allegations of partisanship in the processing of FOIA requests or in hiring. It did, however, assert that perception issues—that were largely a byproduct of legitimate shifts in enforcement priorities of different administrations—existed and were fueled by incidents of polarization, discord, distrust, and harassment within the Voting Section. The report described in great detail events that led to marginalization of staff and unauthorized leaks of information and included five recommendations—four involved hiring criteria and language used in job opportunity announcements to ensure that hiring practices are consistent with merit systems principles set forth in the Civil Service Reform Act; the fifth involved adding temporary resources to handle the backlog in FOIA processing.

While the 2013 OIG report focused primarily on the CRT’s Voting Section, the Academy was asked to look more broadly and examine the division as a whole for the time period of 2000 to present, and develop a report with recommendations identifying specific managerial and policy remedies to address division-wide management and operational issues. Four questions were posed to the Academy to guide the assessment:

1. Are there steps the division should take to better ensure public confidence that it is enforcing the federal civil rights laws fairly and impartially?
2. Have the steps taken by the division and section to foster and maintain a professional, collegial and teamwork-oriented work environment in the Voting Section adequately responded to the issues related to harassment, retaliation,

unprofessionalism, and work environment identified in the OIG's 2013 Report? Are there additional steps that should be taken to further foster and maintain a professional, collegial, and teamwork-oriented work environment in the section or the division?

3. Are there steps that the division can and should take to stop or prevent the unauthorized disclosure of non-public information by section personnel?
4. Are there additional modifications that could be made to the division's hiring policies and practices to better ensure merit-based hiring consistent with the Civil Service Reform Act's merit system principles and prohibited personnel practices?

RESULTS IN BRIEF

CRT comprises a workforce of deeply committed employees dedicated to the CRT mission. Both the department and division have proactively undertaken a number of actions to directly address issues raised in the 2013 OIG report, as well as several earlier OIG and Office of Professional Responsibility (OPR) reports⁷ detailing issues related to improper hiring and other prohibited personnel actions, and made progress in addressing many of those issues. CRT has also taken a number of actions in response to employee concerns. (See Appendix D.) We also confirmed that while instances of occasional unauthorized disclosure of information persist, they are much more sporadic. The progress CRT has made, combined with the division's deeply committed workforce, provides a strong foundation for making continued improvements that will position CRT for the future.

The Panel found that division leadership's primary focus is on cases and legal issues. An overall and sustained leadership focus on operational management is undermined in part as a result of top leadership turnover and absence of a confirmed Assistant Attorney General for Civil Rights. These factors, in turn, can contribute to problems with morale and teamwork, and can create an environment where some employees may engage in unauthorized disclosure of non-public information. Section management, on the other hand, has a great deal of autonomy that can result in inconsistent practices across the division, although a number of sections have instituted promising employee engagement and professional development initiatives. Results from an Academy-administered employee survey, along with recent results from the Federal Employee Viewpoint Survey, reveal a number of issues related to leadership, communication, and employee engagement that we believe require CRT-wide attention. In addition, disciplinary practices can be

⁷ U.S. Department of Justice, Office of the Inspector General and Office of Professional Responsibility, *An Investigation of Allegations of Politicized Hiring in the Department of Justice Honors Program and Summer Law Intern Program*. (Washington, D.C.: June 24, 2008); U.S. Department of Justice, Office of the Inspector General and Office of Professional Responsibility, *An Investigation of Allegations of Politicized Hiring and Other Improper Personnel Actions in the Civil Rights Division*. (Washington, D.C.: July 2, 2008); U.S. Department of Justice, Office of the Inspector General and Office of Professional Responsibility, *An Investigation of Allegations of Politicized Hiring by Monica Goodling and Other Staff in the Office of the Attorney General*. (Washington, D.C.: July 28, 2008); U.S. Department of Justice, Office of the Inspector General, *A Review of the Operations of the Voting Section of the Civil Rights Division*. (Washington, D.C.: March 2013).

improved. Overall, human resource practices need to be strengthened and lines of authority more clearly defined and communicated to staff.

The work of the division has traditionally enjoyed broad and bipartisan support for its mission (for example, efforts to combat human trafficking, enforcement of the civil rights of persons with disabilities, and repeated reauthorization of the Voting Rights Act). At the same time, however, the division has also historically operated in a politically charged environment, and the visibility of its work creates an inherent set of challenges. This is particularly germane to the Voting Section and the challenges it faces, many of which were chronicled in the 2013 OIG report. The pervasiveness of social media further intensifies that environment and provides a readily available platform for expressing opinions and quickly disseminating information to a wide audience. This environment makes communication practices—internal and external—all the more important and instrumental to the organization successfully achieving its mission.

The Academy Panel found that DOJ and CRT communication practices—the close hold of what is identified (based on statutes and policy) as confidential and privileged information—tend to contribute to perceptions of political motivation for decisions, issues with employee morale, and unauthorized disclosure of information. And, because strategic planning efforts and priority setting are not, as a practice, documented, division and section priorities and enforcement decisions are often not clear to Congress, the public and, at times, division staff.

To help position CRT for the future and, equally importantly, to improve accountability and build public confidence that federal civil rights laws are fairly and impartially enforced, the Academy Panel offers an integrated management framework linking mission and operational management. A key component involves instituting quality assurance through a management improvement review process. Recommendations include structural changes and management practice actions, with a focus on planning, communication, and employee engagement.

METHODOLOGY AND LIMITATIONS

To answer our charge, the Academy convened an expert Panel of six Fellows with broad federal, executive leadership, legal, and academic experience, as well as knowledge and experience in the Department of Justice and in human resource management. The Academy Panel provided ongoing guidance to a study team of six who conducted the assessment, following a structured methodology.

The study team conducted extensive research and analysis of CRT documents and information, including budget and staffing data, hiring information and policies, disciplinary and standard of conduct policies, training/employee development, and enforcement/case management protocols and practices. The study team used the data to assess the structure, policies, procedures, and practices of the Civil Rights Division and the sections comprising the division to determine how enforcement and human resource

decisions are made. To fully understand the environment in which CRT operates—and the challenges it faces in carrying out its mission—the team conducted a literature review, researched congressional hearings, and examined the history and evolution of both civil rights statutes and the entity responsible for executing enforcement. The team also reviewed CRT’s reporting structure within DOJ, as well as applicable DOJ policies and procedures, to identify areas where CRT has the flexibility to change policies and procedures and areas where broader changes may be indicated. The primary focus of our assessment was on enforcement efforts, including priority-setting and communication, the work environment, unauthorized disclosure of non-public information (and related disciplinary processes), and hiring policies and related human resource practices.

The study team conducted interviews with key stakeholders and experts, including both current and former DOJ officials and CRT managers, officials of other federal agencies involved in high profile and potentially controversial litigation, congressional staff, experts from academia, and former employees suggested by the congressional requestors. All interviews were conducted on a not-for-attribution basis. In addition, the study team held discussion groups with CRT managers and section chiefs and conducted a CRT-wide staff survey sent out to all 593 staff on board as of October 1, 2014. To inform the development of options and recommendations for a new management and operational model to aid CRT in successfully meeting its mission and to achieve the desired future state, the study team benchmarked leading management practices and quality assurance approaches involving annual internal management reviews and peer review processes.

In conducting research, the team experienced some limitations as a result of long standing DOJ policies; where these limitations affected the team’s analysis and recommendations, they are noted in the report. Specifically, those policies required redactions of enforcement protocol and procedures documents that limited our ability to fully analyze the practices. Similarly, because of CRT concerns about potential purposeful or inadvertent disclosure of privileged information, we were unable to include several open-ended questions in the employee survey we administered, and were not able to speak with line attorneys or line professional administrative and support staff. Our request to interview the union⁸ was approved, but union representatives, in turn, declined to talk with us although they did review the survey questions, as stipulated in their contract with DOJ, and indicated that they had no problems with them. Several career employees contacted us directly, and we spoke with them confidentially.

DOJ’s policy to decline requests for access to line staff and to safeguard confidential information is codified in a January 27, 2000 letter from Assistant Attorney General Robert Raben to The Honorable John Linder, chairman, subcommittee on rules and organization, House Committee on Rules, and in an earlier, January 4, 1994 letter from Attorney General Janet Reno to The Honorable Orrin G. Hatch, ranking minority member, Senate Committee on the Judiciary. The department judiciously guards against disclosure of information that may compromise litigation or ongoing investigations, may constitute an unwarranted

⁸ American Federation of State, County and Municipal Employees (AFSCME), Federal Council 26, Local 3719.

invasion of personal privacy, or may involve the predecisional deliberative process. DOJ's concern is that certain internal documents may contain roadmaps of litigation plans and preparations and therefore could jeopardize the government's position in cases. DOJ also does not make line staff available for interviews so that they are "free to engage in honest and forthright deliberations and make recommendations based solely on the merits and available evidence." The department's institutional position is that supervisory personnel rather than line staff should answer congressional questions about department actions. Finally, inclusion of open-ended questions in the Academy survey was denied due to concerns that the questions risk either intentional or inadvertent disclosure of privileged information. The department and CRT, however, were responsive to all other requests for documents and interviews.

HOW THE REPORT IS ORGANIZED

In conducting our assessment, we found that the issues that flow from the four questions posed to the Academy are very much interrelated—none can be viewed in isolation. Management and operational practices permeate all of the issues. For example, unauthorized disclosure of information (leaks) is, in the end, a management and leadership issue. Accordingly, we believe that leadership attention to operational management is critical to move CRT forward and have organized the report to emphasize the need for an integrated management framework by starting with a discussion on the need and the benefits in Chapter 3, immediately following Chapter 2, the background, which provides a brief overview of the history and evolution of civil rights statutes and CRT, as well as CRT's organizational structure, responsibilities, and resources. Chapter 4 addresses question 1, enforcement practices and priority setting, as well as communication. Chapter 5 combines questions 2, 3, and 4—the "people" pieces. It addresses current operational and human resource management approaches. Finally, chapter 6 offers a management review approach to promote continuous improvement, along with steps to implement a review process for evaluating management policies, protocols, and practices.

CHAPTER TWO: BACKGROUND

HISTORY OF THE CIVIL RIGHTS DIVISION

While today civil rights is usually thought of in the context of the civil rights movement of the 1950s and 1960s and the 1964 landmark legislation, the Attorney General's responsibility for protecting civil rights dates back to 1866—four years before the Department of Justice was even created. Shortly thereafter, Congress expanded civil rights enforcement authority through a series of statutes culminating in the Civil Rights Act of 1875, which addressed the broad rights of the newly freed slaves.⁹

The first organizational unit for civil rights within DOJ was established in 1939, as part of the Criminal Division. In 1948, President Truman's Committee on Civil Rights recommended adopting new civil rights legislation, creating a separate civil rights division within the Department of Justice, and authorizing the new division to apply civil as well as criminal sanctions to protect voting rights. These recommendations were subsequently embraced by the Eisenhower Administration and taken up by Congress.¹⁰ Much of the focus in these early years was on protecting voting rights.

The Civil Rights Division as we know it today was created by Congress in 1957 to enforce a small number of Reconstruction statutes passed after the Civil War and to remedy voting discrimination. Over time, civil rights laws and CRT's roles and responsibilities have expanded and evolved, reflecting nation-wide social, economic, and political changes.

The motivations for passing modern civil rights laws were both moral and pragmatic in nature: the need to create national unity (which was undermined by racial discrimination); to strengthen the economy; and to ensure public order. In addition, serious credence was given to how racial discrimination at home undermined the U.S. government's support for decolonization in Africa and elsewhere. Legislation and enforcement were shaped by shifting leadership among the federal courts, the President, and Congress; pressure from civil rights groups; exposure of perpetrators of racial discrimination; media attention; partisan politics; and the public's response to civil rights violations with moral outrage.¹¹

The Civil Rights Act of 1960 focused on education and criminalized certain interferences with desegregation, among other things. In 1964, Congress passed landmark legislation that protected individuals along a variety of dimensions, including national origin, religion, and sex. It also authorized the Attorney General to intervene in race-based equal protection cases beyond voting, including discrimination in public accommodations and facilities, education, and employment. In recognition that earlier civil rights acts had not eliminated discrimination in voting, Congress passed the Voting Rights Act of 1965 to create effective

⁹ Brian K. Landsberg, *Enforcing Civil Rights: Race Discrimination and the Department of Justice* (Lawrence: University Press of Kansas, 1997), 8.

¹⁰ *Ibid.*, 10.

¹¹ *Ibid.*, 26.

protections against racial discrimination in voting and confer quasi-regulatory authority on the Attorney General.¹²

In 1968, CRT's responsibilities grew again with the passage of the Fair Housing Act of 1968 (also known as the Civil Rights Act of 1968), which made it illegal to engage in discrimination in the sale, rental, or advertisement of private and public housing based on race, color, national origin, or religion.¹³ A host of responsibilities were added to the division through legislation in the 1970s through the present, including Title IX of the Education Amendments of 1972, which prohibits federally funded education programs or activities to discriminate on the basis of sex; expansion of the Voting Rights Act in 1975 and 1982, and reauthorization of the Act in 2006; the Americans with Disabilities Act of 1990; the National Voter Registration Act of 1993; and the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009—among many others.

More recently, the work of the Voting Section was significantly impacted by the 2013 Supreme Court decision in *Shelby County v. Holder*,¹⁴ regarding the constitutionality of two provisions of the Voting Rights Act of 1965—Sections 5 and 4(b). Section 5 requires certain jurisdictions to obtain federal preclearance before making any changes to voting laws or practices. Section 4(b) contains the formula for determining which states and localities are subject to federal preclearance. The Supreme Court held that it is unconstitutional to use the coverage formula in Section 4(b) because it relies on data that is more than 40 years old. Although the Supreme Court did not rule on the constitutionality of Section 5 itself, the effect of the *Shelby County* decision is that the jurisdictions identified by the coverage formula in Section 4(b) no longer need to seek preclearance for voting changes unless they are covered by a separate court order entered under Section 3(c) of the VRA.¹⁵ As a result, the Voting Section must now bring affirmative litigation to address issues previously subject to preclearance, which has required significant changes in how the section handles its docket.

As CRT's responsibilities have grown and changed, the division has evolved from a small unit to a large division.¹⁶ When it was established, the division was organized geographically. In 1969, the organizational structure was altered to create sections based on the substance of the division's work—education, housing, employment, public accommodations, voting, and coordination (enforcement of Title VI of the Civil Rights Act, which bans discrimination in expending federal funds). There were also legislation and special appeals sections.¹⁷ This basic structure survives today, although sections' responsibilities and authorities have expanded.

¹² *Ibid.*, 16.

¹³ Leadership Conference on Civil Rights, *...And Justice for All: The Civil Rights Division at Forty* (Washington, D.C.: Leadership Conference on Civil Rights, 1997).

¹⁴ *Shelby County v. Holder*, 570 U.S. ___, 2013 WL 3184629 (U.S. June 25, 2013) (No. 12-96).

¹⁵ Under Section 3(c), jurisdictions found to have discriminated against voters can be ordered by the court to preclear certain types of voting changes for a period of time deemed appropriate by the court.

¹⁶ Landsberg, *Enforcing Civil Rights*, 21.

¹⁷ Leadership Conference on Civil Rights, *...And Justice for All*.

CRT OPERATES IN AN INHERENTLY COMPLEX AND CHALLENGING ENVIRONMENT

Given its mission and the nature of its work, the department as a whole has had to contend with perceptions of improper political involvement throughout its history. In 1904, President Theodore Roosevelt wrote to his Attorney General, William Henry Moody, “Of all the officers of the Government, those of the Department of Justice should be kept most free from any suspicion of improper action on partisan or factional grounds.”¹⁸ White House interference, or even the appearance of interference, in individual cases will cause the opposing party and the public to question the administration of justice. “Public confidence—that essential ingredient in a sound legal order—would be shaken by the appearance of special treatment and lack of evenhandedness.”¹⁹ Concerns about the politicization of the department came to a head in the wake of Watergate and the involvement of the Attorney General in that scandal, and in the spring of 1974 hearings were held on *Removing Politics from the Administration of Justice*.²⁰

However, not all political involvement of the White House in the DOJ is improper. Under the Constitution, it is the President (not the Attorney General) who is responsible for the execution of the laws and, as an elected official, it is the President who is accountable to the public.²¹ “Politics is the process through which policies are made by the people. Politics is the means by which we as a nation make government accountable to the people.”²² Completely removing the influence of politics on the setting of government policy sacrifices “both political responsiveness and political responsibility.”²³ It is therefore appropriate for department policies and priorities to reflect the results of the most recent presidential election and be based on the priorities and philosophies of the administration. However, the line between proper and improper White House influence is difficult to discern.²⁴ There is a tension between the proper role of politics in setting legal policies and the negative effect of politics interfering in the legal process.²⁵

¹⁸ Senate Committee on the Judiciary, Subcommittee on Separation of Powers. *Removing Politics from the Administration of Justice*, 93rd Cong., 2^d sess., 1974, S. Repts. 2803 and 2978, 16.

¹⁹ Daniel J. Meador, *The President, the Attorney General, and the Department of Justice* (Charlottesville: White Burkett Miller Center of Public Affairs, University of Virginia, 1980), 25.

²⁰ The majority of the oral and written testimony in the hearing transcript focused on S. 2803, a bill “to ensure the separation of constitutional powers by establishing the Department of Justice as an independent establishment of the United States,” which was introduced on December 12, 1973 by Senator Samuel J. Ervin, Jr. (D-NC). This bill was an attempt to take the politics out of DOJ by removing the Attorney General from the President’s cabinet and having the President appoint (subject to Senate confirmation) the Attorney General, the Deputy Attorney General, and the Solicitor General for fixed 6-year terms. These officials could be removed from office by the President only for neglect of duty or malfeasance. Individuals involved in the discussions included former Attorneys General, senators and representatives, academicians, and a former U.S. Supreme Court justice.

²¹ Meador, *The President, the Attorney General, and the Department of Justice*, 31.

²² *Removing Politics from the Administration of Justice*, 5.

²³ *Ibid.*, 329.

²⁴ Meador, *The President, the Attorney General, and the Department of Justice*, 33.

²⁵ *Ibid.*, 27.

The historical tension regarding the role of politics in the department helps explain the complexity of the environment in which CRT operates. Of all the department's components, CRT's mission is arguably the most politically-charged. Part of the challenge for CRT is that the nature of civil rights violations has changed over time. In the early days of civil rights enforcement, discrimination was overt, obvious, and often violent. The killing of innocent children in the 1963 Alabama church bombing, for example, evoked moral outrage, which, in turn, translated into widespread public and bipartisan political support for civil rights enforcement. Today, due to a number of factors—including CRT's effective enforcement—discrimination is often much more subtle and difficult to prove. In addition, CRT protects the rights of communities that are not universally supported in society or in Congress, such as prison populations. As noted earlier, while CRT continues to enjoy broad bipartisan support for much of its work, such as enforcing disability rights, other areas of CRT's mission spark controversy.

The current social and political divisions in the country are also complicating factors. Due to the laws it enforces, CRT has the authority to affect, directly or indirectly, significant segments of our society and its functions, including education, the economy, public institutions, and—significantly—the election process. Members of both parties have contended that CRT has been used improperly for political purposes by the other party. The perceived and actual politicization of the division documented in the OIG and OPR reports has heightened suspicions that politics is ingrained in the division.²⁶

Differences in political ideology can also contribute to legitimate differences of opinion in how civil rights laws should be enforced. Brian K. Landsberg, in *Enforcing Civil Rights: Race Discrimination and the Department of Justice*, presents a telling example of how this played out in a “conservative” versus a “liberal” administration's interpretation of law and policy on the use of quotas. President Reagan's Assistant Attorney General for Civil Rights, William Bradford Reynolds, testified before a congressional subcommittee that the administration would not continue to “insist upon or in any respect support the use of quotas or any other numerical or statistical formulae designed to provide to non-victims of discrimination preferential treatment based on race, sex, national origin or religion,” viewing the practice as “unsound as a matter of law and unwise as a matter of policy.” Fourteen years later, President Clinton's Assistant Attorney General for Civil Rights, Deval L. Patrick, presented an opposing view to Congress, arguing that a proposed statutory prohibition against quotas “is a rejection of the compelling need to remedy the effects of past and present discrimination. It is inconsistent with principles developed by the Supreme Court and with numerous enactments of Congress and executive branch orders.” As Landsberg points out, CRT leaders relied on law and policy to reach inconsistent positions that echoed the political stances of the Presidents they served.²⁷

²⁶ U.S. Department of Justice, Office of the Inspector General and Office of Professional Responsibility, *An Investigation of Allegations of Politicized Hiring and Other Improper Personnel Actions in the Civil Rights Division*. (Washington, D.C.: July 2, 2008); U.S. Department of Justice, Office of the Inspector General, *A Review of the Operations of the Voting Section of the Civil Rights Division*. (Washington, D.C.: March 2013).

²⁷ Landsberg, *Enforcing Civil Rights*, 4.

Needless to say, CRT is the subject of criticism and scrutiny. While partisan attacks on the division are not new, the Internet and social media have made the attacks on CRT more relentless and accessible to a wider audience. In addition, some attacks have been very personal, aimed at individual career civil servants and often based on information found online. These tactics have been successful in getting the attention of Congress and, at times, the mainstream media, which has increased scrutiny of the division.

The New Black Panther Party (NBPP) case was the perfect storm, involving all aspects of the difficult environment in which CRT operates, and involved the incoming Obama Administration changing the course of the case of the outgoing Bush Administration. This case illustrates how observers' ideologies affected their perceptions of CRT's actions and motives and how technology has heightened public scrutiny of the division. On November 4, 2008 (election day), two members of the New Black Panther Party stood outside a polling place in Philadelphia, PA. Witnesses accused the men of intimidating white voters and videotaped the men. Soon the footage was being aired on television and viewed on the Internet. The Voting Section initiated an investigation and just days before Inauguration Day 2009, CRT filed a civil action against the two men who were at the polling place, the NBPP's national chairman, and the organization itself. The complaint alleged violations of Section 11(b) of the Voting Rights Act, which prohibits voter intimidation.²⁸ As the defendants did not answer the complaint, CRT moved the court for an entry of default, which was done in April 2009. Two weeks later the court ordered the government to file formal motion papers. In May 2009, CRT filed a motion to dismiss the complaint against three of the defendants and continued the action against the one defendant who had been holding a nightstick at the polling place. CRT sought and received a default judgment and an injunction prohibiting the defendant from bringing a weapon to a polling place in Philadelphia through 2013.

CRT's decision to alter the government's approach in this case, made by a long-time career civil rights attorney in the role of Acting Assistant Attorney General, ignited a firestorm. Accusations flew that CRT's reversal was the result of political interference to protect supporters of President Obama and reluctance to enforce civil rights laws when the defendants are black and the victims are white. Members of Congress, the press, and the U.S. Commission on Civil Rights all demanded answers. Meanwhile, CRT was criticized in the blogosphere, which helped keep the accusations of political interference alive, long after the Office of Inspector General and the Office of Professional Responsibility conducted two separate investigations and found the decision was made based on the facts of the case.^{29, 30} CRT continues to deal with repercussions from that case.

²⁸ 42 U.S.C. 1973i(b).

²⁹ See U.S. Department of Justice, Office of the Inspector General, *A Review of the Operations of the Voting Section of the Civil Rights Division*. (Washington, D.C.: March 2013) and U.S. Department of Justice, Office of Professional Responsibility, *Investigation of Dismissal of Defendants in United States v. New Black Panther Party for Self-Defense, Inc., et al, No. 2:09cv0065*. (Washington, D.C.: March 17, 2011).

³⁰ The U.S. Commission on Civil Rights (USCCR) also conducted an investigation and issued an interim report that was much more critical of CRT. The study team did not have access to source documentation regarding

In 2000, concerns were expressed about the division’s hiring of attorneys during the final months of the Clinton Administration. Although the OIG found no wrongdoing or political motivation for the spate of hiring, OIG concluded that the hiring actions led to the perception that the division was trying to “stack the deck” with attorneys who “favored the enforcement philosophy of the outgoing administration and to keep the hiring decisions out of the hands of the incoming administration because of concerns about its enforcement philosophy.”³¹

OIG and the Office of Professional Responsibility (OPR) documented instances of politicized and, in some cases, illegal behavior in CRT during the George W. Bush Administration. For example, OIG and OPR found that decisions regarding hiring of career staff, assignment of cases, and transfers (in many instances involuntary), were made by political appointees based on perceived political ideology, at times in violation of the Civil Service Reform Act—specifically, the Merit Systems Principles and Prohibited Personnel Practices. This created a hostile working environment, particularly within the Voting Section, that led to harassment based on perceived political ideologies that carried into the beginning of the Obama Administration.³² The NBPP case, the hiring of attorneys at the end of the Clinton Administration, and the OIG and OPR findings have informed perceptions of how the division carries out its responsibilities and affected CRT’s reputation as a fair and impartial enforcer of civil rights laws.

Partisan political activities of federal employees can also contribute to perceptions of politicization. All Department of Justice employees are subject to the Hatch Act,³³ which generally prohibits Department employees from engaging in partisan political activity while on duty, in a federal facility, or while using federal property.³⁴ The statute carries serious penalties including removal from federal employment. Division leadership regularly communicates with staff regarding the Hatch Act restrictions. In addition, Attorney General Eric Holder instituted a DOJ policy making political appointees subject to the rules that govern “further restricted” employees under the Hatch Act to ensure there is

the NBPP case, and therefore conducted an analysis of the three publicly available reports (OIG, OPR, and USCCR). The study team’s analysis examined the genesis of the reports, data sources relied upon, findings and recommendations, and external criticisms of the reports, among other things. The Panel and study team concluded that the USCCR investigation was incomplete (thus, the “interim” report), and was flawed due to the quality of the data (partially a result of USCCR’s inability to obtain key documents from DOJ), and the interpretation of the data and the law. In addition, Democrats and one of the Republicans on the Commission believed the investigation and interim findings were politically motivated. See U.S. Commission on Civil Rights, *Race Neutral Enforcement of the Law? The U.S. Department of Justice and the New Black Panther Party Litigation: An Interim Report*. (Washington, D.C.: 2010).

³¹ *A Review of the Operations of the Voting Section*, 188.

³² *Ibid.*, 139.

³³ 5 U.S.C. 7323(a) and 7324(a).

³⁴ Political activity is defined as activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.

not an appearance that politics plays any part in the Department's day to day operations.³⁵
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CRT'S MANAGEMENT AND OPERATIONS CHALLENGES ARE NOT NEW OR UNIQUE

The current state and organizational culture of CRT are largely shaped by the culture and historical challenges faced by the department overall. Some of the most common accusations leveled at DOJ in the past are echoed in criticisms that CRT contends with today, and fall into the following issue areas:

- setting policies and priorities
- transparency
- involvement of stakeholder groups
- organizational structure/management

Setting Policies and Priorities

DOJ as a whole has a mixed history on setting and communicating priorities. On the one hand, setting priorities is a necessity, as described by Richard G. Kleindienst (AG 1969-1972): "...because it does not have all of the dollars and resources and management capacity to enforce every law efficiently and completely all of the time, the Department of Justice has always had to say, in any one given point of our Nation's history, in terms of its development and progress and growth and change, that although we will do our best to enforce all of the laws, there are some areas of the law that demand particular attention at this particular time."³⁷ At the same time, however, priorities tend to be set in a reactive rather than a proactive mode. Ramsey Clark, who held a variety of positions, including Attorney General, at DOJ through the 1960s said, "There was no clear coordinated objective method or real potential for developing or knowing priorities." He went on to say, "In effect, you have busy people there fighting little brush fires every day without an adequate chance to really get on top and develop what you might call the philosophy that's necessary for a clear concept of effective enforcement of priorities."³⁸

CRT has had several experiences with priority setting through more formal strategic planning processes. In the late 1960s, for example, CRT had a planning and coordination office. Each section was expected to propose program objectives with milestones. Similar prioritization efforts took place in the 1970s.³⁹ In addition, under AAG Thomas E. Perez (2009-2013), the division and sections engaged in priority setting.

³⁵ U.S. Department of Justice, Office of the Deputy Attorney General, *Memorandum for All Department of Justice Non-Career Employees: Restrictions on Political Activities*. (Washington, D.C.: December 17, 2011).

³⁶ "Further restricted" employees are held to more stringent rules that preclude active participation in political management or partisan political campaigns, even off-duty.

³⁷ *Removing Politics from the Administration of Justice*, 71.

³⁸ *Ibid.*, 173-174.

³⁹ Landsberg, *Enforcing Civil Rights*, 110-111.

Transparency

Lack of transparency and accountability is another common criticism of DOJ. The department has been criticized for not being transparent or accountable for at least 40 years. At the 1974 congressional hearings on *Removing Politics from the Administration of Justice*, multiple attorneys from a variety of backgrounds (former DOJ officials, including Attorney Generals, Solicitors General, and Assistant Attorney Generals; former presidential counsels; a former Supreme Court Justice; and legal academicians) and from both political parties agreed that DOJ should be more transparent. There was a recognition that some people take advantage of openness in government for partisan purposes, but that Congress and the public have a right to know what DOJ is doing and how decisions are made. Furthermore, transparency is a “safeguard” of justice and a necessary ingredient of public trust.⁴⁰ Obviously, some discretion is necessary. The question is how to prevent abuse, and one way is to eliminate unnecessary secrecy from the process.⁴¹

Involvement of Stakeholder Groups

CRT has a complicated relationship with stakeholder groups. On the one hand, since CRT was established in 1957, the AAG has had a duty to meet with outside groups⁴² and CRT relies upon these groups for updates on emerging issues in communities around the country. On the other hand, this relationship can create a perception that stakeholder groups have undue influence on the division. As a DOJ observer in 1970 stated, “Justice cannot afford to appear susceptible to pressure from interest groups; its image as even-handed enforcer of the law does not permit that.”⁴³

Organizational Structure/Management

Managing has been a challenge at DOJ for a long time. A 1952 study of the department conducted by a private consulting company found that there was no top-level attention to management.⁴⁴ Most former DOJ officials interviewed for this study or who have written or testified about management at DOJ over the past 40 years expressed the opinion that management is lacking at DOJ.

There were some attempts in the twentieth century to tackle management issues at DOJ. For example, when Ramsey Clark was the Attorney General in the 1960s, Ernest C. Friesen, Jr. was named Assistant Attorney General for Administration, a position that became the overseer of the Justice Management Division. Friesen reportedly began to address DOJ

⁴⁰ *Removing Politics from the Administration of Justice*, 64-65, 68, and 160-161.

⁴¹ Arthur S. Miller, “Justice Without Politics,” *The Progressive* 38 (April 1974).

⁴² See 28 CFR 0.50(c). The AAG is responsible for “Conferring with individuals and groups who call upon the Department in connection with civil rights matters, advising such individuals and groups thereon, and initiating action appropriate thereto.”

⁴³ John W. Ingle, “Center for Political Research/the Justice Department,” *National Journal* 2 (February 7, 1970).

⁴⁴ *Removing Politics from the Administration of Justice*, 494.

management challenges, but did not stay in the position long enough to make major headway. Later, when Elliot Richardson became Attorney General in 1976 he focused on reorganizing and instituting management practices, a task many observers felt was “long overdue.”⁴⁵ At the time, former Associate Deputy Attorney General Donald E. Santarelli characterized the department as “unmanaged” to a large extent and attributed it in part to Attorneys General being lawyers with no management experience. “They are not trained in executing or skilled in a structured, orderly routine and delegation of powers, known as management.”⁴⁶ This lack of a consistent focus on operational management is reflected in the Panel’s findings.

DIVISION STRUCTURE AND RESPONSIBILITIES

The Civil Rights Division is comprised of the Office of the Assistant Attorney General (Office of the AAG), 12 sections, and the Office of Complaint Adjudication.⁴⁷ Figure II-1 presents the current organization of the division.

The Office of the AAG includes the Assistant Attorney General for the division, a Principal Deputy Assistant Attorney General, four Deputy Assistant Attorney Generals (DAAGs), a chief of staff, several special counsels, the Office of Employment Counsel (OEC), and the Professional Development Office (PDO). Currently, two of the DAAGs are political appointees and two are career; more typically three of the DAAGs are political appointees and one is career staff.

The Office of the AAG establishes division policies and priorities and oversees the sections and cross-sectional working groups (there are currently three working groups: Indian, LGBTI, and National Origin). Each DAAG oversees two sections, providing legal expertise for review and making recommendations to the AAG regarding the approval of cases to pursue. The roles of the special counsels are fluid and change based on the current needs of the division in different legal skill areas, and may include section review.

The Office of Employment Counsel (OEC), which was created in 2010 to ensure compliance with federal employment laws, including merit system principles, represents the division on Equal Employment Opportunity (EEO) matters and provides legal advice to managers and supervisors on personnel-related issues such as hiring, reasonable accommodations,

⁴⁵ Ibid., 487.

⁴⁶ Ibid., 492.

⁴⁷ The Complaint Adjudication Officer (CAO), currently an ancillary duty of a deputy chief in the Appellate Section, is responsible for issuing Department of Justice final decisions and other actions in all EEO complaints filed against the department by applicants and employees. While the Complaint Adjudication Office (comprised of attorneys who support the CAO) is technically housed in CRT, it is not funded by the division and the office’s work is not reviewed by the Office of the AAG (although the AAG’s approval is required for remedial action in cases where no discrimination is found). The reason the CAO is domiciled in CRT is a function of congressional statutory authority conferred in 1972 directing the AAG for Civil Rights to appoint the CAO. (28 CFR 42.2(b)).

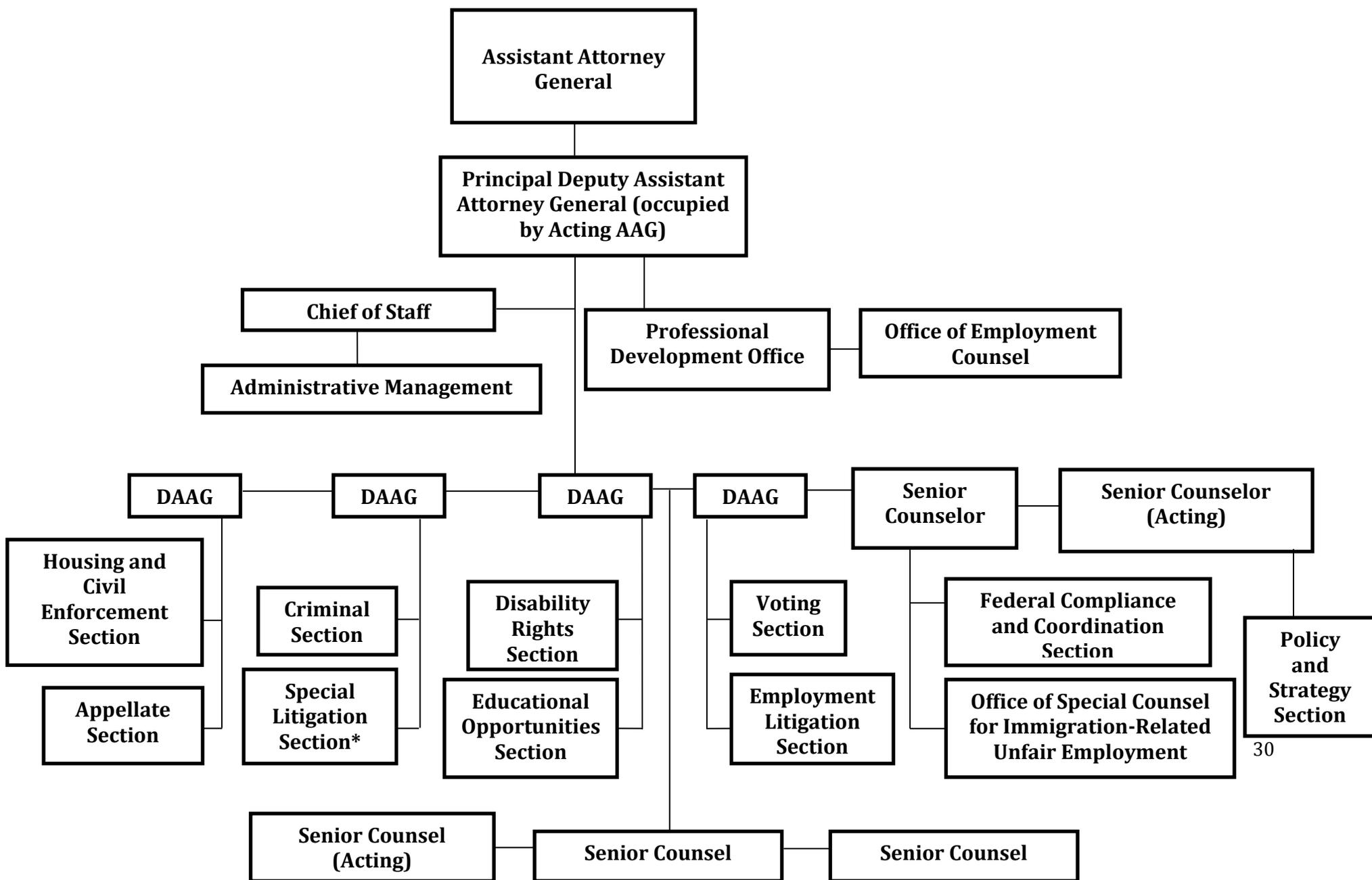
and conduct and performance issues. It also collaborates with the Professional Development Office (PDO) in developing and presenting supervisory training as well as annual mandatory training on hiring, EEO, merit systems principles, and prohibited personnel practices. PDO, which was created in 2005, serves as the division's training office, and develops courses and programs for attorneys and other staff in a number of areas, including electronic discovery, advocacy skills, and litigation practice. In addition, PDO coordinates with the division's designated ethics and professional responsibility officers to provide mandatory annual training on ethics and professional responsibility (legal ethics).

The 12 sections include ten enforcement sections (nine civil and one criminal), the Policy and Strategy Section, and the Administrative Management Section. The enforcement sections are charged with upholding the statutes and executive orders for which the division is responsible and include the following:

- Appellate
- Criminal
- Disability Rights
- Educational Opportunities
- Employment Litigation
- Federal Coordination and Compliance
- Housing and Civil Enforcement
- Office of Special Counsel for Immigration-Related Unfair Employment Practices⁴⁸
- Special Litigation
- Voting

⁴⁸ Considered to be a "section" even though termed an "office" in its official title.

Figure II-1: CRT Organizational Chart (source: CRT)



Each enforcement section is headed by a section chief in a career Senior Executive Service (SES) position. In addition to the section chief, most sections' management teams consist of a principal deputy chief, deputy chiefs, special legal or litigation counsels (referred to collectively as "special counsels"), and supervisors of professional and support staff (PASS).⁴⁹ While roles and responsibilities of the management team members vary by section, typically operational management is the responsibility of the section chief and principal deputy chief who serve as rating officials and manage case assignments, deputy chiefs who supervise teams of attorneys and review and approve investigations, and PASS supervisors who are responsible for supervising PASS staff. The role of special counsel varies from section to section, and can include overseeing various areas of enforcement, reviewing decision documents before they go to the section chief, leading large and complex cases, and assisting the section chief with special projects. Typically, special counsels are not rating officials, but otherwise may function like a deputy chief. The larger sections have management teams that include several deputy chiefs, special counsels, and PASS supervisors; the smallest sections do not have special counsels or PASS supervisors.

Section employees include attorneys, PASS, and clerical staff. In addition some sections have contractor staff that supplement the career staff.

Each section has jurisdiction over specific civil rights laws, and each section chief determines a structure for organizing work. Some sections are organized geographically (e.g., with each team responsible for specific states), some are organized based on the statutes enforced by the section, and others are organized based on a mix of the statutes and geographical regions.

Like other DOJ components, CRT sections are dispersed across various Washington, D.C. locations. The Office of the AAG is in the main DOJ headquarters building, the Robert F. Kennedy Building.

RESPONSIBILITIES OF THE DIVISION AND SECTIONS

The Civil Rights Division is organized to align with the statutes it is charged with upholding. Table II-1 summarizes the responsibilities of each section and office within the division, including the Office of the AAG, the ten enforcement sections, the Policy and Strategy Section, the Administrative Management Section, and the Complaint Adjudication Office. Appendix E provides full descriptions of the statutes enforced by each section.

⁴⁹ A notable exception is the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC). By statute, the OSC special counsel is a Senate-confirmed political appointee, a position that has been vacant for several years. The deputy special counsel functions like the section chief in other sections; it is the highest ranking career position in OSC. The rest of the OSC management team consists of two special litigation counsels, who serve as first-line supervisors for enforcement work, and a special policy counsel, who is the first-line supervisor for outreach and policy.

Table II-1: Responsibilities of CRT Sections and Offices

Section or Office	Responsibilities
Office of the Assistant Attorney General	Establishes enforcement priorities and policies. Supervises sections, PDO, OEC, and cross-sectional working groups.
Administrative Management Section	Manages human resources, IT, finance, budget, and procurement.
Appellate Section	Holds primary responsibility for handling civil rights cases in the courts of appeals and, in cooperation with the Solicitor General, in the U.S. Supreme Court. In addition, files amicus briefs in support of civil cases in which the federal government is not a party.
Complaint Adjudication Office	Provides leadership and guidance for the EEO complaint process for the entire Department of Justice, including preparing final actions adjudicating EEO complaints.
Criminal Section	Prosecutes cases involving violent interferences with liberties and rights defined in the Constitution or federal law.
Disability Rights Section	Enforces Titles I, II, and III of the Americans with Disabilities Act and Voting Accessibility for the Elderly and Handicapped Act; also coordinates the Rehabilitation Act of 1973.
Educational Opportunities Section	Enforces Titles IV and VI of the Civil Rights Act of 1964; Title II of the American with Disabilities Act (education); the Equal Education Opportunities Act of 1974 (EEOA); and Title IX of the Education Amendments of 1972. Also coordinates the Rehabilitation Act of 1973.
Employment Litigation Section	Enforces Title VII of the Civil Rights Act of 1964 and the Uniformed Services Employment and Reemployment Rights Act (USERRA).
Federal Coordination and Compliance Section	Coordinates enforcement by federal agencies of Titles VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972.
Housing and Civil Enforcement Section	Enforces Title II of the Civil Rights Act of 1964, the Fair Housing Act (FHA); the Equal Credit Opportunity Act (ECOA); the Religious Land Use and Institutionalized Persons Act (RLUIPA); the Servicemembers Civil Relief Act (SCRA); and Title II of the American with Disabilities Act (housing).
Office of Special Counsel for Immigration-Related Unfair Employment Practices	Enforces Section 274B of the Immigration and Nationality Act.
Policy and Strategy Section	Supports and coordinates the policy work of the entire division, providing a focal point for proactive policy development and legislative proposals.
Special Litigation Section	Enforces the Religious Land Use and Institutionalized Persons Act (RLUIPA); the Civil Rights of Institutionalized Persons Act (CRIPA); the Violent Crime and Law Enforcement Act, Section 14141; the Omnibus Crime and Safe Streets Act; and Title II of the Americans with Disabilities Act (institutions).
Voting Section	Enforces the Voting Rights Act; the Voting Accessibility for the Elderly and Handicapped Act; the Uniformed and Overseas Citizens Voting Act (UOCAVA); the civil portions of the National Voter Registration Act (NVRA); and the Help America Vote Act (HAVA).

Sources: Civil Rights Division individual section websites with links found at <http://www.justice.gov/crt/about/>; and Table 1 on Page 8 of the DOJ OIG and DOJ OPR report, "An Investigation of Allegations of Politicized Hiring and Other Improper Personnel Actions in the Civil Rights Division," July 2, 2008.

In addition to enforcement, CRT engages in activities that may be considered to be more educational and preventative of potential problems than reactive to an actual issue that requires an investigation or filing of a case. These include developing legislation, regulations, and policy; conducting outreach; providing guidance and technical assistance; and monitoring elections.

The major functions of the division are to:

- Investigate and, when warranted by the findings, initiate legal proceedings seeking injunctive and other relief in cases involving discrimination in the areas of education, credit, employment, housing, public accommodations and facilities, federally funded programs, voting, and the rights of prisoners, mentally and physically disabled persons, and senior citizens.
- Prosecute violations of criminal statutes that prohibit specified acts of interference with federally protected rights and activities, such as conspiracies to interfere with or deny a certain individual or group of individuals the exercise of these rights.
- Prosecute violations of anti-trafficking statutes, including the Trafficking Victims Protection Act of 2000, and play a strong role in identifying, protecting, and assisting victims of human trafficking.
- Recommend observer and examiner activities authorized by the special provisions of the Voting Rights Act of 1965, as amended.
- Implement Executive Order 12250 by studying, reviewing and approving regulatory changes proposed by all federal executive branch agencies as they pertain to civil rights, including Titles VI and IX and Section 5 of the Rehabilitation Act of 1973 as amended.
- Coordinate, under the ADA, the technical assistance activities of other federal agencies and provide technical assistance to places of public accommodation and state and local governments.
- Serve as the principal advisor to the Attorney General on all matters pertaining to civil rights.
- Provide department representation to, and maintain close liaison and cooperation with, officials and representatives of other divisions, federal agencies, state and municipal governments and private organizations on civil rights issues.⁵⁰

CRT BUDGET AND STAFFING PROFILE

In FY 2014, the Civil Rights Division had an annual budget of \$144.2 million and 714 authorized positions, although the number of actual staff on board was 592.5 as of the start of FY 2015. These resource levels represent the authorizations enacted by Congress in FY 2014, as at the time of developing this report, DOJ was operating in FY 2015 under a

⁵⁰ *Organization, Mission and Functions Manual: Civil Rights Division*. U.S. Department of Justice. <<http://www.justice.gov/jmd/organization-mission-and-functions-manual-civil-rights-division>>.

Continuing Resolution providing for a budget authorization at the FY 2014 level. For FY 2015, CRT has requested a budget of \$161.9 million (a 12.3 percent increase over FY 2014) with 787 positions (a 10.2 percent increase over FY 2014).

During the ten year period 2000 to 2010, CRT's budget authorization increased substantially (76.9 percent) with funding growing from \$82.2 million to \$145.4 million. In 2010, CRT reached a staffing level of 815 positions, based on an increase of 100 FTEs (full time equivalents) in the FY 2010 budget. However, in FY 2011, Congress did not provide the funding for these 100 positions. In order to cover the salaries of the additional staff hired in FY 2010, CRT stopped hiring, offered voluntary early retirements (VERA) and voluntary separation incentive payments (VSIP) to long-time staff and reduced spending in such areas as case-related travel and litigation expenses. Between FY 2010 and FY 2014, CRT absorbed more than \$28 million in reduced funding, including rescissions, reduced FTEs, unfunded mandates, and transfers to other general legal activities.

Nearly all of CRT's budget represents salaries and related expenses (benefits, travel, and so on); little is discretionary. Table II-2 depicts the budget history of CRT since FY 2000 including both CRT's requests and the congressional authorization.

Commensurate with budget increases, from FY 2000 to 2011, CRT staffing increased 30.1 percent from 566 to 736.5. Since FY 2011 and the start of FY 2015, staffing has fallen, reflecting the impact of the DOJ hiring freeze that was in place in FY 2011 through February 2014. It has since been lifted and hiring actions are currently underway to fill vacancies that occurred during this time. Table II-3 depicts CRT historical staffing and attrition rates since FY 2000 and Table II-4 provides the staffing profile for the division by section and broken out by attorney, professional, clerical, and political appointees. Contractor support is not included in the staffing profile, but the number of contractors in the division is not large—generally in the single digits for each section.

Examining the data, annual attrition rates since 2011 have ranged from 8 percent to almost 12 percent, which was fairly typical historically for the division. FY 2013 had the lowest attrition at 5.57 percent reflecting the government-wide budget environment and less movement of staff across government agencies. The major spike in attrition occurred in FY 2005 (18.5 percent) and 2006 (15.12 percent) and tracks to hiring and staffing practices that occurred during that period and are documented in the OIG and OPR reports noted earlier.

Table II-2: Budget History (FY 2000-2015)		
Fiscal Year	CRT Request	Authorized Amount
2000	\$82.2	\$82.2
2001	\$97.9	\$92.2
2002	\$100.9	\$100.5
2003	\$105.1	\$104.4
2004	\$109.7	\$108.8
2005	\$109.1	\$107.6
2006	\$110.4	\$110.4
2007	\$113.6	\$115.1
2008	\$116.8	\$114.5
2009	\$123.2	\$123.2
2010	\$145.4	\$145.4
2011	\$161.9	\$145.4
2012	\$161.8	\$144.5
2013	\$153.3	Unavailable ⁵¹
2014	\$155.2	\$144.2
2015	\$161.9	144.2 ⁵²

Source: Civil Rights Division budget documents, including CRT *Congressional Budget Submissions* and *Budget at a Glance*.

⁵¹ We could not determine the final authorization for FY 2013, which was affected by the government-wide sequester.

⁵² FY 2015 reflects the continuing resolution authorization through December 11, 2014.

Table II-3: CRT Staffing History and Turnover Rates (FY 2000-2015)

Fiscal Year	Actual Staff on Board⁵³	Attrition Rate
2000	566	10.25%
2001	649	9.71%
2002	699	9.73%
2003	711	12.38%
2004	695	11.22%
2005	708	18.50%
2006	635	15.12%
2007	636	11.64%
2008	653	12.71%
2009	654	7.80%
2010	672	7.29%
2011	736.5	8.01%
2012	723.5	11.89%
2013	646.5	5.57%
2014	634.5	9.46%
2015	592.5	N/A

Source: Civil Rights Division

⁵³ Fiscal year staff numbers reflect the actual number of employees on board at the start of the fiscal year. Attrition rates represent attrition that occurred as of the last day of the fiscal year.

Table II-4: Civil Rights Division Staffing Profile**(as of October 4, 2014)⁵⁴**

Section or Office	On Board: All Staff	On Board Attorney	On Board Professional	On Board Clericals	Political Appointee Positions
Office of the Assistant Attorney General	19	14	3	2	6
Administrative Management Section	65	2	58	5	0
Appellate Section	24	18	4	2	0
Complaint Adjudication Office	6	6	0	0	0
Criminal Section	72	53	9	10	0
Disability Rights Section	82.5	45.5	31	6	0
Educational Opportunities Section	28	19	5	4	0
Employment Litigation Section	48	34	12	2	0
Federal Coordination and Compliance Section	18	16	2	0	0
Housing and Civil Enforcement Section	73	44	24	5	0
Office of Special Counsel for Immigration-Related Unfair Employment Practices	20	13	5	2	0
Policy and Strategy Section	6	4	1	1	0
Special Litigation Section	65	53	8	4	0
Voting Section	66	36	21	9	0
TOTAL	592.5	357.5	183	52	6

Source: Civil Rights Division.

⁵⁴ Numbers include full-time permanent, full-time temporary, part-time permanent, and job share arrangements.

CRT'S REPORTING STRUCTURE WITHIN DOJ

The Assistant Attorney General of the Civil Rights Division reports to the Associate Attorney General (ASG). The ASG oversees a portfolio of litigating divisions, which in addition to CRT includes the Civil Division, the Antitrust Division, the Environment and Natural Resources Division, and the Tax Division. In addition to these divisions, the ASG oversees several other offices. The ASG reports to the Deputy Attorney General, who in turn reports to the Attorney General. Appendix F presents a high level organization chart for the Department of Justice which depicts the reporting structures of the major components of the department, including CRT.

CHAPTER THREE: A STRATEGIC FRAMEWORK FOR THE FUTURE

Effective operational management is critical to the successful execution of an organization's mission. The Panel found that since 2009, the division has made significant progress in responding to the problems detailed in OIG and OPR reports. However, the Panel found a lack of focus in CRT on operational management and a general organization-wide lack of understanding of how operational management supports the division's ability to achieve its mission. Attention and commitment to operational management need to be elevated in importance. As discussed in Chapters 4 and 5, many of the challenges the division has experienced—unauthorized disclosure of information, harassment, and other misconduct; negative press and blog attacks; insertion of politics into hiring and other personnel practices; and heightened congressional oversight—are indicative of management problems, and could have been averted or, at a minimum, ameliorated with a more effective governance approach designed to mitigate risk. Policy/enforcement and management are mutually supportive and need to be in balance.⁵⁵

This chapter presents an integrated leadership and management framework that will effectively position CRT for the future. Chapters 4 and 5 will build the case for the need for the integrated framework by describing the current state of CRT, discussing specific findings that illustrate management deficiencies, and presenting targeted recommendations to address the four questions in the Academy's charge. Chapter 6 provides a continuous improvement methodology for evaluating the effectiveness of management practices and identifying opportunities for enhancements.

PURPOSE OF THE INTEGRATED LEADERSHIP AND MANAGEMENT FRAMEWORK

The purpose of the integrated management framework is to imbue an organizational culture and workplace environment that recognizes and promotes the importance of effective management practices to achieving the organization's mission. It fosters leadership attention and commitment to efforts to improve the effectiveness and efficiency of management protocols and processes. Importantly, the framework and resultant culture further affirms the integrity and accountability of the organization through policies and practices that it communicates to internal and external stakeholders alike. As an Academy publication in 2008 stated, "Organizations enjoying reputations for high integrity will usually be given the benefit of the doubt."⁵⁶ The level of organizational integrity is dependent upon management.

⁵⁵ David M. Cohen, *Amateur Government: When Political Appointees Manage the Federal Bureaucracy* (Washington, D.C.: The Brookings Institution, 1996), 17.

⁵⁶ Cindy Williams, et al., "A Leadership Agenda for Newly Appointed Senior Officials," in *Innovations in Public Leadership Development*, edited by Ricardo S. Morse and Terry F. Buss (Washington, D.C.: M.E. Sharpe, Inc., 2008), 241.

Building organizational respect for the importance of operational management is a first step in changing the culture in CRT. Like other professional organizations, the CRT culture is to focus on the substance of the work; management and operations are often secondary concerns. Lawyers, like other highly educated professionals, tend to undervalue management and administration and view them as distractions.⁵⁷ One of the goals of the management framework is to provide managers and supervisors with the skills and support they need to minimize the “distraction” of operational management and allow them to focus on the mission-related work.

Particularly telling is how relatively easy it was between 2003 and 2006 for political appointees to abandon long-standing practices and substitute processes that conflicted with those practices and in the case of hiring, federal regulations and the Civil Service Reform Act. Codifying long standing practices (or “traditions” as one former official dubbed them) into established policies with internal checks and balances and strengthening a culture of integrity and accountability will help prevent future division leaders from engaging in such actions. In addition, employees who feel valued, respected, and empowered are not only less likely to engage in unauthorized disclosure or other misconduct, but are also more likely to report unethical and illegal conduct. Having internal processes in place to address employee concerns, particularly concerns regarding management and leadership, will further mitigate the risk of leaks (employees will not feel forced to go outside the organization to have concerns addressed) and guard against leadership abuses of policies and practices.

Two examples of leaks from the prior administration illustrate how they can be caused by management practices. In March 2002, *The Washington Post* ran a story documenting complaints of career CRT lawyers that the political appointees were limiting the input of career attorneys; had met with defendants without allowing attorneys handling the cases to be present, or, in some cases, not informing them of the meeting; and were overruling recommendations of career staff for political reasons.⁵⁸ The *Post* also ran stories in 2005 detailing how career staff recommendations regarding specific Section 5 pre-clearance applications were being overruled by political appointees. This was considered unusual because the recommendation of the career staff had been unanimous. These articles also noted that 20 percent of CRT’s lawyers left the division in 2005.⁵⁹ The leaks to the press and high attrition rate (which was 18.5 rather than 20 percent—see Table II-3 in Chapter 2), could have been avoided if there had been decision-making processes in place and followed that ensured accountability and integrity. If there were a sound legal basis for the decision to overrule staff, staff should have been included in the discussion and the decision—the rationale—explained to them. Without such involvement, staff assumed the

⁵⁷ Owen, Jo. “5 Ground Rules for Managing Professionals.” *CBS News*. 26 Jun. 2009. 28 Oct. 2014. <<http://http://www.cbsnews.com/news/5-ground-rules-for-managing-professionals/>>.

⁵⁸ Ellen Nakashima and Thomas B. Edsall, “Ashcroft Personnel Moves Irk Career Justice Lawyers.” *The Washington Post* (March 15, 2002): A5.

⁵⁹ Dan Eggen, “Justice Staff Saw Texas Districting as Illegal.” *The Washington Post* (December 2, 2005).

decision was made based on political considerations. Similar charges and criticisms have occurred during the current administration and led to the OIG report that, in turn, precipitated this study. When staff believe their views are being heard and their input is valued, they are more likely to accept decisions they do not agree with and leaks are less likely to occur. Fairness of the process is paramount. If staff had had an internal process available to raise concerns in the situations described above, they may not have felt that they had to go outside the agency to have those concerns addressed.

An integrated management framework will provide for checks and balances in the implementation and execution of management practices and help CRT ensure the four core values in DOJ's *Strategic Plan: Fiscal Years 2014-2018* are deeply ingrained in the organization and are sustained over time:

1. Equal justice under the law (enforcing laws fairly and consistently)
2. Honesty and integrity ("highest standards of ethical behavior")
3. Commitment to excellence
4. Respect for the worth and dignity of each human being (department employees treat each other and their constituents with fairness, dignity, and compassion; respect different viewpoints; and are committed to the well-being of employees)⁶⁰

Adopting an integrated framework can help build the confidence of Congress, the public, stakeholders, affected communities, and employees in the honesty and fairness of CRT's processes.

SUCCESSFUL INSTITUTIONALIZATION OF THE INTEGRATED MANAGEMENT FRAMEWORK WILL REQUIRE SENIOR LEADERSHIP SUPPORT

Institutionalizing an integrated management framework is particularly important for sustaining changes in government because senior leaders are not in their positions long enough to maintain continuity and because they are primarily focused on policy, not management.⁶¹ Frequent turnover creates leadership vacuums, "mixed signals" regarding priorities, and disruptions in working relationships.⁶² Typically, political appointees are not interested, or have little experience, in government management; they do not stay in their positions long enough to become good managers; and they are not held accountable for managerial performance.⁶³ Studies have found that political appointees tend to be less

⁶⁰ U.S. Department of Justice, *U.S. Department of Justice Strategic Plan: Fiscal Years 2014-2018*, 3.

⁶¹ National Academy of Public Administration, "Can Government Grow Great Leaders? Results of a Symposium," in *Innovations in Public Leadership Development*, edited by Ricardo S. Morse and Terry F. Buss (Washington, D.C.: M.E. Sharpe, Inc., 2008), 350.

⁶² John B. Gilmour and David E. Lewis, "Political Appointees and the Competence of Federal Program Management," *American Politics Research* 34 (January 2006): 23.

⁶³ Cohen, *Amateur Government*, 28, 32.

effective managers than career senior executives because of their high turnover.⁶⁴ In addition, while political appointees may care about the organization they are leading, they do not have a long-term stake in it. The overall lack of focus on management causes an “accumulation of management problems” that can make the organization more and more difficult to manage over time.⁶⁵

CRT's current leadership consists almost entirely of personnel who have arrived in the Office of the AAG within the past year. While constant change can be destabilizing, it also presents an opportunity for new division leadership to focus attention on operational and change management to create a strong and vital Civil Rights Division. Without question, Office of the AAG leadership is critical to promoting and institutionalizing successful practices and driving organizational transformation. It is the role of leadership to reinforce a culture of integrity and accountability. Moreover, “the personality and values of the person at the top set the tone of the culture.”⁶⁶ A key responsibility of a leader is not solely to leave the organization better off than when he/she joined it, but to leave it “better positioned for the future.”⁶⁷ Organizational transformations involving changes in culture and individual behaviors require sustained attention from senior leadership. (See Appendix G for more information on organizational change management best practices.)

In recent history, the individuals in the division’s chief of staff role have had some responsibility for operations in that they provided oversight over the Administrative Management Section. However, the chief of staff role can change depending on the preference of the AAG, and the chief of staff does not have responsibility for operations and management across the division. Also, the chief of staff is a GS-15 position. The executive officer heading the Administrative Management Section, by contrast, is in a Senior Executive Service (SES) position and not technically in the Office of the AAG. Furthermore, the focus of the executive officer position is on providing administrative and operations services to the division and not on overseeing operational management across the division.

Having a career DAAG position in the Office of the AAG responsible for operational management would help provide continuity, institutional knowledge, and support for division leadership. The individual in this position must have experience/competence in managing a highly professional legal organization. If possible, the person in this position should be an attorney from within DOJ to help ensure the individual has an understanding of the intrinsic complexities of the work of the division and department and climate in which CRT operates, as well as have the respect of division staff and authority required to support the implementation of the necessary and significant management and cultural changes.

⁶⁴ David E. Lewis and John B. Gilmour, “Political Appointees and the Quality of Federal Program Management,” *Policy Brief: Woodrow Wilson School of Public and International Affairs* (October 2003): 2.

⁶⁵ Gilmour and Lewis, “Political Appointees,” 41.

⁶⁶ Simon Sinek, *Leaders Eat Last: Why Some Teams Pull Together and Others Don't*, (New York: Portfolio/Penguin, 2014), 174.

⁶⁷ *Innovations in Public Leadership Development*, 350.

ELEMENTS OF AN INTEGRATED MANAGEMENT FRAMEWORK

The integrated management framework is designed to promote and establish effective and consistent management practices across CRT that link the human resource system with the vision, mission, goals, and objectives of the organization.⁶⁸ All aspects of the human resource system must be linked in order to be successful. For example, even if training focuses on desired behaviors, if the employee is not evaluated on or rewarded for the desired behaviors, it is less likely they will be adopted.⁶⁹ These practices send cues to employees on what is valued and helps integrate those values into the culture of the organization.⁷⁰ In addition to reinforcing a culture of integrity and accountability, these management practices will improve performance.

The integrated management framework should include the following elements:

1. policies and processes
2. strategic planning/priority-setting
3. communication practices
4. employee engagement
5. performance management and accountability
6. staff development, including leadership development

These elements are interrelated and mutually-reinforcing. While each is discussed separately and in more detail below, they should be implemented together as an integrated approach.

- 1. Policies and Processes:** Senior leaders, including political appointees and career staff, should review existing, and if necessary create new, policies and processes that foster and reinforce integrity. Processes should have built-in checks and balances to guard against bias, manipulation, and conflict of interest.⁷¹

The policies and processes need to address human resource/people issues, such as hiring, discipline, promotions, reporting unethical behavior, performance evaluation, staff engagement, and so forth. CRT already has a number of these activities in place in terms of setting and reinforcing human resource policies and practices. What is missing is an assessment of how well they are working—that is, whether they are they working as intended—and uniform leadership oversight.

Equally important is developing processes that ensure the integrity of mission-related work, such as case assignments, initiating investigations, developing cases, and

⁶⁸ Ibid., 350.

⁶⁹ Ibid.

⁷⁰ Ibid., 349.

⁷¹ Ibid., 242.

enforcement decision-making.⁷² Making these processes as public and transparent as possible will demonstrate organizational integrity and accountability and create trust among those inside and outside the division that CRT is enforcing civil rights laws fairly and impartially.

- 2. Strategic Planning/Priority-Setting:** The lack of a formal CRT strategic plan affects almost all aspects of management and operations. Without a documented strategic plan, division priorities will be ambiguous to employees and stakeholders, impacting employee effectiveness and job satisfaction, and engendering perceptions—both internally and externally—that division priorities are not publicly communicated due to political considerations. In addition, human capital planning should be linked to strategic plans to establish how human resources will support achieving results. Finally, without a formal strategic plan, the division has no effective way to evaluate progress on outcomes beyond measuring outputs (for example, number of cases and descriptive results of those cases); it cannot effectively evaluate whether they are pursuing the right cases for achieving broader objectives—that is, evaluate impact.

The strategic planning process should not be viewed as a management exercise with no inherent value or that takes time away from the “real work.” Rather it should be viewed as a way to develop commitment and support for division and agency outcomes.⁷³ If stakeholders are not involved in developing the strategic plan, they may oppose or subvert it, or simply bide their time until there is another change in leadership.

A formal strategic plan, a management best practice, would help ensure the division operates more efficiently and effectively by being proactive about where scarce resources will have the biggest impact, rather than reacting to events on a case-by-case basis. In addition, a plan will make priorities clear to employees, raising their individual effectiveness in working toward organizational goals, and provide a basis by which the division can measure progress.

The division strategic plan should link with the DOJ strategic plan, consistent with the Government Performance and Results Act (GPRA). Goals and objectives should cascade down from the top beginning with the department strategic plan, to the division strategic plan, to the section strategic plans, and finally to individual performance plans. This creates a results-oriented culture by clearly showing a line of sight as to how individual and section performance contributes to overall agency goals.

- 3. Communication Practices:** Senior leadership should reinforce the importance of the integrity of policies and processes in internal and external communication.⁷⁴ The primary way that leadership demonstrates its commitment to change is through communication. It is not enough to send an occasional email to staff to remind them of

⁷² The Criminal Division’s Public Integrity Section’s *Federal Prosecution of Election Offenses*, prominently displayed on the section’s web page, provides a good model.

⁷³ *Innovations in Public Leadership Development*, 237.

⁷⁴ *Ibid.*, 242.

expectations. Even if staff read the email, it is unlikely to get the required attention given the pressing demands of the employees' day-to-day work. And, as will be discussed throughout this report, one-way communication will not effect change.

The dispersion of CRT staff in different locations can make other forms of internal communication challenging, but leadership can take advantage of technology to hold division-wide town halls and webinars. For example, a webinar could be used when a new policy is issued to demonstrate leadership's commitment to its implementation and respond to staff questions and concerns. Ineffective internal communication practices create situations where career staff will fill the vacuum with what they perceive is the situation or motivation for particular actions. External communication is also an important element of demonstrating accountability and integrity. The division's commitment to these principles should be communicated through outreach mechanisms including speeches, CRT's web presence, and written documents.

- 4. Employee Engagement:** As we will highlight in detail in Chapter 4, attention to people issues and employee engagement are critical elements of an organization's performance. Successful organizations empower and actively involve their employees, seeking their input in planning and decision-making; communicating organizational goals and objectives; and promoting teamwork and an inclusive environment. Efforts to improve employee engagement are dependent on the quality of line supervisors; two-way communication; a focus on staff development; and clear, accessible human resource policies and practices to which all levels of management are committed.⁷⁵ When done effectively, employee engagement leads to increased staff motivation, productivity, and morale.
- 5. Performance Management and Accountability:** Organizations depend on effective performance management systems to maximize performance and assure accountability. Not surprisingly, high performing organizations effectively link and measure organizational and individual employee performance. Government-wide requirements for organizational performance management are set forth in GPRA (1993) and the GPRA Modernization Act (2010), while OPM administers requirements for employee performance management based on the Civil Service Reform Act (1978 and as amended). Among the requirements for organizational performance are documented strategic plans and the development of annual performance plans and reports, along with an increased emphasis on performance goals, data, and measures. Individual performance management, as defined by OPM, is the systematic process by which an agency involves its employees in improving organizational effectiveness in the accomplishment of agency mission and goals. Elements include planning the work, setting expectations, continually monitoring performance, developing the capacity to perform, periodically rating performance, and rewarding good performance.

⁷⁵ D. Robinson, et al., *The Drivers of Employee Engagement* (Brighton, U.K.: Institute for Employment Studies, 2004).

Certain characteristics of high performing organizations stand out. They include the following:

- Goals and strategies are clearly stated.
- Organizations communicate regularly with staff.
- Decision-making is driven downward (empowerment).
- Leaders champion high performance.
- The internal culture makes high performance a priority.⁷⁶

Fostering a performance management culture is an important step. Practices that contribute to a performance culture include:

- leaders as champions
- linkage of work to mission
- performance tracking and dialogue
- cascading goals
- investment in talent
- rewards and recognition
- manager accountability
- employee engagement⁷⁷

CRT does not have a documented strategic plan. In terms of individual performance, the division recently revised its performance appraisal system and manual for all GS-level staff. It defines employee performance as an integral part of maintaining a high performance workforce and clearly states the purpose of the new system—to effectively develop, appraise, and reward employees to drive organizational performance—but gives only a passing reference to expectations being results-oriented and aligning with organizational goals. A clear line of sight from the individual employee to organizational goals is missing. Opportunity exists to further strengthen CRT's performance management by establishing a formal strategic planning process and linking individual performance to CRT and DOJ goals.

- 6. Staff/Leadership Development:** In addition to providing staff with the competencies and skills needed to contribute to mission success, staff development promotes employee engagement, improves job satisfaction and morale, increases motivation and productivity, fosters innovation, and improves the organization's ability to recruit and retain talent. Leadership development not only refers to building the skills of individuals, but also the leadership abilities of the organization.⁷⁸ With high turnover among senior CRT leadership, it is important to institutionalize successful leadership

⁷⁶ Howard Risher and Charles H. Fay, *Managing for Better Performance: Enhancing Federal Performance Management Practices* (Washington, D.C.: IBM Center for the Business of Government, 2007), 26.

⁷⁷ *Ibid.*, 32.

⁷⁸ Ellen Van Velsor, et al., *The Center for Creative Leadership Handbook of Leadership Development* (San Francisco: Jossey-Bass, 2010), 18.

practices so that they are less dependent on individuals, and are embedded in the culture of the organization. The focus is therefore on developing leaders, as well as capacity for leadership through policies and processes. CRT has a dedicated training unit, the Professional Development Office (PDO), in place and has instituted a number of staff development and leadership courses while tapping into programs offered through DOJ and more recently the Department of Treasury, and is well positioned to further assist CRT leaders and expand efforts in the context of an integrated management approach.

PANEL RECOMMENDATION 3.1

Objective: To secure CRT senior leadership commitment to driving the changes needed in organizational culture and individual behaviors necessary to implement the integrated leadership and management framework; to design and implement the integrated management framework; and to ensure the division is positioned to make continual management improvements.

Recommendation: CRT should adopt a comprehensive change management approach to design and implement a CRT integrated management framework following best practices (summarized in the Implementation Steps below).⁷⁹

Implementation Steps:

- *Ensure senior leadership drives the transformation in operational management.*
- *Establish a clear vision and design the management framework to enable and support the vision.*
- *Communicate frequently through multiple channels to multiple stakeholders.*
- *Dedicate an implementation guidance team to manage the transformation process.*
- *Engage employees to seek their improvement ideas, build momentum, and gain their buy-in of, and ownership for, the transformation.*
- *Sustain the effort by evaluating the effectiveness of framework components put in place and measuring progress.*

⁷⁹ An Academy Panel has previously researched and identified common prerequisites for successful organizational change, drawn from best practices in both the public and private sectors. See Government Accountability Office (GAO) report to Congressional Subcommittees; *Results Oriented Cultures: Implementation Steps to Assist Mergers and Organizational Transformations Transforming Organizations*, by Mark A. Abramson and Paul R Lawrence; and *The Heart of Change*, by John Kotter and Dan Cohen. These are summarized in the previously mentioned Appendix G.

PANEL RECOMMENDATION 3.2

Objective: To institutionalize operational leadership in the Office of the AAG for ensuring that organizational integrity and accountability are further strengthened and operational leadership will be sustained through changes in administrations.

Recommendation: CRT should establish a non-political, career DAAG (SES) position dedicated to operational management. Responsibilities would include providing management support and advice to the AAG and DAAGs to ensure that successful practices are continued with changes in administration, the Office of the AAG is holding section chiefs accountable for operational management, and areas needing attention are being addressed. The DAAG for Operations and Management should also be responsible for overseeing Administrative Management.

Implementation Steps:

- *Seek DOJ approval to request authorization and appropriation from Congress to establish a non-political, career SES DAAG for Operations and Management.*
- *Pending approval, recruit to fill the position with an individual who is an effective and proven leader with experience in leadership development, employee engagement, communication, strategic planning, and organizational performance.*

CHAPTER FOUR: MISSION MANAGEMENT—ENFORCING CIVIL RIGHTS LAWS

The Civil Rights Division engages in a variety of activities designed to uphold civil rights laws and prevent violations. To answer Question 1 on whether there are steps the division should take to better ensure public confidence that it is enforcing the federal civil rights laws fairly and impartially, the Panel and study team focused on how CRT carries out and prioritizes its discretionary enforcement work and how it communicates priorities internally and to the public.

HOW MISSION WORK IS GENERATED AND ORGANIZED

Initiating Investigations

The amount of discretion a section has in its enforcement work varies by section and is determined by the statutes in its jurisdiction. For example, the division may be required by statute to pursue certain types of cases or cases referred from other federal agencies. At one end of the spectrum is the Criminal Section, where all enforcement is discretionary. At the other end is the Appellate Section where many appeals are mandatory. But even the Appellate Section has discretion over some appeals and on all decisions to participate in ongoing cases through the filing of an *amicus curiae* brief.⁸⁰ At least some portion of the enforcement work is discretionary for all sections.

Each year, CRT identifies thousands of potential civil rights violations through a variety of sources:

- Citizens raise complaints about some civil rights issues by phone, email, fax, and mail (the CRT website includes instructions on raising complaints with the different sections). Some sections also have hotlines and online submission forms. Most sections have complaint intake units to determine how to handle specific complaints (e.g., sections may refer a complaint to another DOJ component or agency if it is not in the section's jurisdiction, or refer it to an attorney if investigation is warranted).
- Other federal agencies refer complaints to DOJ that they believe may require DOJ enforcement. For example, the Department of Housing and Urban Development (HUD) refers to the Housing and Civil Enforcement Section matters where it has determined reasonable cause exists to believe the Fair Housing Act has been violated, conciliation has been unsuccessful, and either party involved elects to be heard in federal court.
- Media coverage alerts the sections to potential violations (the August 9, 2014 Ferguson, Missouri shooting is a high profile example). Stakeholder groups may also alert CRT to potential violations of civil rights laws.

⁸⁰ CRT participates in pending suits brought by other parties by filing a statement of interest on behalf of the United States in district or state courts, or an *amicus curiae* brief in federal courts of appeals.

- Research by CRT staff using statistical analysis or other investigatory approaches may identify potential geographic or subject areas requiring enforcement.

Typically, investigations of potential violations are authorized by section management and do not require approval from the Office of the Assistant Attorney General (Office of the AAG).⁸¹ If the decision is made to initiate an investigation, it is assigned to a trial attorney (or a case team, if the matter is complex or sensitive) to conduct. The investigating attorney interviews witnesses and requests documents and information from relevant parties, including the investigative target. Depending on the scope of the investigation, the investigation can last from a few months to more than one year.

The Enforcement Decision-Making Process

The process described below is the general process for civil enforcement. However, some civil enforcement actions may not conform to this process due to statutory requirements. In addition, CRT engages in defensive litigation, which is not discretionary; conducts criminal prosecutions; and participates in pending suits brought by other parties. Regarding criminal prosecutions, the DAAG authorizes the section chief to open a grand jury (the investigative phase of a criminal matter), but all other decisions related to the case (e.g., indictments, pleas, sentences) are made by the section chief. The decision-making process for participating in ongoing civil cases is more complex.

At the completion of the investigation, the trial attorney makes a recommendation to the section chief to close the matter,⁸² file a lawsuit, or participate in another way. If the trial attorney chooses to recommend filing suit, the attorney prepares a justification package that includes: 1) a justification memorandum (“j-memo”) presenting the facts of the case and legal argument supporting a lawsuit; and 2) the proposed formal complaint to be filed with the court.

The section chief reviews the j-memo and determines whether to forward it to the Office of the AAG. Before forwarding the justification package to the Office of the AAG, the section chief typically considers factors such as the impact that a suit might have or the resources required to bring it. While the case selection criteria considered by section chiefs are not documented,⁸³ the section chiefs were able to crisply articulate the criteria used in their sections. And, while the selection criteria varied somewhat by section, there were

⁸¹ There are exceptions. For example, in the Special Litigation Section, the AAG is required by statute to authorize certain investigations.

⁸² A “matter” is defined as an activity that has been assigned an identification number but has not resulted in the filing of a complaint, indictment, or information. A “case” is defined as an activity that has been assigned an identification number that has resulted in the filing of a complaint, indictment, or information. (U.S. Government Accountability Office, *Civil Rights Division: Selection of Cases and Reasons Matters Were Closed* GAO/GGD-00-192. (Washington, D.C.: September 2000), 1).

⁸³ The exception is the Appellate Section’s “standards for amicus participation,” which are detailed in Section 8-2.170 of the U.S. Attorneys’ Manual.

significant commonalities. Examples of other selection criteria cited by multiple sections include:

- potential for significant impact (e.g., a large jurisdiction, such as a state; or the opportunity to set legal precedent)
- egregious violation
- resource availability
- ability of a private litigant to bring the case (e.g., if it is a large pattern and practice case regarding policies that affect large numbers of people and requires sophisticated expert analysis, private litigants may not be able to do an effective job)

The DAAG reviews the justification package and may contact the section chief to clarify issues and discuss any concerns. The DAAG then makes a recommendation to the AAG, who may also want to contact the section chief for additional information or clarification. The AAG has delegated authority from the Attorney General to approve cases.

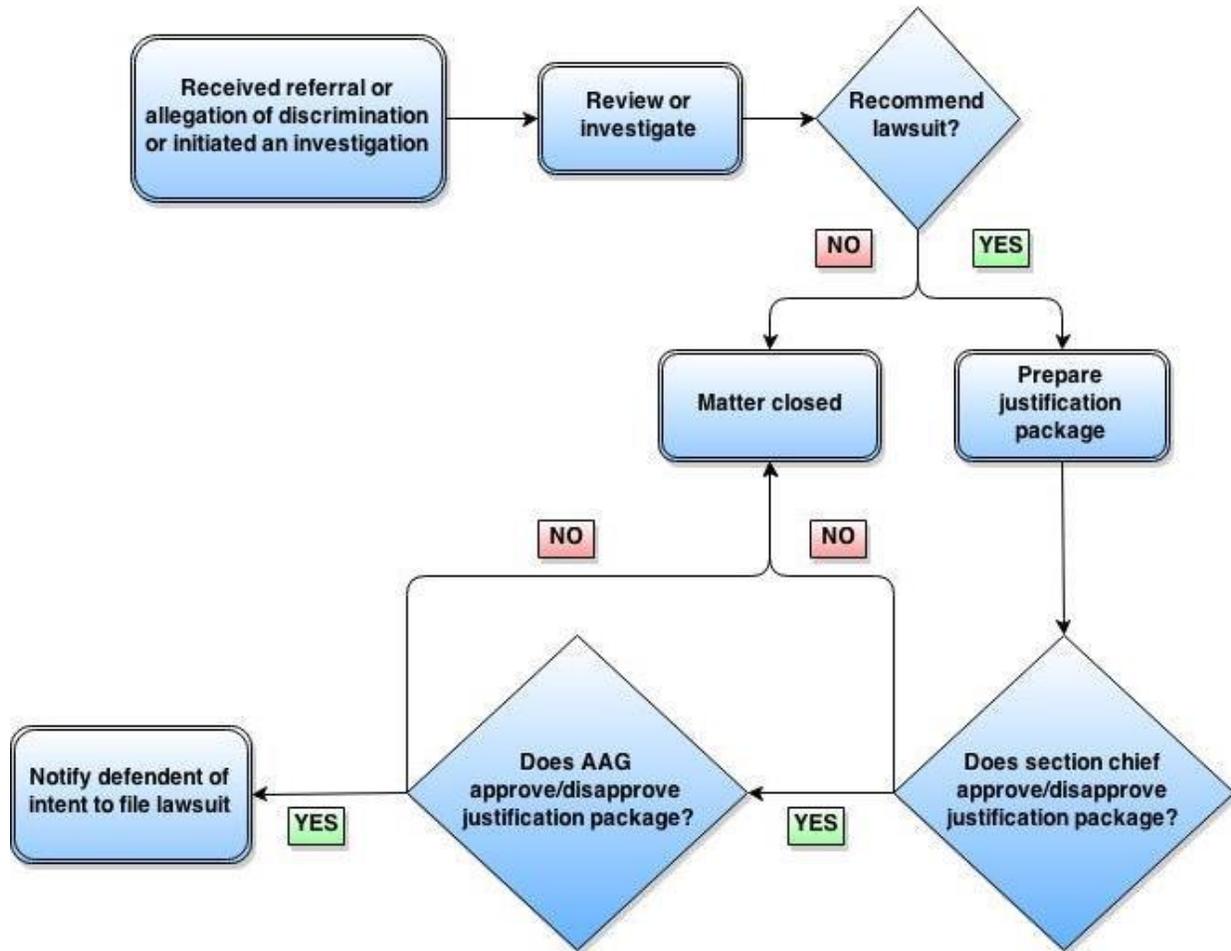
In the rare case that a justification package is not approved, the trial attorney prepares a closing memorandum and, as appropriate, notifies the charging parties. If the justification package is approved, CRT notifies the defendant in writing of intent to file suit.

Figure IV-1 illustrates the general internal process followed when a section receives a referral or allegation of discrimination, or initiates an investigation.

The AAG has regularly scheduled meetings with the ASG, Deputy AG, and the AG. At these meetings the AAG provides updates and advice on civil rights matters, and alerts those up the chain of command if there is a controversial matter in the pipeline of which they should be aware. The AAG may also seek advice on specific cases, but as stated earlier, the AAG has authority to approve cases.

Sometimes other members of the management team, in addition to the section chief, are involved in emails, phone calls, and meetings with the DAAG and AAG to discuss justification packages. Because the decision to approve or disapprove a litigation recommendation is made by management, case teams are not routinely included in these discussions. Currently, in the rare case that a litigation recommendation is not approved, section management notifies the case team. The study team was told that case teams are often excluded from discussions with the Office of the AAG regarding their cases, but sometimes learn about decisions by receiving a forwarded email thread containing the discussions. At other times, however, this information is not shared and the case teams receive no explanation of how or why decisions are made.

Figure IV-1. CRT's Decision-Making Process



Source: U.S. Government Accountability Office, *Civil Rights Division: Selection of Cases and Reasons Matters Were Closed* GAO/GGD-00-192. (Washington, D.C.: September 2000), 44.

Since 2000, matters and cases have been tracked using DOJ's Integrated Case Management System (ICM). The purpose of ICM is to improve senior management oversight of the work of the division by providing ready access to matter and case data needed to analyze performance; improve accountability; respond to inquiries from the OMB, Congress, auditors, and the public; and support budget justifications. ICM was also designed to help section managers oversee the work of attorneys by capturing and reporting on the level of effort that staff dedicate to investigations and other tasks,⁸⁴ such as conducting outreach to community groups.⁸⁵ The section chiefs indicated that ICM does not meet their needs, and therefore multiple sections utilize ancillary systems to track information on cases. Having an ancillary system interferes with the ability to aggregate data consistently across systems, and will likely require additional time and resources to collect and report information than when there is an integrated system.⁸⁶

The current enforcement decision-making process described here is very similar to the process that has been followed by the division since 1966 (there is a one-paragraph description in the division's procedural notebook issued that year that comports with the above-described process). However, this process was disrupted during the George W. Bush Administration (from approximately 2003-2006). According to current and former officials, Office of the AAG officials exercised significantly more control over the sections during this time period. The Office of the AAG, not the section chief, approved investigations; the Office of the AAG overruled the recommendations of the career attorneys more often; and the Office of the AAG even got involved in assigning cases to attorneys. Between 2003 and 2006, the Office of the AAG also set up some parallel structures, particularly in the Voting Section. For example, a unit was set up within the Voting Section that was staffed with career attorneys who reported directly to the Office of the AAG. In addition, during that period career attorneys were asked by political appointees to review section j-memos and make recommendations without the knowledge of the section chief.

LACK OF DIVISION DOCUMENTATION OF ENFORCEMENT DECISION-MAKING POLICIES AND PROCEDURES

There were limitations to the study team's ability to review the enforcement decision-making process because there are reportedly no written division policies, procedures, or other documents describing internal processes. In addition, due to the division's need to protect privileged law enforcement information and pursuant to DOJ's policies, the study

⁸⁴ U.S. Government Accountability Office, *U.S. Department of Justice: Information on Employment Litigation, Housing and Civil Enforcement, Voting, and Special Litigation Sections' Enforcement Efforts from Fiscal Years 2001-2007* GAO-10-75. (Washington, D.C.: October 2009), 15-16.

⁸⁵ U.S. Government Accountability Office, *Civil Rights Division Case Management System* GAO-09-938R. (Washington, D.C.: September 30, 2009), 6.

⁸⁶ U.S. Government Accountability Office, *U.S. Department of Justice: Opportunities Exist to Strengthen the Civil Rights Division's Ability to Manage and Report on Its Enforcement Efforts* GAO-10-256T. (Washington, D.C.: December 3, 2009), 13.

team did not have access to case files or other documents that would have shed light on how the process works in practice. However, in response to an Academy request, CRT drafted a confidential document that included a high-level description of how enforcement decisions are made. CRT officials also described the process in general terms in interviews. Information in interview notes and the document provided by CRT were compared to the process described in a Government Accountability Office (GAO) study of four CRT sections that was carried out in 2000, which provides a detailed description of the steps in the enforcement decision-making process.⁸⁷ Although the GAO report provided more detail than was provided to the study team, the comparison did not reveal any changes in the process since 2000. Therefore, the description of the process in the previous section is largely a summary of what appears in the GAO report, with some additional information supplied by interview notes.

CRT's lack of publicly documented procedures does not appear to be the norm for the department. For example, other litigating divisions (tax, civil, etc.) have a chapter on procedures in their Resource Manuals included in the *United States Attorneys' Manual* (USAM), which is publicly available on DOJ's website. The level of detail and the types of procedures described varies by division, but the existing resource manuals of other litigating divisions provide an example of the type of information that should be included in CRT's procedures section of their Resource Manual. The Resource Manual for Title 8, the Civil Rights section of the USAM carries the notation "currently being revised."⁸⁸ In place of the Resource Manual, CRT, together with the Executive Office for United States Attorneys (EOUSA), developed *A Guide to Building an Effective Civil Rights Enforcement Practice in a U.S. Attorney's Office*, referred to as a "Tool Kit," in 2011. The 38-page Tool Kit is described in its introduction as providing information to U.S. Attorney's Offices (USAOs) on CRT's work and how USAOs can play a role in civil rights enforcement. In contrast to the detailed instructions to USAOs contained in the USAM, the Tool Kit includes information on each of CRT's sections, including the types of cases each section handles and how USAOs can participate; a list of organizations USAOs can contact for the purposes of conducting outreach; a list of training resources available; and a contact list for CRT's sections. The Tool Kit does not provide anywhere near the level of detail as the resource manuals for other DOJ litigating components, and is not publicly available. (CRT, in consultation with EOUSA, provided the study team with a redacted copy of the Tool Kit.)

Another example of a publicly available DOJ manual is *Federal Prosecution of Election Offenses*,⁸⁹ which is a procedures document for the Criminal Division's Public Integrity Section.⁹⁰ This 327-page manual discusses types of election crimes; the statutes that govern them; the approach to enforcement, including—at a high level—issues to consider in

⁸⁷ U.S. Government Accountability Office, *Civil Rights Division: Selection of Cases*, 41-45.

⁸⁸ *Civil Rights Resource Manual*. U.S. Department of Justice.

<http://www.justice.gov/usao/eousa/foia_reading_room/usam/title8/cvr00000.htm>.

⁸⁹ U.S. Department of Justice, *Federal Prosecution of Election Offenses (Seventh Edition)*. By Craig C. Donsanto and Nancy L. Simmons. (Washington, D.C.: May 2007; Revised August 2007).

⁹⁰ The Public Integrity Section is responsible for prosecuting federal election offenses that do not involve civil rights violations.

evaluating allegations and conducting investigations; and sentencing following convictions. The document is prominently posted on the section's home page.

In addition, one of CRT's own sections, the Federal Coordination and Compliance Section, has two legal manuals (both dated January 11, 2001) covering Titles IX and VI on their website's publications page. These manuals primarily provide an overview of the statutes, as well as legislative histories. However, the 129-page Title VI manual also describes the procedures for investigating and resolving complaints.⁹¹

While there are no written division policies that document the process described above, there are some procedural memos affecting the work of specific sections. For example, the Employment Litigation and Housing and Civil Enforcement sections have written policies in place on which decisions are made by the section chief and which decisions require Office of the AAG approval. The roles and responsibilities of the sections versus the Office of the AAG were negotiated between the sections and former AAG Perez.

In another example, the Office of Special Counsel for Immigration-Related Unfair Employment Practices has an enforcement manual and written protocols internal to the section, including a Memorandum on "OSC Assignment and Review Practices." In addition to outlining the section's assignment policy, the memo also provides direction on deadlines, the review process, and contents of settlement and suit packages.

In 2011, AAG Perez issued a memorandum that established a detailed policy for all Voting Rights Act Section 5 matters (preclearance of voting changes, which is no longer applicable post-*Shelby*) requiring a decision by the AAG. The policy covered the timing of the submission of the recommendation to the Office of the AAG, a brief description of and outline for the recommendation memorandum, a list of standard attachments, and actions to be taken after the AAG returned a signed memo to the Voting Section. In addition, the section chief and deputy chief were each required to indicate if they agreed or disagreed with the recommendation, and all career staff who worked on the submission had the opportunity to state whether or not they agreed with the submission and why. Moreover, CRT leadership was required to provide a written explanation if it disagreed with a staff recommendation. In congressional testimony, AAG Perez described this policy as reestablishing a practice that had been in place up until 2005, when the process was changed by the previous administration.

The lack of documentation of division and most section policies and procedures for the enforcement decision-making process and roles and responsibilities of career and political staff poses a number of problems for the division. First, it is impossible to evaluate whether the practices being followed include the necessary checks and balances to mitigate the possibility of bias and manipulation. It is also impossible to evaluate to what extent a

⁹¹ U.S. Department of Justice, Civil Rights Division, *Title VI Legal Manual*. (Washington, DC: January 11, 2001); U.S. Department of Justice, Civil Rights Division, *Title IX Legal Manual*. (Washington, DC: January 11, 2001).

particular practice conforms to the long established “policy” and what the division is trying to accomplish. Validating internal policies and processes can help build public (and employee) trust that civil rights laws are being enforced fairly and impartially. In addition, as evidenced by practices introduced between 2003 and 2006, the lack of written policies and procedures makes it easier for political appointees to disregard time-honored approaches and institute practices that can inject bias and threaten the integrity and accountability of the division.

THE EFFECTIVENESS AND INTEGRITY OF THE DIVISION DEPENDS ON MUTUAL TRUST AND OPEN COMMUNICATION BETWEEN POLITICAL APPOINTEES AND CAREER CIVIL SERVANTS

While the tenure of senior CRT leadership is relatively short, section chiefs, deputy chiefs, and even senior attorneys tend to stay in their positions for decades. Career staff offers an enormous amount of institutional knowledge and have a long-term stake in the division. In addition, political appointees must rely on career staff to implement policy. Political appointees, on the other hand, can inject fresh perspectives and energy into the organization that may facilitate rethinking of substantive positions and organizational structure. They also wield clout within the department, as well as externally. The sheer volume of work, as well as the need for expertise and maintenance of credibility with the courts and Congress, point to the need for collaborative decision-making, involving career and non-career staff. Even where there are disagreements on policies and approaches, career and non-career officials usually share a common commitment to enforcement of civil rights laws.⁹²

The challenge is configuring an inclusive working relationship between career and non-career staff in a way that promotes communication and cooperation to achieve shared division and department goals. This requires building trust between career and non-career staff, acknowledging the legitimate concerns of each other, and drawing on each other’s strengths to produce proper restraint—checks and balances—in setting law enforcement policy.⁹³ In other words, “cooperation doesn’t mean agreement, it means working together to advance the greater good...”⁹⁴

As is the case government-wide, career staff must have confidence that they will not be punished for expressing their views to a political appointee, and political appointees need to listen to the career staff. Otherwise, they risk becoming insulated from the range of information and views needed to make wise choices. Ultimately, political appointees make decisions, but involvement of career staff in decision-making discussions lends legitimacy to the decisions and spurs the staff to accept those decisions, provided plausible legal arguments were delineated to support it.⁹⁵ In the end, the career staff may not fully agree

⁹² Landsberg, *Enforcing Civil Rights*, 164.

⁹³ *Ibid.*, 170.

⁹⁴ Simon, *Leaders Eat Last*, 164.

⁹⁵ Landsberg, *Enforcing Civil Rights*, 167.

with the position, but will likely defend it because they understand the rationale and appreciate that the process for arriving at it was fair.

This type of communication between non-career and career staff has been considered a “lynchpin to the effective operation of the division for decades.”⁹⁶ During the timeframe of the Academy’s review (2000 to present), there were periods where communication between the non-career staff in the Office of the AAG and career staff was limited. This occurred during the George W. Bush Administration,⁹⁷ although concerns were also raised as the Obama Administration took over the helm of CRT. Communication between division leaders and section managers did increase under AAG Perez, but more can be done to provide case teams an opportunity to participate in discussions regarding their cases.⁹⁸ Excluding case teams unnecessarily from these discussions negatively affects morale. Furthermore, if a decision is made that they do not agree with, and no legal or other justification is offered, employees are more likely to ascribe political considerations to the decision, and are more likely to engage in inappropriate behaviors such as the unauthorized disclosure of information.

CRT’S FLUID ORGANIZATIONAL STRUCTURE AND LEADERSHIP TURNOVER IN THE OFFICE OF THE AAG IMPACT THE DECISION-MAKING PROCESS

A management team of career staff and political appointees in the Office of the AAG reviews the work of the sections. All of the DAAGs (currently two political and two career) perform a reviewing role, and some Senior Counsel (a mix of political and career positions) also review sections. Originally, all the DAAGs were career positions; they did not become primarily politically appointed positions until the Reagan Administration. The DAAG position also came to be seen as a stepping stone to higher office, resulting in frequent turnover and DAAGs not staying long enough to leave a lasting mark.⁹⁹ This is not unique in the federal government, where political appointees have an average tenure of 18-24 months.¹⁰⁰ Currently, two DAAGs are on loan from universities, and multiple Office of the AAG staff are either detailees to the Office of the AAG or are on details elsewhere.

Vacancies in the Office of the AAG tend to precipitate changes in organizational reporting structures and the reallocation of resources. Understandably, the expertise of an incoming DAAG is considered when assigning sections to reviewers. However, this leads to shuffling the responsibilities among the DAAGs, which can be disruptive to section management. Also, as reassignments occur, situations arise where a newly assigned reviewer may not be familiar with the laws a section enforces. It then becomes the responsibility of the section

⁹⁶ House, *Civil Rights Division of the Department of Justice*, 111th Cong., 1st sess., 2009, H. Doc. 111-81.

⁹⁷ Interviews with former and current CRT officials.

⁹⁸ House, *Civil Rights Division*.

⁹⁹ Landsberg, *Enforcing Civil Rights*, 112.

¹⁰⁰ Neal, Jeff. “Are New Political Appointees Ready to Govern?” Federal Government HR and Management News and Insight. 5 Aug. 2014. 2 Nov. 2014 <[http:// www.chiefhro.com/tag/political-appointee](http://www.chiefhro.com/tag/political-appointee)>.

chiefs to bring reviewers quickly up to speed, which can be labor intensive. Some sections may experience multiple changes in DAAGs in relatively short periods of time (one section has had three reviewers in eight months), with each having different priorities, expectations, and processes, and exercising different levels of review. As a result, situations may arise where the section chief is unclear on priorities and what the reviewer does and does not need to see. Moreover, the Office of the AAG reviewer may not necessarily be the Section Chief's rating official. This can occur where a GS-15 on detail to the Office of the AAG reviews the work of an SES section chief but cannot rate his/her performance because the SES official is a higher grade than the reviewer.

The instability of division leadership has been compounded by frequent and, occasionally, long periods without a permanent AAG because of political opposition to the nominees.¹⁰¹ For example, there have been three acting AAGs since July 2013. Under the Vacancy Act, the Acting AAG position is filled by the person in the Principal DAAG role. The Acting AAG therefore plays a dual role as both acting DAAG and AAG. In effect, there is no one dedicated to the principal DAAG role when there is an acting AAG.

"Sub-cabinet level agencies such as the Civil Rights Division are hurt every day that they have to operate without a presidential appointee."¹⁰² Acting AAGs often don't have the clout within DOJ or Congress that confirmed appointees have. People within and outside the agency, and often the acting incumbents, view individuals serving as acting political appointees as "placeholders" or "caretakers," which means that important decisions regarding priorities and policy are deferred.

STRATEGIC PLANNING IS NOT CONDUCTED SYSTEMATICALLY AND PRIORITIES ARE NOT DOCUMENTED

The DOJ Strategic Plan for Fiscal Years 2014-2018 sets out the priorities of the department. CRT's responsibilities fall under Strategic Goal 2: "Prevent Crime, Protect the Rights of the American People, and Enforce Federal Law," specifically under strategic Objective 2.5: "Promote and protect American civil rights by preventing and prosecuting discriminatory practices." The department's civil rights priorities include the following:

- Combat discriminatory lending and ensure fair housing.
- Investigate and prosecute hate crimes.
- Ensure voting rights (Section 2 enforcement is mentioned as a particularly high priority).
- Fight employment discrimination.
- Protect the rights of persons with disabilities.
- Protect religious liberty.
- Address education discrimination and desegregation.

¹⁰¹ Turner, James P. "Used and Abused: The Civil Rights Division." *James P. Turner's page* (1997): 25 pars. 22 Sep. 2014 < <http://www.turnerhome.org/jpt/971214-wp-jpt.html>>.

¹⁰² Ibid.

During the time of the Academy's review, the CRT Office of the AAG did not conduct comprehensive, CRT-wide strategic planning (although "mini" strategic planning sessions, reportedly, have been held when there are changes in personnel to determine optimal allocation of resources). We were told that the AAG communicates division priorities that are based on the Attorney General's priorities to the DAAGs in meetings, and the DAAGs in turn orally communicate those priorities to the sections.

At the section level, the process for conducting strategic planning and setting priorities is inconsistent. Most, but not all, sections engage in some sort of strategic planning. And, among those sections that do strategic planning, the frequency, process, and level of staff involvement differ greatly. In some sections, priorities are set by the section chief with input from the management team. In others, individual trial attorneys conduct research and may make suggestions for areas to pursue. In still others, dedicated meetings are held with all attorneys (and, in at least one section, with the PASS staff too) to discuss and determine priorities.

A documented methodology for strategic planning would provide some consistency across the division on how priorities are set, as well as help the division and sections systematically analyze and explain the rationale for priorities. For example, there are a number of sources of data, such as FBI and Census Bureau statistics, that could be used to determine changes in demographics and occurrence of civil rights crimes. In addition, CRT has in-house resources that could be relied upon, including historians, geographers, and social statisticians.

The role of the Office of the AAG in priority-setting also varies. For some sections, priorities are determined within the section and the Office of the AAG is informed; some of these sections seek approval of the Office of the AAG once the priorities have been developed. Other sections have more of an iterative process that includes internal section discussions and discussions with the Office of the AAG. Still other sections indicated that priorities are set on a "case-by-case basis." While the Office of the AAG is involved to some extent in setting section priorities for all sections, none of the sections reported that their priorities were dictated by the Office of the AAG.

Most sections do not document the results of strategic planning, including section priorities. Section chiefs reported that they had been advised not to put priorities in writing due to concerns that they might be FOIA-able or lead to leaks of protected information. Other concerns expressed included the potential for revealing litigation strategy and inviting external criticism by Congress or other stakeholders. The criticism could arise based on the nature of the priorities or the cases CRT chooses to pursue being seen as inconsistent with those priorities. Current and former CRT officials from both parties specifically characterized the lack of documentation as a conscious decision based on legal, policy, and related considerations.

Lack of documentation of priorities, however, may lead to cases where employees may not fully understand what the priorities of the section are, how they were determined, or how their work supports them. It can also result in the staff putting their own interpretation on

the priorities that may or may not be accurate. For example, some former employees indicated that attorneys learned about section priorities by comparing the cases in their dockets.

There is a direct link between employee satisfaction and understanding how the individual's work contributes to an organization's mission; lack of documentation and explanation can affect morale and performance. Results from recent Federal Employee Viewpoint Surveys, as well as the Academy-administered survey, indicate that the majority of CRT staff believe they understand how their work relates to agency goals and priorities. They are considerably less satisfied with managers' communication of the goals and priorities and managers' review and evaluation of CRT progress in meetings goals and objectives. On the Academy survey 25 percent of the staff responding selected "no basis to judge" when answering the latter question on managers' review and evaluation in meeting goals—and in some individual sections, staff response on this same question was as high as 42.1 percent indicating they have no basis to judge. It is the lack of documentation of priorities that makes it difficult for the division and the sections to evaluate progress toward meeting DOJ strategic goals and objectives. Instead, progress is measured in terms of output (number of cases) rather than impact.¹⁰³

One of the obstacles to documenting priorities appears to be CRT's interpretation of what "priority" means in the context of strategic planning. Division priorities should link to the Attorney General's priorities as stated in the department's strategic plan. They should be more detailed than the Attorney General's priorities, but it is not necessary to provide a level of detail that would divulge litigative strategy. In addition, strategically identifying priorities does not mean that anything that is not a priority will not be addressed. It simply means that while the division will strive to enforce all laws, to be maximally effective the division must be strategic in how it allocates limited resources.

Documenting and publicizing DOJ civil rights priorities is not unprecedented. For example, the Offices of the United States Attorneys webpage¹⁰⁴ on DOJ's website lists ten priority areas, one of which is civil rights. The website explains that these priority areas were established to create uniform policies and share information. Each priority area has key priorities associated with it. The key priorities for civil rights are hate crimes, disability rights, human trafficking, fair housing, and employment. Background and rationale are provided for the priorities (e.g., an issue may be a priority based on data demonstrating the scope of the problem).

¹⁰³ See, for example, U.S. Department of Justice, *U.S. Department of Justice, Civil Rights Division: Accomplishments, 2009-2012*. (Washington, D.C.: 2012).

¹⁰⁴ *Civil Rights: Key Priorities*. U.S. Department of Justice. <http://www.justice.gov/usao/briefing_room/crt/index.htm>.

PANEL RECOMMENDATION 4.1

Objective: To strengthen and demonstrate the integrity of CRT's enforcement decision-making processes, improve accountability, and minimize the disruption to sections caused by high turnover among Office of the AAG reviewers.

Recommendation: CRT should produce written policies on (1) the roles and responsibilities of career and non-career staff, (2) internal processes and criteria—at a high level—used to evaluate allegations to investigate and cases to pursue, and (3) how case teams provide input into the decision-making process (similar to the process that was in place for Section 5 preclearance decisions), and when case teams should be included in discussions regarding their cases. The division should also develop and publish procedures manuals similar to the Resource Manuals of other components and the Public Integrity Section's enforcement manual for election offenses. Policies and processes should be publicly available, to the extent possible.

Implementation Steps:

- *Convene a working group that includes division leadership and career staff from the various sections to draft written policies and procedures that include internal checks and balances to prevent bias and manipulation.*
- *Solicit input from staff on the draft policies and procedures.*
- *Make policies and procedures publicly available on CRT's website and in the United States Attorneys' Manual.*

PANEL RECOMMENDATION 4.2

Objective: To ensure CRT is effectively, efficiently, and strategically addressing the most pressing civil rights issues; to convey to the public, Congress, and CRT employees what the division is doing and why; and to provide CRT with a method for evaluating progress.

Recommendation: CRT should engage in strategic planning, following GPRA and DOJ internal guidelines.

Implementation Steps

- *Engage in strategic planning at the division level by including Office of the AAG staff and section leadership, inviting input from section staff, and involving relevant DOJ officials on the resultant draft strategic plan.*
- *Engage in strategic planning at the section level to develop strategic plans that align with the division strategic plan. All section staff should be involved in developing the strategic plan to promote support and buy-in and leadership should be involved to lend credibility to the plans.*
- *Rely on in-house statisticians and other resources to create stronger linkages between emerging problems and division and section priorities.*

COMMUNICATION PRACTICES

A Government-Wide Call for Transparency in Executive Agency Communications

On the day following his inauguration, President Obama issued a memorandum to all executive departments and agencies directing agency heads to commit to “creating an unprecedented level of openness in government” and setting forth three principles to guide their efforts:¹⁰⁵

- **Government should be transparent:** Transparency promotes accountability and provides information to citizens about what their government is doing.
- **Government should be participatory:** Public engagement enhances the government’s effectiveness and improves the quality of its decisions.
- **Government should be collaborative:** Collaboration actively engages Americans in the work of their government.

The President tasked the Director, Office of Management and Budget (OMB) to issue a directive instructing agencies to implement the principles delineated in the memorandum. On December 8, 2009, the OMB Director issued the *Open Government Directive* noting that “the three principles of transparency, participation, and collaboration form the cornerstone of an open government” and establishing deadlines for action on four objectives:

- Publish government information online.
- Improve the quality of government information.
- Create and institutionalize a culture of open government.
- Create an enabling policy framework for open government.

It concluded with a caveat—“nothing in this Directive shall be construed to suggest that the presumption of openness precludes the legitimate protection of information whose release would threaten national security, invade personal privacy, breach confidentiality, or damage other genuinely compelling interests.”

The goals and elements of the open government initiative highlight the importance of effective external communication with the public that government agencies service. Effective communication approaches enable delivery of a clear and consistent agency vision and promote accountability. Conversely, ineffective communication practices are missed opportunities for the agency to educate the public on its programs, plans, and activities and to demonstrate their effectiveness. They also can lead to misperceptions and misinterpretations of agency actions both in terms of intent and results.

Department of Justice and CRT Communication Policies Create Challenges

¹⁰⁵ The White House, *Memorandum for the Heads of Executive Departments and Agencies on Transparency and Open Government*. (Washington, D.C.: 2009).

In June 2014, DOJ issued an updated open government plan affirming its commitment to the principles of transparency, participation, and collaboration. In the plan, the department asserts that those principles are central to achieving the DOJ mission but also points out that by necessity DOJ must balance a host of competing interests that may prevent disclosure of information. It is this tension between push (open/transparent) and pull (privileged/predecisional/protected) that influences CRT's communication strategy and decisions on what information is, and is not, shared publicly—or even internally across the division and department. This push-pull requires CRT vigilance in evaluating and balancing information dissemination consistent with DOJ's overall commitment to transparency. Not surprisingly—given the sensitivity of, and often emotional response to, civil rights issues and CRT enforcement actions—when information is withheld, it creates a conflict with public and stakeholder expectations, often leading to charges of political influence in decision-making.

CRT's Current Approaches for Disseminating Information

CRT uses a wide variety of platforms to inform and educate the general public and those interested in civil rights issues. These include the departmental website (www.justice.gov) and CRT dedicated webpages, social media, the annual CRT accomplishments report, DOJ's Strategic Plan, press releases, Attorney General and CRT senior officials' speeches, conference presentations, targeted outreach, and issue-specific publications and newsletters.

While the primary responsibility for producing and disseminating information about CRT rests with division management, DOJ's Office of Public Affairs (OPA) is responsible for informing the public and the media of department activities and the priorities and policies of the Attorney General and the President with regard to law enforcement and legal affairs. OPA is also responsible for ensuring that all applicable laws, regulations, and policies involving the release of information to the public are followed. This helps ensure that maximum disclosure is made without jeopardizing investigations and prosecutions, violating the rights of individuals, or compromising national security interests. An OPA public affairs specialist is specifically assigned to CRT and works with CRT section staff to facilitate publicizing the activities and accomplishments of the division. This is important given the Attorney General's expressed interest in civil rights matters.

CRT's Website Needs Attention to Keep It Current and Improve the Public's Access to Information

The most comprehensive and easily accessible public resource for information on the division's work, the sections, and working groups (Indian, LGBTI, National Origin) is found on the CRT-dedicated web pages located on the DOJ website. In addition to links to each of the sections, the CRT home page provides general information, including division news; featured items; press releases; publications (reports, brochures, etc.); employment, FOIA, and contact information; links to sign up for email updates and news releases; and instructions on how to raise a complaint. Included in the links to popular and common social media outlets (Twitter, YouTube, and Facebook) is MySpace. Facebook long ago

supplanted MySpace as a widely used social media communications tool. In addition, the link is outdated—it takes you to “page not found.”

Each section maintains its own section-specific page on the CRT website. What is included varies considerably in scope, quality, and quantity from section to section; all include information on jurisdictional responsibilities and issues, and most include section news and featured items (speeches, recent decisions). In addition, litigating sections commonly include information and links to statutes, executive orders, and partner agencies (federal, state, and municipal), as well as links to section contact information. The Voting Section also provides helpful Frequently Asked Questions (FAQs).

Because each section is responsible for the care and feeding of its webpages, there is a great deal of inconsistency across the section webpages in terms of quality and quantity. It is not uncommon to find what appears to be dated information that leads one to wonder about more recent activity. For example, on the Voting Section site, the entry under “voting news” is the *Shelby County* Decision, dated 6/23/13 and under “recent activity,” the March 14, 2014, *U.S. v. the State of Alabama* case. In addition, what is clearly a default script, “December 31, 1969” is often found under “section news.” And, links to other websites may be broken. For example, the Disability Rights Section has relatively little information on their webpage and the links to “disability online news,” “guide to disability rights,” and “technical assistance publications” are broken. More significantly, a link to ADA.gov, a webpage that the Disability Rights Section hosts and maintains does not appear on the section page. Instead, the link is found on CRT’s homepage, with no explanatory information or reference to disability rights. Yet information found on ADA.gov is robust and should be showcased rather than hidden.

Community Outreach as a Communication Tool

Another mechanism CRT uses to communicate is through outreach and community engagement. Outreach efforts have included public speaking engagements by the Attorney General and CRT executives, attendance at relevant conferences, participation in civil rights working groups, solicitation of information regarding issues of interest to specific groups, expanded use of social media to disseminate information, and production of issue-specific brochures and pamphlets designed for certain stakeholder groups.

Outreach is considered crucial to the work of the division. In a July 10, 2012 memorandum, then AAG Perez stated that outreach is a critical tool “to educate people and communities about their rights; to deter discriminatory conduct; to inform (CRT) enforcement efforts; and to shape the remedies (CRT) pursues.” The memorandum also defined the benefits of outreach to CRT staff, including increasing awareness of the scope of harm caused by civil rights violations and gaining a better sense of community concerns and challenges. In performing outreach, however, staff need to apply the applicable rules of professional responsibility and confidentiality of internal DOJ communication and deliberations. To ensure that staff possessed the skills to effectively carry out outreach, the Professional Development Office (PDO) was tasked with providing training on ethics, professional responsibility, and media issues related to outreach efforts.

The importance of outreach to stakeholders in achieving CRT's mission is enhanced by the relationships most of CRT leadership and managers have with organizations and groups interested in civil rights issues. Many of the division leaders and section chiefs have worked for, or with, prominent civil rights organizations and/or academic institutions where they focused on civil rights related issues.

The study team found that across the division, there was an emphasis on maintaining viable and productive relationships with stakeholders. This has enhanced the ability to expeditiously identify potential cases and issues, minimize misperceptions, and improve the effectiveness and efficiency of section performance. It has also aided in the development of new policies—a benefit that the U.S. Commission on Civil Rights identified and recommended in 2002.

The primary criticisms of this approach to outreach come from those who say that the relationship between CRT and certain stakeholder—i.e., advocacy—groups is too close; the implication being that CRT is improperly using its authority to favor a partisan agenda. This tenuous balancing of CRT's operational needs—and statutory requirement—for stakeholder involvement with the ethical requirement to maintain “arms-length” relationships is an ongoing challenge.

CURRENT APPROACHES TO COMMUNICATION ARE A DISSERVICE TO THE DIVISION

As noted earlier, CRT does not have a strategic plan and priorities are by design not documented. As a result, there is little information readily accessible to external audiences regarding specific division or section priorities, policies, and procedures, precluding a clear and comprehensive understanding of what the division is doing and why. For example, the 2013 Civil Rights Accomplishment Report lists individual cases and matters that were successfully resolved in topical categories, but are not clearly tied to specific sections. This is consistent with CRT's approach of focusing communication on the outcomes of specific cases rather than the impact of the division's work on advancing civil rights. Without notation of organizational priorities, it is difficult to assess how successful the sections were in addressing issues. Lack of documentation of priorities in a manner that is transparent to the public, Congress, and external stakeholders can affect public confidence. It can also lead to questions as to whether civil rights laws are being enforced fairly and impartially and create opportunity for uninformed speculation concerning division activities. Recognition of the importance of civil rights matters to the American people should compel the department and division to provide a clear, cogent basis for prerogatives, initiatives, and priorities and importantly, be willing to defend its decisions.

The need to formally establish specific civil rights goals and objectives and subsequently advise the public predates the current Administration's open government directive. The

U.S. Commission on Civil Rights published a report in 2002¹⁰⁶ that provided a framework for federal civil rights enforcement. Included in the report's recommendations was the instruction to include civil rights goals and objectives in the strategic plans of all federal agencies. "These objectives should specify the agency's responsibilities for enforcing all applicable civil rights statutes and specify goals, performance measures, and timeframes for fulfilling the responsibilities of each statute as well as the resources necessary to do so." Other recommendations directed, in part, that agencies improve education and outreach programs "...that designate the specific responsibilities of individual agency components, establish clear and realistic goals and objectives, and hold components accountable for reaching them." Further, the commission recommended that agencies ensure that civil rights information be readily available to all interested parties, including the regular and timely dissemination of all policy to appropriate audiences.

As a standard practice—and as noted earlier—the division's and department's default position to refrain from public disclosure of specific priorities and initiatives is long standing. Current managers told us that they are reluctant to share priorities more transparently. They indicated that they did not understand how publicizing priorities would be helpful to the public—although some saw value in documenting priorities for internal purposes to ensure employees have a clear understanding of priorities for the work at hand. These managers believe that in order to make the priorities public based on their understanding of current DOJ guidance on disclosing information, the priorities would be vague, by necessity—and therefore not particularly useful.

A common refrain was that priorities could be detected through analysis of cases and matters that have been resolved; public announcements and speeches by the Attorney General and CRT officials; and accomplishment reports. Reviewing cases that have been filed or closed provides a backward and not a prospective look into division's priorities. Cases sometimes take years of investigation before they are filed, and then can require months or years to resolve. Forward-looking priorities could be very different from those suggested by the history of cases, especially if the AAG, DAAG, or section leadership has changed recently.

Former senior officials and managers with whom we spoke—and from all sides of the political spectrum—were largely in agreement that in theory, CRT should publicly identify priorities and openly share related information. But, they were also quick to point out that, based on their observations, providing specific and detailed information on CRT initiatives and priorities would provoke controversy and, ultimately, would likely be counterproductive. Among the concerns raised were increased and potentially confrontational congressional scrutiny; alienation of certain stakeholder groups and constituencies; disclosure of enforcement and litigation strategies; and the perception that lower priority matters were not of importance.

¹⁰⁶ U.S. Commission on Civil Rights, *Ten-Year Check-Up: Have Federal Agencies Responded to Civil Rights Recommendations? Volume I: A Blueprint for Civil Rights Enforcement* (Washington, D.C.: September 2002), 47.

However, several former high-ranking officials stated that despite the inherent challenges and potential for fallout from publicly announcing priorities and strategies, CRT should be more open. These officials noted that, if the administration and the agency believe issues are important enough to be priorities, the agency should be willing to openly explain and defend its position.

Today, the environment in which every government agency operates is highly dynamic—communications devices are at the public’s fingertips and information flow can be instantaneous. It is incumbent upon agencies to adjust their information dissemination practices to meet these new requirements. For CRT, this means re-evaluating communication and information sharing practices and moving to a more proactive rather than reactive posture. Shifting to a more transparent communication approach would not negate the safeguards in place regarding privileged and predecisional protected information. In those instances where information needs to be protected, it can be generalized to permit dissemination while providing greater clarity on CRT initiatives. Effectively “telling the story”—who CRT is and what it does in terms of the breadth and depth of the division’s and sections’ work and priorities—and linking to the DOJ strategic plan would in the long run help the division to better manage communication and the public’s, as well as Congress’ and stakeholder groups’, expectations. It would also minimize perceptions and speculation that the division’s actions are motivated by politics and partisanship.

PANEL RECOMMENDATION 4.3

Purpose: To more effectively communicate and provide the American people with a clear, cogent basis for specific prerogatives, initiatives, and priorities.

Recommendation: CRT should engage in more open and transparent communication. To do so requires a delicate balance between what can be communicated more openly, consistent with the open government initiative, and what rightly needs to be protected.

Implementation Steps:

- *Reevaluate CRT policies and practices on protecting information (consulting with DOJ, as appropriate) with an eye toward making more information publicly available and documenting priorities and initiatives.*
- *Seek OPA assistance in identifying new and innovative ways of publicizing the work and accomplishments of CRT and its sections, particularly where identified segments of society are uninformed, new initiatives have been established, and/or collaboration between CRT and other government agencies or private organizations has produced significant results.*

PANEL RECOMMENDATION 4.4

Purpose: To ensure that CRT's website serves as an effective vehicle for communicating the divisions' goals, priorities, responsibilities, organization, and accomplishments and to educate the public on the division's efforts to protect the civil rights of all Americans.

Recommendation: CRT should make significant improvements to the division and section web presence to ensure that information is useful, current, and easy to find.

Implementation Steps:

- *Elevate website maintenance as a priority by designating a CRT "owner" who will oversee website development and maintenance and ensure the information is up-to-date and links are working.*
- *Convene a CRT working group, comprising volunteers from the sections, to review the existing websites and make recommendations for improvements. As part of this effort, conduct a usability review to assess functionality and ease of access to information.*
- *Consult with OPA to develop effective website content delivery.*

CHAPTER FIVE: OPERATIONAL MANAGEMENT—LEADING CRT

Questions two through four of the Academy's charge relate to "people issues," including teamwork, professionalism, unauthorized disclosure of information, and hiring. Specifically:

2. Have the steps taken by the division and section to foster and maintain a professional, collegial and teamwork-oriented work environment in the Voting Section adequately responded to the issues related to harassment, retaliation, unprofessionalism, and work environment identified in the OIG's 2013 Report? Are there additional steps that should be taken to further foster and maintain a professional, collegial, and teamwork-oriented work environment in the section or the division?
3. Are there steps that the division can and should take to stop or prevent the unauthorized disclosure of non-public information by section personnel?
4. Are there additional modifications that could be made to the division's hiring policies and practices to better ensure merit-based hiring consistent with the Civil Service Reform Act's merit system principles and prohibited personnel practices?

To answer these questions, the Panel and study team analyzed CRT's operational management and human resource policies and practices, reviewed the results of recent Federal Employee Viewpoint Surveys, and conducted an Academy-administered survey of CRT staff.

HUMAN RESOURCE MANAGEMENT

Effectively managing human resources is critical to an organization's success. Among the enablers of organizational performance—people, process, and technology—people are the most important element as they define an organization's character, affect its ability to perform, represent the organization's knowledge base, and most often constitute the largest budgetary investment.

Over the years, DOJ has examined the department's human resource management. In 2002, DOJ contracted with KPMG Consulting and Taylor Cox & Associates to analyze its human resources management practices for their effect on the department's ability to hire and retain a diverse attorney workforce. The resultant report issued in June 2002 noted that the department suffers from an inadequate human resources management infrastructure. It also found section chiefs play an extremely critical role in diversity and human resources given their authority in recruitment, hiring, promotion, performance appraisal, case assignment, and career development.

In conducting our assessment of CRT policies and practices, the study team reviewed applicable CRT human resource practices. What we found is not unlike the results of the 2002 study—DOJ and the human resource infrastructure are diffuse. For CRT, human resource support responsibilities and authorities are dispersed among multiple CRT and

DOJ offices. In addition, the section chiefs have a great deal of autonomy in how they manage their enforcement work and their people resources.

AN OVERALL AND SUSTAINED LEADERSHIP FOCUS ON OPERATIONAL MANAGEMENT IS LACKING

No one official in the Office of the AAG is currently responsible for division operational management. Division leadership's primary focus is on individual cases and specific policy and legal issues. Generally, political appointees are subject matter experts who do not necessarily have management/leadership or government experience. As they are responsible for ensuring that the administration's and department's priorities are being implemented, it is appropriate for them to spend the majority of their time on legal issues and individual cases. In addition, the division enforces a large number of complicated statutes, leaving little time to concentrate on management.

The absence of division-wide position management charts and Office of the AAG and section organizational charts illustrates the fluidity of the organization and the lack of focus on management. (CRT did not have a current organizational chart until the study team drafted one for their review.) Across the board, operational management matters are not seen as a priority by senior leadership. Strategic planning is precipitated by personnel changes and focuses on how to allocate Office of the AAG resources and organize the work. Beyond annual reminders and occasional emails, leadership has not actively engaged in frequent, consistent communication with staff on management issues, such as professional conduct, consequences for misconduct, and new policies. And, efforts in employee engagement are largely considered within the purview of the section management teams.

Similarly, oversight of the sections is primarily focused on the case and policy work—that is, individual cases and other matters that need approval for initiation or resolution. We were told that Reviewers (DAAGs and counsels in the Office of the AAG) typically meet with section chiefs every two weeks to discuss active cases, investigations, settlement discussions, policy work, initiatives, and outreach. In addition, most DAAGs communicate by phone, in-person, and by email with section management on a daily basis. Discussions between section chiefs and reviewers in the Office of the AAG touch on management issues, including staffing, resources, morale, and quality of the section's work. There is also a standing monthly meeting that includes all of the section chiefs, reviewers, and the Acting AAG. Topics of discussion include legal and policy issues, cases, staffing, and budget.

All sections except Voting have monthly staff meetings. The primary focus of these meetings is case and decision updates. Some section chiefs reported discussing administrative issues, such as staffing and budget. New policies are sometimes discussed, but there is no indication that managers explicitly communicate management's commitment to implementation and enforcement of policies, or that other management issues are addressed. The Office of the AAG and section leadership appear to rely almost exclusively on email to communicate management policies and changes. Information is also posted to the CRT intranet, the Civil Rights Insider. While section management teams meet regularly (usually once per week), some members of the teams reported that the meetings

focus on legal issues and cases, and occasionally performance issues; other personnel, administrative, or management issues are rarely discussed. In some sections, even members of the management team do not have an opportunity to provide input on section policy changes.

Former AAG Perez, who came into what was widely described as a demoralized and dysfunctional division, is regarded as placing a greater emphasis on operational management issues, including employee engagement, than is typical of AAGs, at least in part because Attorney General Eric Holder viewed revitalizing and reenergizing CRT as a priority.¹⁰⁷ AAG Perez's experience as a career CRT attorney undoubtedly affected his management approach, as well. Initially there was some loss in momentum when AAG Perez left the division, partially because there has not been a confirmed AAG, but also because management practices are not institutionalized and are dependent on the individual leader. However, current leadership has reportedly refocused attention on operational management.

AAG Perez's first priority was restoring long-established practices that had been suspended during the previous administration, such as the hiring policy that was issued in January 2010. This policy restored hiring roles and responsibilities to career staff and required training on merit system principles and prohibited personnel practices for anyone involved in hiring. To restore confidence in the Voting Section that decisions regarding Section 5 of the Voting Rights Act were made in a fair and impartial manner, AAG Perez issued the January 2011 Section 5 policy (described in Chapter 4) that added transparency to the process and provided opportunities for case teams to share their opinions regarding recommendations.

Under AAG Perez, CRT also focused some effort on increased teambuilding, staff training, and employee engagement including, we were told, the first-ever CRT-wide staff meeting and a comments and suggestions program (available on the intranet, the Civil Rights Insider). And, a CRT Diversity Council was established in 2010 and became fully operational in January 2012, comprising representatives from management, line attorneys, professional and administrative support staff (PASS), and clerical staff to review programs and practices that impact diversity and inclusion and to make recommendations to further a culture of inclusion. AAG Perez also conducted listening sessions, where he would visit different sections to hear from staff, including some sessions focused on morale and open to non-supervisory staff only (known as skip level meetings).

AAG Perez also instituted an internally developed employee climate survey, augmenting the Federal Employee Viewpoint Survey, to gauge employee morale and identify issues related to leadership, management, and people issues, including performance and promotions. The Office of the AAG met with each section chief and talked about the results and potential improvements. In addition, after the first survey, a CRT town hall meeting

¹⁰⁷ Senate Committee on the Judiciary. *Oversight of the U.S. Department of Justice*, 111th Cong., 1st sess., 2009, S. Rept. J-111-63.

was held to discuss the results and proposals to address issues identified in the survey. In subsequent surveys, the expectation, we were told, was that section chiefs would follow through on addressing survey results with their staffs.

Although the last internal survey was in 2013, the suggestion program remains in place and the Office of the AAG has maintained an “open door” policy. Also, acting AAGs have attended section staff meetings and made other visits to sections to boost morale (for example, after the government shut-down). However, the CRT-wide meetings and listening sessions do not appear to have continued after AAG Perez’s departure.

AUTONOMY OF THE SECTIONS

Section chiefs have significant flexibility in managing their sections and have almost total control over operational management. Senior leadership believes that the section chiefs know best how to manage their sections on a day-to-day basis. Section managers decide if and when to have staff meetings, if there will be section-specific professional development opportunities and what they will be (e.g., IDPs, training, and informal sessions like brown bags), and if staff will be engaged and how. In this environment, some sections have implemented internal employee engagement and staff development efforts and actively addressed organizational and change management by instituting more innovative or leading management practices to fit their organization. Examples include:

- professional development initiatives, such as individual development plans (IDPs), mentoring, and section-specific orientation tool kits and training
- teamwork and morale-building efforts, such as employee-of-the-month and “shout-outs” about individual accomplishments to make people feel that their work is recognized by management and their peers; soliciting employee input on section priorities, policies, and assignments through working groups; holding routine monthly staff meetings and informal sessions to create a sense of community and share information; and setting up times for staff to drop by and raise issues with the section chief in a neutral setting
- engaging employees in strategic/strategy planning by establishing staff working groups and holding a 2-day section-wide planning meeting
- advertising all section cases so attorneys may express interest in the ones they would like to work on

However, consistency across the division is lacking. Successful practices are not shared systematically or institutionalized. Practices are largely dependent on the management style of the particular section chief, resulting in the likelihood that management improvements will not survive changes in section management. This, in turn, can cause organizational disruption and morale issues, as well as missed opportunities to sustain successful management practices.

A concerted effort by Office of the AAG leadership to promote uniformity across the division appears to be missing. The sections vary greatly in size, number and complexity of statutes they enforce, and in other ways that make a one-size-fits-all approach to management inadvisable. However, there are some essential leadership and operational management practices—especially in the areas of employee engagement—that are needed across the board to improve morale and teamwork. In addition, while section chiefs are formally evaluated on leadership and management competencies (e.g., leading change and leading people), the study team was told that senior leadership does not routinely discuss these issues with section chiefs, raising questions about how effectively section chiefs are held accountable for section management.

Over the past year or so, section chiefs (with the support of the Office of the AAG) have independently instituted regular monthly meetings. While these meetings are not focused on operational management, they do provide an opportunity for section chiefs to share management concerns and promising practices, which could help to promote uniformity in management practices and seed a culture that values operational management. However, simply sharing best practices is not enough; senior leadership support is needed to institutionalize successful practices.

HUMAN RESOURCES OFFICE PLAYS A SUBORDINATE ROLE RATHER THAN A LEAD ROLE IN HUMAN RESOURCES MANAGEMENT

Since 1998, CRT has had delegated personnel authority from DOJ. The human resources (HR) staff sits organizationally within CRT's Administrative Management Section. It is a small staff of about 10 who reportedly can be overwhelmed by fluctuations in the volume of work. For example, DOJ was under a hiring freeze from 2011 to February 2014, which limited the number of positions recruited to an "exception only" basis. When authority was granted to hire again, the HR staff, understandably, could not handle all the pent up demand for recruit actions. Currently, CRT is recruiting for three additional HR staff.

HR responsibilities include competitive service hiring for PASS and clerical staff, staffing, benefits, labor relations, time & attendance/payroll, and personnel processing. HR's authority and responsibilities, however, are diluted as different organizational components both within CRT (primarily, the Office of Employment Counsel and Professional Development Office) and DOJ maintain authorities over certain HR functions. Key among those functions is attorney hiring which is vested in a departmental office, the Office of Attorney Recruitment and Management (OARM). And, a fundamental HR function essentially missing from CRT's HR is employee relations. As a result, HR largely functions as a transaction processing and tracking unit. We were told that over time, as HR's staff dwindled due to a hiring freeze and as deficiencies or gaps in services from HR were identified, CRT leadership requested that OEC and PDO provide additional support to the division to cover gaps in HR services. Accordingly, these organizations assumed functions typical of an HR office.

To illustrate, in the performance management process, HR's role is largely confined to reviewing and tracking completed appraisals and overseeing the process from an administrative perspective. OEC led the effort to revise the performance appraisal system and develop the new performance appraisal manual and has a role in program execution. The study team was told that former AAG Perez directed OEC to provide support to section managers so that they could build the skills necessary to hold employees accountable for performance and conduct issues. Revising the performance appraisal system was a key step undertaken by OEC. Similarly, OEC has assumed the lead role in working with managers and HR staff on EEO laws and related issues and advising managers on the disciplinary process from both the conduct and performance management perspective. The staff of employment counsels provides advisory services to CRT managers and supervisors and also works with PDO in developing and providing supervisory, hiring, and EEO training. HR employee relations support is limited to serving as liaison with other departmental oversight offices and reviewing disciplinary action proposals and decision letters; it does not provide information to staff nor is it a partner to OEC in advising on disciplinary approaches. OEC has also taken on a role in the crafting of job opportunity announcements—typically an HR, rather than an employment counsel function—developing a template (that meets legal requirements) for sections to use when they recruit a position.

For employee development and learning, the PDO, established in the 2005-2006 timeframe, has the lead role. It too sits in the Office of the AAG and like OEC is a separate unit from HR. Since its inception, PDO has expanded its role and course offerings including leadership and supervisory training and content specific training for attorneys—and, more recently, hired a coordinator for PASS courses. PDO affords CRT the elements of a solid learning infrastructure to support employee development.

The HR authorities and functions that reside at the departmental level include:

- OARM—performs suitability reviews and approves all attorney hiring, handles recruitment for the Attorney Honors Program and intern programs, and serves as deciding authority in discipline involving suspensions of more than 14 days and removals
- Justice Management Division (JMD)—exercises overall oversight over DOJ HR and administers the DOJ Employee Assistance Program (EAP), workforce relations, and EEO programs
- Office of Professional Responsibility (OPR)—investigates allegations of attorney misconduct and recommends disciplinary action

Within this environment, section chiefs have considerable autonomy in how they manage. We repeatedly were told by CRT managers how helpful OEC has been to them as they deal with performance and conduct issues. On the other hand, frustration was expressed about HR support with respect to the recruitment and hiring process and in particular, on the time it takes to get a job opportunity announcement (JOA) posted and the lack of assistance

in the development of position descriptions (PDs) and job analyses, a necessary first step in developing a JOA.

HIRING POLICIES ARE CONSISTENT WITH MERIT PRINCIPLES, BUT ROUTINE ASSESSMENT OF IMPLEMENTATION PRACTICES SHOULD BE INSTITUTED

Merit system principles serve as the bedrock of the federal personnel system. The Civil Service Reform Act established federal merit systems along with governing principles for those systems—merit system principles and prohibited personnel practices—to promote a competent and effective workforce that serves the public interest.¹⁰⁸ Among these principles enumerated in law are the following:

- Recruitment should be from qualified individuals, from appropriate sources, to achieve a workforce reflective of all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills.
- All employees and applicants should receive fair and equitable treatment without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition.
- All employees should maintain high standards of integrity, conduct, and concern for public interest.
- Employees should be protected against arbitrary action, personal favoritism, or coercion for partisan purposes.

Prohibited personnel practices include violation of the merit system principles; discrimination against protected classes (race, color, religion, sex, national origin, age, and disability), marital status, or political affiliation; affording unauthorized preference or advantage to an employee or applicant; and retaliation for filing an appeal, complaint, or grievance, among others.

To address the issues enumerated in prior OIG reports (noted earlier) that identified specific instances of prohibited personnel practices involving political considerations in the attorney hiring process during the 2003-2006 timeframe, CRT commenced a focused division-wide effort. That effort, which continues to today, includes routinely updating human resource policies and processes on hiring, promotions, reassignments, details, awards, and adverse actions to communicate and reinforce to all staff the importance of merit principles and clearly setting forth what constitutes a prohibited personnel practice. Starting in 2007, the Assistant Attorney General for Civil Rights has annually distributed a memorandum to all staff affirming “that there would be no discrimination based on color, race, religion, national origin, political affiliation, marital status, disability, age, sex, sexual orientation,” to include personal favoritism, and leadership commitment that all personnel

¹⁰⁸ U.S. Merit Systems Protection Board, *Preserving the Integrity of the Federal Merit Systems: Understanding and Addressing Perceptions of Favoritism*. (Washington, D.C.: December 2013).

decisions will be consistent with the principles of fairness. More recently, responsibility for annually disseminating the memo has been assumed by Administrative Management. The information is also available on the CRT internal website—the Civil Rights Insider.

In terms of hiring processes, the Office of the AAG and a committee of career section managers revised the division’s internal and external hiring guidance and procedures for attorneys emphasizing federal merit principles and prohibited personnel practices—and stressing the need to be nonpartisan and nonpolitical in all recruitment and promotion activities. Efforts have largely focused on putting checks and balances in place. These include the following requirements:

- All hiring actions must be advertised, and a hiring checklist was created to ensure consistency across the division in hiring actions.
- All employees involved in the hiring process must attend mandatory training; refresher training is available annually and required, at a minimum, once every three years for those employees who participate in hiring committees and the interview and selection process. In addition to explaining CRT hiring program requirements and processes, the training includes competitive service hiring, EEO in the hiring process, Uniformed Services Employment and Reemployment Rights Act (USERRA), hiring people with disabilities, and diversity training.
- Line attorneys can be involved in the hiring process through participation in hiring committees, which assess and interview candidates; the section chief is the selecting official with final approval by the AAG.
- Prohibited personnel factors such as political affiliation may not be considered in selecting hiring committee members.

From our review of the hiring process, we found that the policies and procedures put in place are consistent with merit principles. In fact, CRT’s policies and processes are clearly defined. However, an organization can have solid standards and documented processes, but, even in these best of circumstances, can fail in practice. Once policies and processes are put in place, it is important to evaluate how they have been implemented and whether subsequent actions are consistent with those policies. Demonstrated leadership commitment to the policies and practices is critical.

Career attorney positions are what is known as excepted service, Schedule A appointments. Schedule A positions do not require open competition; that is, positions do not need to be advertised. This affords hiring officials a great deal of flexibility in the hiring process—but it can also set up potential for abuse. As career civil service appointments, however, merit systems principles and prohibited personnel practices apply to schedule A positions, as well as to the competitive service, Title 5 positions.

CRT PASS and clerical staff are hired through the competitive process using category ranking. In addition, there are Schedule C appointments that apply to political positions, which are not covered by civil service rules. Conversion of political to career positions must follow the “burrowing” rules put in place in 2009 by OPM to guard against improper

conversion of political appointees to career positions. OPM must approve all such conversions.

It is currently a DOJ policy that all applicants for positions must formally apply and all positions are advertised even though Schedule A does not require advertisement. CRT has required that all applicants apply for positions since the 2009 timeframe. During the mid-2000s, positions were commonly filled without advertisements, and section staff and leadership may not have been aware of hiring actions until a new employee appeared on the scene. This was a practice that led to abuses documented in OIG reports and in turn to the current requirement that positions be posted and all applicants submit an application.

Currently, announcements are posted on the DOJ/OARM website, as well as USAJOBS, and disseminated to a list of nationwide organizations, bar associations, and universities maintained by OARM. CRT uses a supplemental list, as well—the intent is to cast as wide a recruitment net as possible. CRT’s list contains some of the same universities and bar associations as OARM but also includes other organizations with an interest or experience in civil rights issues such as the American Foundation for the Blind, National Coalition on Health Care, and National College of District Attorneys. The CRT list can be added to as hiring managers identify additional groups for outreach; however, there does not appear to be a routine or systematic review of the list to ensure balance across constituencies and to eliminate redundancies with the OARM list.

CRT has delegated authority to handle the recruitment, hiring, and promotion process for experienced attorney positions, as well as all supervisory and managerial attorney positions, and for PASS and clerical staff. The Attorney Honors Program and intern programs are run by OARM, and all attorney hires must be sent to OARM for approval. However, OARM reviews solely for suitability (a character and conduct check that includes checking for misconduct, criminal conduct, intentional false statements, illegal drug use, etc.); it does not evaluate the qualifications of selected candidates, and instead relies on the hiring division to validate qualifications.

The study team reviewed past and current job opportunity announcements and found wide variation, particularly with respect to required and preferred qualifications that appear in the announcements. We also reviewed sample interview questions and once again found considerable variation. In the hiring process, section officials are expected to develop position descriptions (PDs), job analyses, and job opportunity announcements (JOAs) with advice and assistance from HR. HR staff posts the JOAs, conducts the qualification analyses for competitive service (PASS) positions, and the paperwork review for experienced attorney hire JOAs. The burden, however, is on section/hiring officials to do the substantive work for the actions. The result is inconsistency in JOA quality and interview questions across CRT. Consultative advice from HR is limited, and section managers have noted their need for greater help from HR. In part to address the inconsistency issue, OEC developed a JOA template for sections to use that includes legally required language for EEO, merit systems principles, prohibited personnel practices and other notices/information, and HR has created a PD library that was recently made available to managers to help facilitate the process of developing PDs.

In developing JOAs, CRT has been criticized in the past for using “interest in civil rights” as a required or preferred qualification with concerns specifically raised that it serves as a proxy for candidates with certain political leanings. The 2013 OIG review addressed the issue of whether political considerations were affecting hiring actions. While OIG did not conclude that partisanship played a role in hiring, it recommended a number of actions in how announcements are written. In response to OIG, CRT has since changed the JOA language to “experience or interest.” Interest, however, is still overly broad and can be subject to varying interpretations. It should be avoided as it is not work or position related criteria.

While references to “interest” are common across government JOAs, its use does not mean that it is a best practice. What is important, particularly for senior level and supervisory positions, is to sufficiently define the job requirements that become the criteria against which to assess applicants. This is particularly critical as OPM does not issue qualification standards for attorney positions; only classification standards exist. While section chiefs almost universally told us that “interest” and “commitment” were important elements in identifying good candidates, this can be said of any position—hiring officials are always looking to identify candidates with passion to carry out the responsibilities and duties of the position. Clearly defining requirements is key for the JOA.

Experience in civil rights is clearly appropriate for senior and managerial level positions; it is not required for entry level positions and is typically not used. Experience in civil rights can be both defensive and affirmative which can broaden the recruitment base. What is important is to look at the positions from the perspective of what is needed to be successful—it will differ for a litigating attorney as opposed to an attorney advisor. In addition, supervisory or managerial positions must take into account the skills needed to be successful in that role and to lead people.

CRT needs to build a skilled, customer-focused HR capacity to assist managers in teasing out the knowledge, skills, and experience required for the job through the job analysis process in order to achieve better defined requirements for the JOAs—and to better distinguish “required” versus “preferred” requirements. These requirements, in turn, should form the basis for the interview questions.

Because CRT was under a hiring freeze from 2011 to midway through FY 2014, hiring was very limited and done on an exception basis. With so few hiring actions, it is difficult to assess in practice how well CRT’s policies and processes are working. However, in our Academy-administered staff survey, we were able to identify staff concerns about favoritism involving some recent hires/promotions. For the most part, CRT-wide response to this question of favoritism yielded considerable “no basis to judge” answers. However, in a couple of sections (this did not include the Voting Section) the responses suggest that at minimum, perceptions of favoritism exist and raise issues of transparency in the hiring process. This needs to be proactively addressed by leadership.

PANEL RECOMMENDATION 5.1

Objective: To ensure CRT hiring practices conform to written policies and merit system principles, prevent prohibited personnel practices, and are both transparent and consistent across the division.

Recommendation: CRT should establish a process for routinely evaluating the implementation of division hiring policies and practices put in place to ensure merit system principles, identify necessary adjustments, and share both the evaluation process and results with staff.

Implementation Steps:

- *Conduct an assessment of the results of recent hiring and promotion actions across CRT to determine whether the processes put in place are in fact working and make changes as necessary.*
 - *Interview hiring officials, hiring committee staff, and HR for their perspectives.*
 - *Solicit suggestions for improvements from staff.*
 - *Develop an action plan to address any problem identified.*
 - *Share the evaluation results and action plan with all staff.*

PANEL RECOMMENDATION 5.2

Objective: To improve the hiring process, provide customer-focused assistance to hiring managers, and ensure that merit system principles are followed across CRT.

Recommendation: CRT should boost HR capacity in recruitment, revise the current approach in developing job opportunity announcements and interview guides, and review its outreach announcement lists.

Implementation Steps:

- *Refrain from using “interest” in civil rights as required or desired qualifications in JOAs and replace it with defined experience requirements.*
- *Build a core, customer-focused HR recruitment function. Steps include:*
 - *providing job analysis training to on-board HR specialists and filling current HR vacancies with seasoned HR specialists experienced in job analysis and recruitment approaches to strengthen HR support*
 - *establishing HR customer service goals/standards to measure customer satisfaction with the hiring process.*
 - *HR working closely with hiring officials and facilitating job analyses so that HR can develop JOAs based on experience requirements, grade level desired, and job functions.*
 - *HR taking the lead in working with CRT managers and OEC to develop a CRT-wide interview question template to move to a more consistent approach for interviewing staff, particularly at the senior and supervisory levels*

- *HR preparing or revising position descriptions as needed based on discussions with hiring officials.*
- *Review current recruitment dissemination lists maintained by both OARM and HR and amend the CRT list as appropriate to ensure that the recruitment net includes outreach to individuals who are diverse along a wide variety of criteria (e.g., affirmative and defensive experience).*

PERFORMANCE MANAGEMENT PRACTICES ARE NOT APPLIED CONSISTENTLY AND AN HR EMPLOYEE RELATIONS FUNCTION IS LACKING

Instances of harassment, favoritism, discrimination, partisan influences, prohibited personnel practices, and unauthorized disclosure of information all speak to issues involving leadership practices and employee performance and conduct. The 2013 OIG report detailed an unhealthy work environment in the Voting Section where ideological differences were on display and where some employees felt marginalized, fueling instances of unauthorized disclosure of information with leaks to various media outlets.

Government-wide ethics and standards of conduct that apply to all federal staff—as well as those specifically for attorneys—and DOJ and attorney bar association codes of conduct govern professional behavior and what is and is not acceptable for CRT employees. The rules are clearly laid out and require acknowledgement in writing. Unauthorized disclosure of information is also covered by these rules as well as harassing, disrespectful behaviors and improper political or partisan influence. The ability to work with others and build cooperative relationships is covered by the performance management system.

To address OIG findings, CRT updated and strengthened internal policies and guidance on professional responsibilities and standards of conduct, as well as on employee anti-discrimination and harassment. For example, CRT’s Equal Employment Opportunity (EEO) and anti-harassment and whistleblower policies have been bolstered to emphasize employees’ responsibilities to act in a professional manner and refrain from hostile or offensive conduct. These policies and practices are updated on an annual basis at which time reminders are disseminated to all staff. In addition, annual mandatory training is conducted on standards of conduct and ethics. Training requirements for attorney staff include (in one-hour chunks) professional responsibility/legal ethics, government ethics, and EEO/harassment prevention. Attorneys who investigate, litigate, or prosecute are required to take an additional one-hour training on electronic or criminal discovery. And, all employees are required to take training annually on No FEAR (Notification and Federal Employee Anti-discrimination and Retaliation) Act and EEO, as well as computer security and awareness.

CRT has also been active in DOJ-wide efforts to update policies and was a key player on the DOJ team that developed and disseminated a new department-wide social media policy. The policy, written in non-legalese language, clarifies employees’ responsibilities when using social media at home, in addition to at work. It emphasizes every employee’s need to adhere to government-wide and professional standards of conduct and is a good model for

other government agencies. The policy was endorsed and disseminated by the Deputy Attorney General to all DOJ staff on May 20, 2014. However, in our discussions with CRT leadership, we were told that the policy was not widely discussed within the division. As a result, division leadership lost an opportunity to communicate the importance—and leadership’s support—of this policy and what it means in practice to CRT, particularly given CRT’s active role in the development of the policy and the environment it seeks to correct. We also understand that, because it is a reasonably new policy, it has not yet been applied to a conduct issue. However, it does provide a solid foundation for enforcing the department’s standards of conduct relative to electronic communications.

Based on the evidence presented in the OIG investigations, CRT took employee disciplinary actions to address the specific cases cited and expanded the Office of Employment Counsel (OEC) in the Office of the AAG. OEC was initially established in 2010 with one Employment Counsel to ensure compliance with federal EEO laws and respond to issues raised in OIG reports related to misconduct from 2003 to 2006. Today, the three employment counsels serve as advisors to CRT managers and supervisors and the point of contact with other DOJ components involved in the disciplinary process—such as DOJ’s Equal Employment Opportunity Office (EEO), OIG, OPR—and with the Equal Employment Opportunity Commission (EEOC). OEC also works with PDO and HR in developing and providing related supervisory training. As a result, support to CRT managers in the areas of both conduct and performance-based actions has been buttressed by the increase in the size and scope of OEC. During our review, the study team heard again and again how helpful OEC is to section chiefs and managers—a number of whom mentioned that they have OEC counsel on “speed dial.” OEC has also created a SharePoint site to post information such as newsletters and advice for managers.

CRT, however, does not have a schedule or table of disciplinary actions that clearly communicates to staff the division’s expectations for employee conduct and the consequences of unacceptable conduct. The current CRT view is that such a table would not be helpful as it cannot address all the situations that may occur or the nuances of each situation, as well as precedents set by prior actions. However, a disciplinary table is not meant to be all inclusive—and agencies that routinely place among the top for HR practices and Best Places to Work (including NASA and GAO) have a table of disciplinary actions. A well-constructed table, made available to all staff, can demonstrate management’s commitment to take conduct issues seriously and communicates expectations to the staff.

To improve performance management CRT-wide, the CRT performance appraisal system was recently revised. OEC took the lead, modeling the system after the Criminal Division’s program. OEC established a working group of managers from CRT sections and human resource representatives, and revised the appraisal system for attorney, PASS, and clerical staff, moving from a 5-level rating scale to a 4-level system. A new performance management program manual codifying the system was developed and disseminated to all staff, and the system was put in place effective April 1, 2014.

The new system seeks to clarify performance standards and provides more consistency across CRT. A mandatory critical element for all CRT staff under the new system—and one

germane to work environment issues identified in the OIG report—is “Professionalism & Teamwork.” Under the prior system, it was an optional standard; under the new system, a standardized definition has been provided for this critical element. And, all supervisors must have the critical elements of “Accountability for Diversity” and “Accountability for People/Workforce” that may be separate or combined into one critical element. In addition, all new supervisors must attend supervisory training, and refresher training is required every three years for incumbent supervisors. The training covers EEO, performance management, reasonable accommodations, and professional development and mentoring.

The manual clearly lays out the system requirements. However, it makes only a passing reference to the need to link individual performance with agency goals—“to the extent possible, performance expectations should be results oriented and align with organizational goals”—a Government Performance and Results Act (GPRA) requirement. It was also drafted and disseminated to staff (after consultation with the PASS employees’ union) without providing an opportunity for staff to review and comment on the new program. We were told that their staff is too large to seek comments. However, best practice organizations always seek their employees’ involvement and feedback on changes to programs affecting employees such as performance management, particularly given that the system is the foundation for employee advancement, rewards, and actions for nonperformance. In the future, such significant changes to a performance management program affecting all staff’s potential for success should be done transparently and with staff involvement.

Until 2013, the HR staff provided some employee relations support, including investigating alleged employee misconduct. (The division lost a specialist and was unable to hire until the hiring freeze was lifted; a new specialist reportedly joined HR in November 2014.) Today, OEC handles aspects of employee and workforce relations as OEC has assumed additional human resource staff functions over time, as noted earlier. HR principally operates as a pass through, reviewing and processing disciplinary letters; it maintains the lead for labor relations.

While advice on performance and conduct issues and on compliance with applicable personnel laws and regulations is available to CRT leadership and managers, similar avenues for staff to seek advice and raise issues within CRT are not as clear. Avenues to seek advice and guidance on sensitive and personal issues, particularly involving a supervisor, primarily reside outside the division. Of course, employees may appropriately raise issues with their supervisors if they feel comfortable doing so or with HR—but some former employees have asserted that HR defers to OEC whose role is to guide management, not employees. We were told by OEC that if an employee comes to them, they will encourage employees to talk with their managers and inform them that they can seek resolution or services from the appropriate DOJ office, such as EEO and EAP. In addition, recourse is available independent of DOJ through the Office of Special Counsel and the Merit Systems Protection Board (MSPB) depending on the nature and status of the issue or complaint. As a result, an issue can easily escalate to a formal complaint, setting up an adversarial relationship between staff and supervisors/managers. Processes or mechanisms to facilitate an informal resolution of issues appear to be lacking.

There also appears to be a dichotomy between how performance issues and conduct such as insubordination are handled, and conduct involving unauthorized disclosures of information. With respect to the latter, managers talk about constraints in pursuing actions, including difficulty in identifying the source as well as concern for whistleblower rights and the First Amendment, which leads ultimately to a reluctance to take action.

The study team was not privy to information on specific cases, and such a review was beyond the scope of this study. However, the study team was able to review the number and type of actions underway. In 2013, 18 conduct (for such behaviors as misuse of travel card, disrespectful behavior and failure to follow instructions, disrespect toward supervisors) and three performance actions were undertaken; in 2014 there were 10 conduct actions, plus one performance and one combined performance and conduct. The actions range from a counseling letter to suspension and proposal to remove. (The 2014 performance action is a removal.) No actions were initiated related to unauthorized disclosure of information because, reportedly, CRT was unable to identify the leakers despite an investigation. In terms of performance improvement plan issues—a first step in performance-based actions—there were seven in 2013 and four in 2014. The most common critical element addressed was professionalism, teamwork, and cooperation.

Some former staff in a number of the sections spoke with the study team and stated that they had felt marginalized and felt they had no other option but to retire in lieu of a performance-based action. These former staff also raised concerns about the lack of communication on changes in priorities as it affected their individual work, and supervisors and managers not addressing employee issues and staff complaints about supervisors' bullying. A few had been given performance improvement plans that they believe were in retaliation for questions raised to their supervisors. Others spoke about not being accorded what they believe were appropriate reasonable accommodations or not receiving annual performance appraisals and feedback. (Results from the FEVS also point to lack of consistency across the division in providing annual performance appraisals, which HR confirmed occurred under the prior appraisal system.) As noted above, the study team did not have access to records to validate these comments. We are reporting the concerns as articulated to us as they raise serious issues that need to be looked at closely by leadership, and point to a need for more training for supervisors and managers in conflict resolution, constructive conversations, and other communication strategies.

In the past, CRT had a designated ombudsman who would be available to staff to share concerns and seek advice and resolution of issues. Some former employees we spoke with talked positively about the role of the Ombudsman and the availability of an individual staff could turn to. However, the role, which was performed by a line attorney on detail, was eliminated in 2011, and employees subsequently were told to contact HR or seek advice outside CRT, resulting in limited avenues of redress within CRT. The study team was given a variety of different reasons for dismantling the ombudsman role—the most common reason was that it was budget-driven. However, CRT leadership has explained that the role was eliminated because it created a conflict of interest between staff who wanted to make confidential complaints and division management that has a responsibility to act on certain types of complaints. That we were given different reasons for dissolution of the

ombudsman role reflects a lack of consistent communication and transparency. This lack of transparency, in turn, can contribute to trust issues across the division. Moreover, the conflict of interest problem is indicative of the role not clearly being defined and communicated to all staff.

Former staff also asserted that HR is not helpful to employees in these situations and always defers to OEC. Currently, staff with a concern or issue may raise it through their supervisory chain if they feel comfortable doing so—or may follow the formal grievance and EEO process. What appears to be missing is a structure and process for resolving conflict before it reaches the formal complaint stage. An employee relations function should promote a productive, supportive work environment by dealing with employees in a fair and constructive manner.

The lack of a strong HR employee relations function is problematic. Employment counsel should play an important and active role—but so should HR given that employee relations is a human resource function. Respective responsibilities and how each would approach employee relations issues are necessarily different. HR should be the owner of employee relations policies and practices, while the employment counsel role should be to ensure that the policy conforms to applicable laws and actions taken under these policies are defensible for the organization. By their very nature, the employment counsel role is commonly more adversarial as it approaches actions from the potential litigation perspective. The HR role is typically more consultative and facilitative, with HR providing advice and confidential consultation to supervisors and employees (in terms of their rights) and facilitating a dialogue between them to proactively resolve matters to the extent possible. Ideally—and as a best practice—HR and the Employment Counsel should work collaboratively.

PANEL RECOMMENDATION 5.3

Objective: To foster a workplace culture that (1) is fair, constructive, and inclusive; (2) promotes behaviors to reduce and prevent conduct issues; and (3) supports managers and staff in addressing and improving performance.

Recommendation: CRT should formally establish employee relations support in HR to administer a CRT employee relations program and related activities, coordinating with OEC and PDO, and establish an ombudsperson role to serve as a go-between among staff, managers, and employee relations to help facilitate informal resolution and alternative dispute resolution approaches.

Implementation Steps:

- *Hire seasoned HR employee relations specialists to develop an employee relations function.*
- *Establish a process for the HR employee relations function to work collaboratively with CRT's OEC in advising on performance and conduct actions, with a focus first on informal resolution.*
- *Publish a table of disciplinary actions, created collaboratively by HR and OEC, to communicate expectations to all staff.*
- *Hold managers accountable for supervision and promoting a constructive work environment.*
- *Expand PDO learning opportunities for all staff in conflict resolution and communication approaches.*
- *Involve the CRT Diversity Council in helping to clearly define the role and authority of the ombudsperson, including the relationship of the ombudsperson with HR and OEC, to cultivate employee buy-in among staff and managers.*
- *Establish Advisory Committees (line attorneys, PASS, mid-level supervisors) to periodically meet with the CRT Office of the AAG to present group issues, concerns, and suggestions.*

INSTANCES OF UNAUTHORIZED DISCLOSURE OF INFORMATION ARE NEGATIVELY AFFECTING DIVISION MANAGEMENT AND COMMUNICATION

Unauthorized disclosure of information—commonly referred to as leaks—is not new to CRT; leaks have occurred historically. They are also quite common across government agencies and tend to “go with the territory,” particularly where issues and policies evoke strong public interest and sentiment.

In CRT, leaks primarily occur in the Voting Section though there have also been some occasional episodes in other sections. But these are relatively rare and reportedly quickly addressed as they occur. Occurrences in the Voting Section have diminished and are now much more sporadic. The disclosures have included substantive information regarding cases and litigation, internal documents regarding investigative and litigation strategy, and information shared in staff meetings. In addition, “leaked” information at times has been used as fodder for personal attacks on division and section employees. Through interviews conducted by the study team, it is evident that disclosures have occurred during both the previous and current administrations, but they appear to intensify when there are ideological differences or disagreements between new leadership and career staff—or where changes in direction have not been communicated to staff, and staff have been precluded from discussions that would have provided a rationale for the decision.

Without question, unauthorized disclosure of information has had a detrimental impact on management practices and employee morale within CRT, and on the public’s perception of how CRT carries out enforcement responsibilities. Fear and concerns about unauthorized disclosure of information and Freedom of Information Act (FOIA) requests have fostered,

in turn, a reluctance in the Voting Section to share information widely or hold section-wide staff meetings. Instead, information flow tends to be compartmentalized and shared only with those who have a “need to know.” Voting Section leadership acknowledges that leaks affect the morale of the section and engender trust issues between the leadership and staff, as well as among staff. They also recognize that there are distinctions in the type of leaks—i.e., those that are a clear violation of law versus those that are professionally questionable. In particular, they admit that the personal nature of leaks—at times, quite vitriolic—appearing in some blogs has negatively affected the morale of Voting Section staff. While more recent leaks have involved divulging litigation strategy, clearly covered by the DOJ and attorney standards of conduct as well as the department’s new social media policy, section leadership notes that it is difficult to identify who is committing the disclosure and therefore violating the policy. In addition, leadership is quick to point out that consideration must be given to whistleblower and First Amendment—freedom of speech—rights. As a result, leadership seems to feel powerless to act and stem the occurrence of these leaks. Meanwhile, they feel constrained in having candid conversation about cases or holding staff meetings as experience has shown that whatever is said will appear in blogs.

Concerns about whistleblower and First Amendment rights are not confined to the Voting Section; they were similarly echoed by CRT leadership. From our review, leaks appear to be largely in the personal harassment area or are of a substantive nature that violates department and professional standards of conduct. Either way, they would be covered by the new departmental social media policy. And, CRT’s leadership has indicated a willingness to pursue disciplinary actions where it can identify the leakers.

On a positive note, CRT managers acknowledge that instances of unauthorized disclosures have lessened. Despite this, there persists a near universal reluctance to widely share information beyond those who have a need to know or to formally document and disseminate information out of concern that the information will be leaked.

Broadly speaking, leaks are a management issue—and leaders should not be held hostage by the fear of leaks. It is important to engage staff to build trust as trust is a critical success factor for organizational performance. Staff meetings and sharing of information across the organization helps to build trust. When leaks do occur, they need to be addressed consistent with the policies CRT already has in effect to address behaviors that violate DOJ standards of conduct.

PANEL RECOMMENDATION 5.4

Objective: To engender a collaborative and team-oriented environment in the Voting Section.

Recommendation: The Voting Section should immediately take steps to improve communication and information-sharing.

Implementation Steps:

- *Institute routine staff meetings and share information more widely.*
- *Convene informal gatherings (such as brown bags) to promote information-sharing on legal issues and cases.*

PANEL RECOMMENDATION 5.5

Objective: To stem unauthorized disclosure of information and ensure that division and department standards of conduct and related policies are followed.

Recommendation: CRT should hold staff accountable for standards of conduct and take action as appropriate when those standards are violated.

Implementations Steps:

- *Contact OPR and/or OIG, as appropriate, for an investigation when a violation occurs.*
- *Inform staff when an unauthorized disclosure takes place and what action the division is taking to address it.*
- *Remind staff of their responsibilities consistent with the appropriate standards of conduct, emphasizing why adhering to these standards is important and the consequences for violating the standards.*

SURVEY RESULTS AND MANAGEMENT PRACTICES INDICATE OPPORTUNITIES TO IMPROVE EMPLOYEE ENGAGEMENT

The link between employee engagement and job satisfaction to an organization's health has been well documented—employee engagement and overall job satisfaction are critical elements of an organization's performance and success. The importance of understanding how engaged an organization's employees are and, in turn, identifying areas on which to focus attention and improvement initiatives cannot be overstated.

The Office of Personnel Management's (OPM)'s Federal Employee Viewpoint Survey (FEVS) defines employee engagement as "employees' emotional response to their job:

- Do all employees feel they are personally part of their agency's overall mission?
- Do they feel empowered and encouraged to make suggestions, voice opinions, and make decisions [where appropriate]?
- Do employees feel their contributions are considered and appreciated by their supervisors?
- Do employees feel they know what's going on in their organization?"

Similarly, employee satisfaction is defined as "how happy or content employees are with their jobs, their pay and their organization" and whether they would recommend the

organization as a good place to work—important factors in employee recruitment and retention.

As OPM notes, achieving an engaged workforce is neither easy nor straightforward. It involves the interplay of a number of conditions including:

1. Senior agency leadership clearly communicating the organization’s goals and priorities and maintaining the highest levels of honesty and integrity.
2. Agency leadership at all levels supporting employee development and listening to/respecting their subordinates.
3. The nature of the work itself being compelling and affording employees the ability to use their talents to do their job well.

Annually, the Partnership for Public Service, in collaboration with Deloitte Consulting, LLP, examines the FEVS results and prepares a variety of special analyses and snapshots developed from that data, as well as publishing the popular Best Places to Work in the Federal Government analysis. One such analysis is the leadership communication ranking, which segments three questions from the FEVS to measure employee satisfaction with leadership communication in their agencies. The questions cover communication of goals and priorities, information provided to work units, and employee satisfaction with information they receive on what is taking place in their organization. As the snapshot notes, “effective communication from organization leaders is needed to establish a transparent, positive work environment.” It goes on to state that there is a “statistically significant correlation between effective workplace communication and employee satisfaction.”

The Partnership’s recommendations to improve leadership communication include making communication a priority for leadership, communicating with employees through multiple platforms, maintaining open and direct communication between managers and employees, implementing employee suggestions to convey commitment to communication, and approaching communication strategically. These recommendations are particularly relevant to CRT given the results from recent FEVS surveys and our Academy-administered employee survey.

Survey Results Are Revealing

Government-wide responses in the 2014 survey reflect a general downward trend since 2010, with employee satisfaction declining about nine percentage points since 2010. The Best Places to Work score of 56.9 out of 100 for federal employee job satisfaction and commitment represents the lowest score since the Best Places rankings were first initiated in 2003.¹⁰⁹ The results serve as a testimony to the need for government leaders to focus on employee engagement, while offering a roadmap on areas needing attention. The 2013 and

¹⁰⁹ Partnership for Public Service, *The Big Picture: Government-wide Analysis, Best Places to Work in the Federal Government*. (Washington, D.C.: December 2014).

2014 CRT Federal Employee Viewpoint Survey results similarly indicate a call for action in certain areas to augment current section employee engagement efforts and importantly, to initiate a CRT-wide effort that demonstrates leadership's commitment to address staff issues. Results from the Academy-administered survey are even more telling.

The discussion that follows in the sections below focuses largely on responses to questions where high negative scores were received, indicative of areas where management attention is needed to further advance the division. However, the 2013 and 2014 FEVS surveys, together with the Academy-administered survey, also indicate areas of strength and a committed workforce that believes their work is important, understands how their work relates to the work of DOJ, and believes the quality of their work is good. Among subcomponent agencies government-wide, CRT was ranked 59th among 300 agencies in the 2013 and 64th among 315 agencies in the 2014 FEVS surveys. Among the 18 DOJ subcomponents reported, CRT was 5th in 2013 and 6th in 2014. The department ranked 5th among 19 large agencies in both 2013 and 2014. In addition, CRT scores in category ratings were consistently higher than DOJ as noted in Table V-1 below.

**Table V-1: Civil Rights Division and Department of Justice
Best Places to Work Rankings, 2013 & 2014**

	2013		2014	
	CRT (Rank)*	DOJ (Rank)**	CRT (Rank) #	DOJ (Rank)**
Best Places to Work Index	67.4 (59)	63.5 (5)	66.8 (64)	63.8 (5)
Effective Leadership	58.4 (86)	53.5 (10)	60.4 (56)	53.0 (8)
Empowerment	52.1 (76)	46.1 (9)	51.1 (76)	45.9 (8)
Fairness	57.8 (85)	53.7 (10)	58.6 (77)	52.3 (12)
Senior Leaders	57.7 (51)	48.0 (10)	57.4 (40)	46.7 (7)
Supervisors	62.6 (195)	62.7 (12)	69.1 (78)	63.0 (12)
Teamwork	70.1 (73)	64.7 (11)	74.0 (44)	64.0 (13)
Strategic Management	58.4 (75)	54.7 (10)	57.8 (74)	54.5 (8)
Training and Development	61.1 (74)	57.4 (10)	66.2 (40)	58.6 (6)
* 300 subcomponent agencies				
** 19 large agencies				
# 315 or 314 subcomponent agencies, depending on the question				

Source: Partnership for Public Service, *The Best Places to Work in the Federal Government* (<http://bestplacestowork.org/BPTW/index.php>)

These results demonstrate that there are areas where CRT can and should celebrate successes. On the other hand, the pockets of high negative scores, discussed below, on some questions in certain sections are indicative of systemic issues that would greatly benefit from division-wide leadership focus to identify the underlying causes and to develop action plans to address them.

2013 and 2014 FEVS

Across CRT—as is true across government—the lowest positive and highest negative score (discounting the question on pay which is beyond an agency’s control) was in response to the question on steps taken to deal with poor performers. Dealing with employee views on performance is always a challenge as perceptions can trump reality given the need to protect the privacy of individuals and actions that may be underway. Still, employees often

have a good pulse on their work unit. Other high negative CRT scores involved information sharing (on what's going on), employee involvement and empowerment (in decisions affecting work and work processes) and communication (communicating goals and priorities). High positives included the importance of the work, knowing what's expected on the job, knowing how the work relates to agency goals/priorities, being held accountable for results, supervisors treating employees with respect, and employees sharing job knowledge within a work unit.

An illuminating Best Places to Work analysis is the staff/manager alignment score that helps leaders determine whether there are large differences in the perceptions of staff and managers concerning the workplace. The 2013 results for CRT show the greatest divergence between positive responses by managers and staff was Teamwork with a difference of 35.4 percent—"managers promote communication among different work units" (managers: 83.8 percent; staff: 48.4 percent). Similarly, there was a 33.4 percent difference in Effective Leadership-Fairness—"arbitrary action, personal favoritism and coercion for partisan political purposes are not tolerated" (managers: 81.8 percent; staff 48.4 percent) and a 32.4 percent difference in Effective Leadership-Leader—"how satisfied are you with the information you receive from management on what's going on in your organization?" (managers: 77.7 percent; staff: 45.3 percent).

In terms of results for CRT sections, they varied widely, with some sections receiving a considerable number of high negatives. Interestingly, the 2013 FEVS Voting Section scores did not suggest the type of problems documented in the 2013 OIG report. Among the highest negative scores for Voting was response to the question on communicating information on what is going on (37.7 percent), which may not be surprising as the section does not hold staff meetings. The results from the 2014 FEVS, however, indicate an increase in dissatisfaction in areas involving communication and information sharing, empowerment, and innovation.

We did not have information on the Appellate Section for 2013 (responses of less than ten are not made public). Educational Opportunities had the lowest overall satisfaction score and some of the highest negative scores (as high as 51.7 percent on satisfaction with policies and practices of senior leaders and 56.5 percent on involvement in decisions affecting work), followed by Employment Litigation, while Disability Rights and Federal Compliance and Coordination sections had some pockets of high negative scores. Administrative Management also had high negative scores.

The results from the 2014 FEVS differ among the sections from the 2013 results. Educational Opportunities, whose scores were among some of the lowest CRT-wide in 2013, showed a marked improvement that may be reflective of actions underway in the section to address employee issues. Employment Litigation and Disability Rights also showed improvement; we did not have information on Federal Compliance and Coordination.

The Appellate and Voting Sections had some of the highest negative scores in the 2014 survey. Appellate had the highest negative scores for managers promoting communication

among work units (44.7 percent), managers supporting collaboration across work units (57.1 percent); employees feeling encouraged to come up with new and better ways of doing things (45.1percent), and creativity and innovation being rewarded (59.0 percent). In contrast, the Voting Section’s highest negative scores were on steps taken to address poor performers and awards determined by how well employees perform (both 61.8 percent), and satisfaction with information received from management (50.9 percent). But high negative scores were found across CRT sections—no one section was immune. For example, on the question of personal empowerment with respect to work processes, the Special Litigation Section had a negative score of 57.4 percent. In fact, Special Litigation had a number of high negative scores across the survey. And, depending on the question, there were occasional high negative scores indicating a need for further analysis and action in virtually every section. Once again, Administrative Management had a substantial number of high negative scores. But, there were also some very high positive scores. For example, staff in seven sections universally (100 percent)—including the Voting Section—agreed that staff are willing to put in the extra effort to get the job done and in five sections they believed 100 percent that the work they do is important.

Academy Survey

To obtain current employee views on CRT management and operations, the Academy administered a staff survey in October 2014. The survey ran for two weeks and was distributed to all staff. It was modeled after the FEVS and internal CRT surveys and the questions are consistent with these surveys. (Survey questions can be found in Appendix H.) The overall CRT response rate was 40.8 percent, which compares favorably to the 2013 FEVS of 37.3 percent and 2014 FEVS of 39.3 percent in terms of representing staff views. Litigating sections participation ranged from a low of 18 percent in one section to a high of 56 percent; the majority fell in the range of 40 percent.

To encourage participation, the Academy guaranteed that responses would be reviewed only by Academy staff who would summarize the results. Accordingly, the Academy is not identifying specific section results. The fact that we guaranteed anonymity may account for some significantly higher negative scores when compared with FEVS results. Staff may have felt comfortable expressing their views in the hope that actions would be taken to address concerns. Another likely factor is timing given recent hiring and promotion actions, the annual appraisal process, and leadership turnover in the Office of the AAG since the 2014 FEVS. The lack of sustained CRT-wide focus on operational management—and the autonomy of the section chiefs in managing their sections—may also be factors.

As noted above, the 2013 FEVS and 2014 results revealed some areas of concern. The results of our Academy survey are more troubling and indicate areas where the organization is in need of management attention. We were particularly struck by the number of high negative scores in excess of 50 percent on certain questions, meaning that more than half the staff responding to the survey were more dissatisfied than satisfied. For example, 66.7 percent of the staff in one section (note: this is not the Voting Section) where the participation rate was 50 percent responded negatively to the questions on involvement in decisions that affect an employee’s work, leaders soliciting and valuing

input from career staff, and managers communicating section goals and priorities. Even more significantly, 75 percent of the staff in that section responded negatively to the question of employee personal empowerment with respect to work processes and effective mechanisms being in place to ensure concerns are heard and addressed. This does not speak to a healthy organization. Responses often reflected staff views on the close hold of information—that is, questions involving communication and involvement in decisions received high negative scores across a number of sections. The most significant negative score in one section was in response to receiving performance feedback and an annual performance appraisal which garnered a 66.6 percent negative response. However, on a more positive note, staff across the sections rather uniformly felt favorably that they enforce civil rights laws fairly and impartially and that colleagues with whom the employees work cooperate to get the job done, indicative of teamwork within workgroups.

Also revealing in our analysis was the delta in CRT responses between the 2013 and 2014 FEVS and the Academy survey. Table V-2 below illustrates the differences on a selected number of questions.

Table V-2: Comparison of the 2013 FEVS and 2014 FEVS with the 2014 Academy Survey on Selected Questions

Question	(a) 2013 FEVS	(b) 2014 FEVS	(c) Change (b-a)	(d) 2014 Academy Survey	(e) Difference (d-b)
<i>I am satisfied with my organization.</i>	Pos 69.4%	Pos 70.7%	+ 1.3%	Pos 54.7%	-16.0%
	Neg 10.1%	Neg 13.5%	+ 3.4%	Neg 25.7%	+12.2%
<i>I am satisfied with the policies and practices of my senior leaders.</i>	Pos 53.1%	Pos 53.6%	+ 0.5%	Pos 39.5%	-14.1%
	Neg 21.7%	Neg 16.2%	-5.5%	Neg 34.1%	+17.9%
<i>I am satisfied with the information I receive from management on what's going on.</i>	Pos 53.6%	Pos 58.9%	+5.3%	Pos 45.5%	-13.4%
	Neg 26.1%	Neg 23.0%	-3.1%	Neg 34.6%	+11.6%
<i>I am satisfied with the level of my involvement in decisions that affect my work.</i>	Pos 60.0%	Pos 57.9%	-2.1%	Pos 48.7%	-9.2%
	Neg 23.8%	Neg 24.3%	+0.5%	Neg 35.9%	+11.6%
<i>Employees have a feeling of personal empowerment with respect to work processes.</i>	Pos 51.1%	Pos 50.4%	-0.7%	Pos 41.1%	-9.0%
	Neg 27.1%	Neg 28.5%	+1.4%	Neg 42.2%	+13.7%
<i>In CRT leaders generate high levels of motivation and commitment to the workplace.</i>	Pos 50.7%	Pos 48.6%	-2.1%	Pos 39.6%	-9.0%
	Neg 26.3%	Neg 27.6%	+1.3%	Neg 33.0%	+5.4%
<i>Arbitrary action, personal favoritism and coercion for partisan political purposes are not tolerated.</i>	Pos 60.1%	Pos 64.5%	-4.4%	Pos 59.7%	-4.8%
	Neg 24.7%	Neg 21.0%	-3.7%	Neg 24.8%	+3.8%

CRT scores showed improvement and a high level of satisfaction on the following questions.

Question	(a) 2013 FEVS	(b) 2014 FEVS	(c) Change (b-a)	(d) 2014 Academy Survey	(e) Difference (d-b)
<i>I know how my work relates to the agency's goals and priorities.</i>	Pos 83.4%	Pos 86.9%	+3.5%	Pos 88.8%	+1.9%
	Neg 7.3%	Neg 6.1%	-1.2%	Neg 6.3%	-0.2%
<i>I know what is expected of me on the job.</i>	Pos 80.4%	Pos 83.5%	+3.1%	Pos 83.8%	+0.3%
	Neg 9.8%	Neg 6.9%	-2.9%	Neg 10.8%	+4.5%
<i>The people I work with cooperate to get the job done.</i>	Pos 75.8%	Pos 84.4%	+8.6%	Pos 81.7%	-2.7%
	Neg 12.8%	Neg 8.7%	-4.1%	Neg 8.1%	-0.6%

Engagement Challenges—A Call to Action

CRT action on employee engagement is mixed. CRT leadership has recognized the importance of climate surveys and, under Assistant Attorney General Perez, initiated an internal CRT employee climate survey in 2010. Four rounds of the survey have been conducted; however the results were not shared with the study team as it was considered an internal confidential document. We were, however, provided both the questions and the participation rates, which varied considerably by both section and year of the survey. Voting had the lowest participation response rate at 24.3 percent (other than the Office of the AAG) in 2013, followed by Appellate at 30.8 percent. We were told that some section chiefs found the information and narrative comments, in particular, helpful and the Office of the AAG took actions, including expanding leadership and team building training, based on the results of the survey. The division held off disseminating a survey in 2014 given the timing of the 2014 FEVS.

From our conversations with section chiefs, it appears that how individual sections approach the results of the FEVS surveys varies considerably. Some smaller sections share survey results, but by and large, section leadership reviews the data but does not widely distribute the results. In addition, there is no CRT-wide approach for disseminating or discussing results, though we were told that some actions are taken in response to narrative comments. Employee response to the question on results of the FEVS being used to make CRT a better place to work is telling. Less than half the staff responding—42.2 percent in 2013 and 41.7 percent in 2014—believe that action will be taken. Leadership is missing a golden opportunity to engage staff—and more importantly to get to the underlying issues feeding the results. Of the three conditions articulated by OPM for achieving an engaged workforce (noted earlier), CRT easily meets one of the three: the nature of the work itself being compelling and affording employees the ability to use their talents to do their job well. A concerted CRT-wide effort is needed to help the division achieve the other two conditions which are dependent on the direct involvement of senior leadership.

The MSPB's June 2009 report, *Managing for Engagement—Communication, Connection, and Courage*, identified six drivers of employee engagement. The study was a companion piece to a September 2008, report, *The Power of Federal Employee Engagement*, that addressed the strong positive relationship between high levels of engagement and desired organization outcomes. The latter identified six factors—recast as drivers in the June 2009 report—important for engaging federal employees:

- pride in one's work or workplace
- satisfaction with leadership
- opportunity to perform well at work
- satisfaction with recognition received
- prospect for future personal and professional growth
- a positive work environment with some focus on teamwork

MSPB noted that employee empowerment and involvement is a component of the work environment—employees need to be proactively informed of work changes and want to be more involved in their organization. The results of the FEVS and the Academy survey reinforce the need to communicate and actively involve staff in the organization. CRT staff are making it quite clear that they want more communication and involvement. It's important that the results be shared with all staff and efforts initiated to address concerns.

MSPB also identified insufficient supervisor training as a key contributor to the ineffective management of poor performers, the perennially lowest positive score in the FEVS government-wide—and in CRT. MSPB recommended a set of related actions to improve employee engagement and ultimately, organizational performance. These include showing employees that they are valued from their first day, managing performance, establishing a clear line of sight from the employee to the larger organization, mentoring employees, recruiting and selecting supervisors to supervise, and communicating vision and commitment to build trust.

Since 2008, CRT has assigned mentors to new attorneys when they are hired. In addition, CRT has developed a mentoring program for new section chiefs. However, only a few sections have put mentoring programs in place for PASS staff or attorneys beyond new hires. Not surprisingly, in building trust, the supervisor and manager are critical players. It is important that individuals selected to serve in those roles are selected based on criteria that includes demonstrated supervisory abilities or potential to engage subordinates. Often supervisors are chosen for their technical skills—this is particularly true among the DOJ attorney community. We heard again and again that attorneys don't necessarily make the best managers—and that it is not necessarily why they are chosen for leadership positions. Technical knowledge is clearly an important component, but equally important is the ability to lead staff. The issues identified in the FEVS and Academy survey speak to the current state of supervision, particularly in certain sections.

PANEL RECOMMENDATION 5.6

Objective: To build a work environment that improves morale and fosters teamwork and collaboration.

Recommendation: CRT should initiate a CRT-wide employee engagement effort and expand section-specific efforts.

Implementation Steps:

- *Share FEVS and internal climate survey results with all staff.*
- *Involve staff in problem-solving by establishing work groups or teams to analyze results, identify underlying issues, and make recommendations for change to leadership.*
- *Encourage continuous dialogue—hold meetings to discuss the results and progress on actions taken to address issues.*
- *Hold managers/leaders accountable for improving engagement by setting specific expectations involving employee engagement.*
- *Institute CRT-wide-staff meetings, making use of technology resources for virtual meetings to accommodate staff's geographic dispersion.*
- *Institute a practice of senior leadership attending section staff meetings periodically to demonstrate commitment to staff in improving the workplace.*

PANEL RECOMMENDATION 5.7

Objective: To improve the management and operations of the sections, create a sense of unity across the division, and foster a collaborative work environment built on trust.

Recommendation: CRT leadership should build a management/leadership corps that promotes teamwork and employee involvement; assure that section managers/leaders are held accountable for employee engagement actions; and provide active support for supervisor

and leadership development with a focus on techniques and practices that promote an inclusive and collaborative work environment.

Implementation Steps:

- *Recruit and select, as vacancies occur, supervisors/managers based on people and management skills—i.e., supervisory-related experience or potential ability to engage and manage subordinates—as equal criteria to technical expertise.*
- *Use the results of employee feedback and employee engagement efforts in assessing managers and holding them accountable for supervision/leadership.*
- *Augment leadership development efforts by tapping into resources available government-wide and in the community, as appropriate, in addition to those available within DOJ such as the National Advocacy Center. In addition, PDO should:*
 - *Review the current supervisory offerings with an eye toward revamping and bolstering them in the areas of communication, coaching, and employee engagement practices.*
 - *Develop additional supervisory courses/leadership seminars with a goal to build a trusting and collaborative work environment.*
- *Establish a community of practice on leadership and employee engagement.*

CHAPTER SIX: SUSTAINING MANAGEMENT IMPROVEMENT INTO THE FUTURE THROUGH MANAGEMENT REVIEW: AN ACADEMY PANEL RECOMMENDATION

The previous three chapters present an integrated management framework that includes a change management approach to elevate the importance of operational management in CRT, as well as specific recommendations to address the Panel’s findings. Adopting the management framework and recommendations will help position CRT for the future. However, as previously discussed, the high turnover of government leaders necessitates the institutionalization of successful practices. This chapter presents a management review approach for sustaining management improvements through changes in administrations and leadership and provides a mechanism for making continual improvements. This entire chapter is intended to be a Panel recommendation.

Management reviews serve as a powerful change management instrument to assist leaders in assessing the performance of an organization and developing strategies that promote continuous improvement. They also provide an assessment tool for identifying training needs to support the implementation of associated improvements. From a resource perspective, management reviews can help an organization leverage constrained resources by highlighting areas where efficiencies can be achieved and effectiveness enhanced thereby facilitating reallocation of tight resources to meet new or emerging needs, as well as sustaining ongoing responsibilities. Finally, establishing evaluation standards—the necessary foundation of a management review program—affords the organization an opportunity to institutionalize core values that typically reinforce the importance of integrity and accountability and more importantly, define an organization.

Implementing a management review process will position CRT for the future by validating the integrity and accountability of the division’s processes, institutionalizing best practices, embedding DOJ’s core values (e.g. integrity, independence, professionalism) into the organizational culture of the division, and providing the foundation for sustaining and enhancing management practices that can withstand changes in leadership.

The study team analyzed seven management review programs¹¹⁰ to identify derived benefits to agencies that administer, or are subject to, the reviews and common key elements across the programs that could be transferable to CRT. (See Appendix I for additional information on each program.) From this analysis, the Panel recommends that CRT establish a management review process. The elements that should be included and specific implementation steps are presented in this chapter for CRT’s consideration.

¹¹⁰ Council of the Inspectors General on Integrity and Efficiency (CIGIE), Department of Energy, Executive Office for United States Attorneys Evaluation and Review Staff (EARS), Drug Enforcement Agency, Federal Bureau of Investigations, Government Accountability Office Quality Assurance Framework, International Organization of Supreme Audit Institutions.

OBJECTIVES AND BENEFITS OF A MANAGEMENT REVIEW PROGRAM

Management reviews are widely used in accounting, auditing, and other professions, and are common among the academic, medical, research, and evaluation communities in both the public and private sector. While the structure varies depending on the nature of the profession or organization, they all contain similar core elements that they adapt to meet their particular needs and organizational culture. A CRT management review would examine all the functions and activities the division requires to be effective, including mission, enforcement, and operations.

Management reviews are designed to assure quality by evaluating the following:

- performance of work
- quality of service
- effectiveness/adequacy of processes¹¹¹

Implementing management reviews would provide CRT with a mechanism to ensure compliance with CRT standards, which will validate the integrity of its management and operational processes and in turn lend credibility to decisions. Furthermore, a formal management review process would enhance morale and professionalism by providing a transparent set of standards with clearly defined expectations. Key benefits of a management review process are spotlighted in the box below.

Benefits of Management Review
<ul style="list-style-type: none">• Evaluates compliance with standards and requirements• Promotes improvement• Bolsters accountability and transparency• Mitigates risks associated with non-compliant actions• Promotes appropriate consistency in the interpretation and application of policies throughout the system• Strengthens human resource capacity and improves performance• Targets resources to priority needs• Enables the sharing of best practices• Reduces the time and effort devoted to responding to internal and external oversight mechanisms¹¹²• Ensures resources are allocated appropriately to carry out the mission and manage established workloads¹¹³

¹¹¹ U.S. Department of Energy, *Management and Independent Assessments Guide*. (Washington, D.C.: March 2014), 9.

¹¹² National Academy of Public Administration, *Certified Assessment of Human Resource Systems: A Pathway to Assurance*. (Washington, D.C.: July 2007), 4.

¹¹³ Interview notes.

A management review program is fundamentally different from a GAO audit or an OIG investigation. Rather, it is an internal systematic quality assurance tool for identifying opportunities for improving processes and practices. The CRT assessment approach would be based on division policies and procedures, and the division would be responsible for developing the evaluation criteria. As such, the division would establish the standards or practices it would apply to measure its organizational performance.

Management improvement reviews can consist of both internal inspections and external reviews. Both have the same underlying philosophy and basic processes, but internal inspections are conducted by the organization itself, while external reviews are conducted by a team comprised of technical experts from outside of the organization. Internal inspections typically occur on an annual basis, while external reviews occur less frequently (every 3-5 years).¹¹⁴ Internal inspections provide a valuable assessment opportunity, but have limited scope since performance is measured by standards or practices set internally and are conducted by staff internal to the organization. For this reason, some organizations use external reviews to complement internal inspections by providing an additional, broader set of review standards. External reviews are based on collective best practices across a specialty area and add value by being performed by evaluation teams from outside the organization that can provide a greater level of objectivity, neutrality, and independence.¹¹⁵

Several federal agencies have implemented internal management reviews, including various DOJ components—the Drug Enforcement Agency (DEA), the Federal Bureau of Investigation (FBI), and the Executive Office for United States Attorneys (EOUSA). The Offices of Inspectors General (OIG) have an external peer review program conducted by the Council of the Inspectors General on Integrity and Efficiency (CIGIE). The Department of Energy (DOE), Office of Science and Technology (OST) external peer review is conducted by the American Society of Mechanical Engineers (ASME). The Government Accountability Office (GAO) uses both an internal and external review. Though these agencies may refer to their management review processes using different terminology (e.g. inspection, audit, peer review, evaluation, etc.), the purpose of these reviews and the methodologies used are fundamentally similar.

KEY ELEMENTS OF MANAGEMENT REVIEWS

The study team’s analysis of federal management review programs identified seven key elements that are common to most, if not all, of the programs. (See Appendix I for specific program examples of each element.) These elements can be adapted in a way that would best support CRT’s circumstances, characteristics, and the nature of its work.

¹¹⁴ EOUSA evaluation and review staff conducts internal inspections of U.S. Attorneys’ Offices every 3-5 years, primarily due to budget constraints.

¹¹⁵ U.S. Department of Energy, *Management and Independent Assessments*, 1.

- 1. Quality Assurance Approach for Measuring Performance:** In contrast to quality control, which is output-focused, quality assurance refers to the implementation of procedural safeguards intended to maintain a desired level of quality in all aspects of mission performance. The goal is to design a consistent set of standards, protocols, or practices that applies to the diversity of the organization's work and provides a process for designing and performing the evaluation and reporting the results. The approach should be grounded in the organization's established core values.¹¹⁶

The purpose of the approach is to provide reasonable assurance that work is professional, has integrity (in fact and appearance), evidence is sufficient and appropriate, conclusions are supported, products/results are fair and balanced, and recommendations are sound. The approach should assess the quality of leadership, human capital, and performance in civil rights enforcement. The reviews should utilize the approach to assess compliance with the division's established standards or practices in each area, in addition to compliance with DOJ policy and applicable legal and regulatory requirements.

- 2. Leadership Support of the Review Process:** One of the primary requirements for a management review process is the commitment and dedication of an organization's senior leaders to the highest quality objective review and the motivation of the review manager to conduct a technically credible review.¹¹⁷ In addition to emphasizing the importance of the review process and encouraging staff participation, leadership needs to stress the necessity of adhering to the policies, procedures, and standards that the process is meant to facilitate. When reviews are completed, findings should be presented to leadership.
- 3. Transparency of the Management Review Process:** For both internal and external management reviews, the process must be carefully planned, transparent, and consistent so that expectations are clear from the onset. In particular, pre-review activities, entrance meetings, and exit meetings allow for continuous communication and feedback.
 - **Pre-Review Activities:** Publicizing and providing information to staff, especially those about to go through the review process, is an important component for staff acceptance and support of the program (e.g., making key management review tools, such as checklists and forms, available on the intranet and providing questions that will be asked and documentation that will be requested in advance of the evaluation process).

¹¹⁶ GAO, "Quality Assurance Framework," (document provided to the study team).

¹¹⁷ Committee on the Department of Energy, Office of Science and Technology's Peer Review Program, et al., *Peer Review in the Department of Energy, Office of Science and Technology: Interim Report*. (Washington, D.C.: The National Academies Press, 1997), 28.

- **Entrance Meetings:** A pre-meeting involving the management review team and the managers of the organization being assessed sets the stage for a positive and productive independent assessment.¹¹⁸
 - **Exit Meeting with Preliminary Findings/Issuing Draft Report:** Groups undergoing management reviews should have an opportunity to respond to the findings of their review to ensure objectivity, accuracy, and completeness of the findings. Because the true value of an assessment is the improvement opportunities it identifies, a draft report should be issued as quickly as possible. This allows an assessed organization to begin improvement actions, yielding the maximum return for those actions. If this is not feasible, a written summary or briefing document of the conclusions and results can facilitate the initiation of improvement actions.¹¹⁹
- 4. Independence of Reviewers:** While internal review assessments are conducted by individuals within an organization, they should be independent from the work or processes being evaluated.¹²⁰
 - 5. Accountability of Reviewed Sections:** Managers responsible for assessed activities should also be responsible for the development of effective corrective actions for the problem areas/deficiencies discovered during the assessment.¹²¹ However, groups may need additional help to implement corrective actions.
 - 6. Minimum Interference of Evaluation Process with Operations:** There are several steps that can be taken to minimize the interference of the management review on regular business operations, including reviewing only completed work (e.g., matters and cases that have been closed), submitting requests for information well in advance to allow sufficient time for response, and reviewing any files or documentation accessible electronically in advance. Soliciting and incorporating feedback on the process from groups who have been reviewed will also help ensure the process is minimally intrusive, fair, and transparent.
 - 7. Recognition of Value of Serving on Management Review Teams:** At many agencies, serving as an evaluator for an internal review is deemed as a step in career development and provides a valuable opportunity for leadership and management training. Individuals who demonstrate leadership potential are often selected to serve as reviewers. In some agencies, serving on a management review team is a prerequisite for career advancement.

¹¹⁸ U.S. Department of Energy, *Management and Independent Assessments*, 22.

¹¹⁹ *Ibid.*, 26.

¹²⁰ *Ibid.*, 9.

¹²¹ *Ibid.*, 26.

IMPLEMENTATION STEPS FOR ESTABLISHING A MANAGEMENT REVIEW PROCESS

Federal agency internal review programs have evolved over time and are continually updated to ensure that the program adequately reflects management priorities. Implementing a review program is therefore an iterative process, with many opportunities for refinement and improvement.

The following steps form a starting point for CRT in beginning the process of designing an internal management review program.

- 1. Appoint an Internal Review Program Representative/Coordinator:** This individual would be responsible for overseeing the development of the management review process and should occupy a career management level position in the Assistant Attorney General's Office. Assigning this role outside of the sections would ensure that resources designated for mission work are not impacted. In this initial phase of the process, the function would be ancillary to the designee's existing responsibilities.
- 2. Establish Standards or Practices:** Designing a management review process requires the development of standards or practices by which an organization intends to measure performance. CRT would build upon its current management and operations improvement efforts to develop these standards/practices. Given the division's concern about resource constraints, CRT would benefit from leveraging the experience of DOJ components that have well-established programs, such as EOUSA, FBI, and DEA. The lessons they have learned through their "hands on" experience in evaluating programs and improving internal policies, processes, and practices would be invaluable to the architects of the CRT program. Additionally, CRT could seek input from additional DOJ components widely recognized for having the characteristics of a high performing organization, such as the Environment and Natural Resources Division and the Civil Division.¹²² Both components have sustained high standings among federal agencies in the annual Best Places to Work analysis of the Federal Employee Viewpoint Survey.

DOJ should provide CRT with the necessary resources to establish an advisory team comprised of representatives from these components to assist CRT in validating a quality assurance approach, while also providing input on its management review program. In this capacity, advisors would only be called upon as needed to provide input and expertise and would not perform an evaluation function for CRT.

- 3. Generate Buy-In and Socialize Standards:** Employee engagement is key to generating robust staff participation and acceptance of a new organizational performance management system. CRT should ensure that the management review process is transparent and that standards/practices for how performance will be measured are

¹²² U.S. Office of Personnel Management, *2013 Federal Employee Viewpoint Survey Results: Department of Justice*. (Washington, D.C.: 2013), 32.

clear and understood. This effort should incorporate effective communication that informs staff of the reasons for the change, the benefits of successful implementation, and details on the revised and new processes. Discussion should focus on expected outcomes, including improved processes and increased efficiencies to better leverage limited resources, while fostering staff professionalism through the monitoring of compliance with clearly laid out management standards/practices.

4. **Develop a Pilot Program:** Once measurement standards/practices have been established, the division would be able to implement a pilot program that introduces staff to the review process. The pilot program should help CRT identify areas for improvement and adjustment. This pilot would also provide an opportunity for staff to give feedback on the process and would afford the division a “proof of concept” that can then be shared with all staff to build acceptance across the division.
5. **Select a Management Review Team:** The selection of a management review team is a critical step and should be done by applying formally established criteria with an initial emphasis on selecting reviewers with some management or supervisory experience.
6. **Require Training for Reviewers:** Reviewers must be trained to ensure quality assurance and consistency in the evaluation process. CRT’s Professional Development Office could assist in coordinating training opportunities with, for example, the National Advocacy Center (NAC) which offers evaluation training required by EOUSA’s EARS program. An additional training option would be for designated CRT reviewers to “shadow” review teams from other DOJ components. Most DOJ component reviews are typically completed in one week, which minimizes the amount of time that appointed CRT reviewers would be required to be away from their regular duties and responsibilities. CRT also has a program for detailing staff to other organizations that could be used to provide training opportunities. The division could develop detail assignments with these components, with an explicit understanding that during the course of the assignment, the detailee would have an opportunity to shadow an EARS review team for training purposes.

LOOKING AHEAD: ESTABLISHING AN EXTERNAL MANAGEMENT REVIEW PROCESS

The Panel recommends that once CRT has successfully implemented an internal management review program the division should consider establishing an external management review. Independent external management reviews provide a number of additional benefits above and beyond internal reviews, including:

- lending credibility to the process by virtue of the fact that the reviewers are not in the organization and are not vested in the outcome
- providing the objectivity needed to recognize strengths, weaknesses, and methods of improvement in ways that may be overlooked by those who are intimately familiar with them

- expanding the breadth and depth of the analysis
- providing comments that are more open, frank, and challenging to the status quo than may be possible for internal reviewers

In order to leverage resources internal to the department, the division should consider establishing an external advisory panel composed of DOJ component representatives (e.g. EOUSA, FBI, DEA) capable of providing the division with an objective and neutral external management review.

APPENDICES

APPENDIX A: PANEL AND STAFF

PANEL

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President's Message: The White House Communication Operation and Mapping the Glide Path to Power: The 2008 Presidential Transition; Director, White House Transition Project; Board and Executive Committee Member, White House Historical Association; Board Member, National Coalition for History; Former Instructor, University of Maryland, Baltimore County; Former Instructor, Tennessee State University.

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Distinguished Fellow, Project on National Security Reform and President, RandolphMorgan Consulting, LLC; Senior Consultant, Bluelaw International; Senior Consultant, KnowledgeBank, Inc.; NAPA positions: Former Project Director, Senior Consultant, and Director of the Center for Human Resources Management; Director, Administrative Office of the U.S. Courts; Director of Administration, Federal Housing Finance Board; Associate Director for Passport Services and Associate Director for Human Resources, Department of State; Assistant Director for National Security and International Affairs, U.S. Office of Personnel Management; Director of Personnel, Federal Trade Commission; Staff member, Norfolk Naval Shipyard in Portsmouth, VA, U.S. Department of the Navy.

**Academy Fellow*

ACADEMY STUDY TEAM

Joseph P. Mitchell, Ph.D., *Director of Project Development*—leads and manages the Academy's studies program and serves as a senior advisor to the Academy's President and CEO. He has served as Project Director for past Academy studies for the Government Printing Office, the U.S. Senate Sergeant at Arms, USAID/Management Systems International, the National Park Service's Natural Resource Stewardship and Science Directorate, and the USDA Natural Resources Conservation Service. During his more than 10 years at the Academy, Dr. Mitchell has worked with a wide range of federal cabinet departments and agencies to identify changes to improve public policy and program management, as well as to develop practical tools that strengthen organizational performance and assessment capabilities. He holds a Ph.D. from the Virginia Polytechnic Institute and State University, a Master of International Public Policy from The Johns Hopkins University School of Advanced International Studies, a Master of Public

Administration from the University of North Carolina at Charlotte, and a B.A. in History from the University of North Carolina at Wilmington.

Cynthia Heckmann, *Project Director*—previously served as Project Director on the Academy’s Centers for Disease Control (CDC) Human Resource Process Review. Her extensive career at the Government Accountability Office includes serving as the Chief Human Capital Officer (CHCO) and the Deputy Chief Information Officer. Ms. Heckmann also has executive agency and state government experience. She has served as a strategic advisor on research studies for the Partnership for Public Service and is currently a CHCO SAGE—Strategic Advisor for Government Executives—for the Partnership. She holds a Masters of Public Administration from Northeastern University and a Bachelor of Arts from Simmons College. She also attended the Executive Fellows Program at Harvard University’s John F. Kennedy School of Government and Yale University’s School of Organization and Management.

Maria Rapuano, *Deputy Project Director*—previously served as a Deputy Project Director for a study of the Government Printing Office and as a study team member for reviews of the Department of Homeland Security Science and Technology Directorate, the Defense Civilian Intelligence Personnel System, and the FEMA Flood Mapping Program. Prior to joining the Academy, Ms. Rapuano was a Project Director with the Alliance for Healthy Homes (formerly the Alliance to End Childhood Lead Poisoning) and helped found and direct the organization’s international program. She is a Member of the Board of Directors of the Trust for Lead Poisoning Prevention. She holds a Masters of Arts in International Affairs from The American University and a Bachelor of Arts in Government from the College of William and Mary.

Tron Brekke, *Senior Advisor*—possesses significant experience and expertise in counterintelligence, personnel security, and organizational procedures and processes. He retired from the FBI as Deputy Assistant Director and National Spokesman after twenty-eight years, the last eight of which were as a member of the Senior Executive Service (SES). During his career, Mr. Brekke managed, supervised, and directed investigations and programs involving counterintelligence, counterterrorism, violent crimes, public corruption, civil rights, undercover operations, applicant/background investigations, and congressional and public affairs. Subsequently, he was a consultant in the FBI’s Security Division. Mr. Brekke is currently designated as an Expert Witness for the U.S. Department of Justice regarding FBI investigative policies and procedures. He recently served as a senior advisor on the Academy’s review of the National Aeronautics and Space Administration’s foreign national access management. Mr. Brekke graduated from the College of William and Mary with a B.A. degree, and earned a Juris Doctorate from the University of South Carolina School of Law.

David Treworgy, *Senior Advisor*—prior to joining the Academy, David served government organizations in improving operational effectiveness through his roles as a Project Delivery Executive with IBM’s Global Business Services division and a Partner at PricewaterhouseCoopers. He worked extensively with various government departments and agencies to improve the quality and availability of information to help executives make

decisions, including the Department of Defense, Department of Veterans Affairs, Department of Energy, Department of Homeland Security, Department of Labor, and U.S. Postal Service. His areas of expertise include cost management, activity based costing, enterprise performance management and reporting, business case development, and business decision analysis. Mr. Treworgy is the author of a number of published papers and a frequent speaker at industry conferences. He has provided expert witness testimony on several occasions, including at a joint Senate/House of Representatives hearing. He recently served as the project director of the Academy's work for the Financial Accounting Standards Advisory Board. He holds a B.A. in Economics from Williams College and an MBA from Harvard Business School.

Nicole Camarillo, *Project Development Advisor*—is the Associate General Counsel and Project Development Advisor for the National Academy of Public Administration. Nicole has a legal background in regulatory compliance and employment law issues. She has extensive experience working for nonprofits on a variety of advocacy issues and has federal campaign experience. At the Academy, Nicole assists the Academy's General Counsel on all employment law and policy matters affecting the organization. Nicole also serves as a legal advisor on Academy studies, particularly those involving legislative and regulatory matters. She assists the Director of Project Development with the development of Academy proposals and studies. Nicole received her B.A. from Stanford University and her J.D. from the University of California, Berkeley School of Law.

Daniel Orr, *Research Associate*—has previously served as a Research Associate on the Academy's development of a long-term vision and high-level strategic plan for the Social Security Administration (SSA), as well as reviews of the National Aeronautics and Space Administration's (NASA) foreign national program and the Pension Benefit Guaranty Corporation's (PBGC) governance structure. Prior to joining the Academy, Mr. Orr served as an AmeriCorps VISTA focusing on capacity-building and strategic planning for housing outcomes and completed an internship with the National League of Cities. He is a graduate of the Master of Public Administration program at Penn State University, Capital College, writing his Thesis on organizational models for homelessness prevention program implementation. Mr. Orr is also a 2008 graduate of American University's School of Public Affairs, holding a B.A. in Political Science.

APPENDIX B: PARTICIPATING INDIVIDUALS AND ORGANIZATIONS

The Panel and study team met with numerous stakeholders through formal interviews, meetings, and discussion groups. The Academy would like to thank these individuals for their contributions.

CURRENT CIVIL RIGHTS DIVISION OFFICIALS & STAFF

Office of the AAG

Bains, Chiraag—Senior Counsel

Cadogan, James—Senior Counselor

Christian, Forrest—Senior Counsel (Acting)

Chung, Edward*—Special Counselor

Deines, Jennifer—Senior Counsel (Acting)

Friel, Gregory—Deputy Assistant Attorney General

Gupta, Vanita—Acting Assistant Attorney General

Hill, Eve— Deputy Assistant Attorney General

Kappelhoff, Mark—Deputy Assistant Attorney General

Karlan, Pamela—Deputy Assistant Attorney General

Monroe, Rebecca*—Special Counselor

Toomey, Kathy—Acting Chief of Staff

Section Management

Berman, Robert—Deputy Chief, Voting Section

Bond, Rebecca—Section Chief, Disability Rights Section

Bhargava, Anurima—Section Chief, Educational Opportunities Section

**These individuals have since left CRT on detail assignments.*

Donovan, Sarabeth—Deputy Chief, Voting Section

Embrey, Diana—Senior Counselor, Office of Employment Counsel

Fentonmiller, Laura—Deputy Employment Counsel, Office of Employment Counsel

Flynn, Diana—Section Chief, Appellate Section

Foran, Sheila—Special Legal Counsel, Disability Rights Section

Gaither, Linda—Director, Human Resources Office

Ginsburg, Jessie—Director of Professional Development, Professional Development Office

Gomez, Abel—Special Litigation Counsel, Voting Section

Herren, Chris—Section Chief, Voting Section

Isa, Jon—Deputy Employment Counsel, Office of Employment Counsel

Jang, Deanna—Section Chief, Federal Coordination and Compliance Section

Kennebrew, Delora—Section Chief, Employment Litigation Section

McConkey, Mac—Executive Officer, Administrative Management Section

Moossy, Robert—Section Chief, Criminal Section

Pellegrino, Whitney—Special Legal Counsel, Educational Opportunities Section

Rosenbaum, Steven—Section Chief, Housing and Civil Enforcement Section

Ruizsanchez, Alberto—Acting Special Counsel, Office of Special Counsel for Immigration-Related Unfair Employment Practices

Russ, Burt—Elections Coordinator and Special Litigation Counsel, Voting Section

Schuham, Aaron—Section Chief, Policy and Strategy Section

Smith, Jonathan—Section Chief, Special Litigation Section

Wertz, Rebecca—Principal Deputy Chief, Voting Section

FORMER CIVIL RIGHTS DIVISION OFFICIALS & STAFF

Agarwal, Asheesh—former Deputy Assistant Attorney General

Ard, Joel—former Trial Attorney, Voting Section

Bowers, Susan—former Trial Attorney, Special Litigation Section; former Acting Deputy Assistant Secretary for Civil Rights, Office for Civil Rights, Department of Education

Coates, Christopher—former Section Chief, Voting Section

Driscoll, Robert—former Deputy Assistant Attorney General

Jenkins, Sabrina—former Trial Attorney, Disability Rights and Educational Opportunities Sections; former Ombudsperson and Diversity Advisor

King, Linda—former Investigator, Federal Coordination and Compliance Section

Mackie, Robert—former Architect, Disability Rights Section

Moran, Molly—former Acting Assistant Attorney General (currently, Principal Deputy Associate Attorney General)

Ortego, Christian—former Trial Attorney, Voting Section

Perez, Thomas—former Assistant Attorney General

Popper, Robert—former Deputy Chief, Voting Section

Reed, Judith—former Trial Attorney, Voting and Disability Rights Sections

Rich, Joseph—former Section Chief, Voting Section

Samuels, Jocelyn—former Acting Assistant Attorney General

Sowdon, Carolyn—former Investigator, Disability Rights Section

von Spakovsky, Hans—former Trial Attorney, Voting Section

Waters, Richard—former Trial Attorney, Federal Coordination and Compliance Section

Yeomans, William—former Deputy Assistant Attorney General; former Chief of Staff; former Acting Assistant Attorney General

OTHER DOJ STAFF

Beckhard, Daniel—Deputy Assistant Inspector General, Office of the Inspector General

Carpenter, Eleanor—Deputy Director, Office of Attorney Recruitment and Management

Doyle, Monica—Assistant Director of Human Resources Policy and Advisory Services,
Justice Management Division

Fallon, Brian—Director, Office of Public Affairs

Frone, Jamila—Deputy Director and Acting Director of Recruitment, Office of Attorney
Recruitment and Management

Salans, Marc—Assistant Director, Office of Attorney Recruitment and Management

Weinsheimer, Bradley—Deputy Counsel, Office of Professional Responsibility

Wong, Norman—Deputy Director and Counsel to the Director, Executive Office for United
States Attorneys

FORMER DOJ OFFICIALS

Mukasey, Michael—former Attorney General

Perrelli, Thomas—former Associate Attorney General; former Deputy Assistant Attorney
General, Civil Division; former Counsel to the Attorney General

CURRENT AND FORMER OTHER FEDERAL AGENCY STAFF

Chellino, Frank*—former Deputy Assistant Administrator, Drug Enforcement
Administration (DEA)

Fishkin, Christine—Assistant Director, Audit Policy and Quality Assurance, Government
Accountability Office (GAO)

Marcus, Kenneth—former Staff Director, U.S. Commission on Civil Rights

Nelson, Benjamin—Managing Director, Audit Policy and Quality Assurance, Government
Accountability Office (GAO)

Strudwick, Maria—Assistant Director, Homeland Security and Justice, Government
Accountability Office (GAO)

*Academy Fellow

Temko, Janet—Attorney, Office of the General Counsel, Government Accountability Office (GAO)

CONGRESSIONAL STAKEHOLDERS

Ashford, Jeffrey—Minority Staff, House Appropriations Committee, Subcommittee on Justice, Commerce and Science and Related Agencies

Betourney, Chanda—Majority Staff, Senate Judiciary Committee

Culligan, Thomas—former Legislative Director for Representative Frank Wolf, Chair, House Subcommittee on Justice, Commerce and Science and Related Agencies

Eskra, Jennifer—Majority Staff, Senate Appropriations Committee

Lucius, Kristine—Majority Staff, Senate Judiciary Committee

Ringler, Michael—Minority Staff, House Appropriations Committee, Subcommittee on Justice, Commerce and Science and Related Agencies

Shannon Hines—Minority Staff, Senate Appropriations Committee

Smith, Matthew—Minority Staff, House Appropriations Committee, House Subcommittee on Justice, Commerce and Science and Related Agencies

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APPENDIX D: DOCUMENT PROVIDED BY THE CIVIL RIGHTS DIVISION ON ACTIONS TO ADDRESS EMPLOYEE CONCERNS

Since 2009, the Division has taken a number of concrete steps to address employee concerns. The Division has made significant strides during that time notwithstanding operating under a three year hiring freeze and managing the impact of the Government shutdown and sequestration. The Division's effort to be responsive to employee concerns are active and ongoing.

Accountability: In response to employee concerns, the Division has taken a number of concrete steps to promote accountability among managers and line staff. Some examples of those steps include:

- In October 2014, Acting AAG Molly Moran sent all employees an email to remind them of Government ethics rules, particularly those pertaining to political activities in the workplace during election season. This followed a July 2014 posting on the CRT Insider that reminded employees of Government ethics rules. Acting AAG Jocelyn Samuels and AAG Tom Perez engaged in similar communications with employees on Government ethics issues between 2009 and 2013.
- In spring 2014, Acting AAG Jocelyn Samuels emailed all section chiefs to emphasize the need to provide honest, fair, and constructive feedback on employee performance evaluations. Former AAG Perez also communicated this message several times by email and orally to section chiefs
- Formed a CRT working group to study the Division's performance evaluation system and make recommendations for improvements. In summer 2014, CRT implemented a new 4-tiered system for performance evaluations.
- Issued a new Performance Management Program manual to gather all relevant rules and guidelines into one easy-to-use document and to better explain the evaluation process to employees and managers.
- In 2013, Office of Employment Counsel began issuing a monthly newsletter for CRT managers that provides advice on a variety of issues including managing a multigenerational workforce, leave without pay, etc.
- In 2013, Office of Employment Counsel created a SharePoint site that is used to post OEC newsletters and other documents and advice for managers.

Collaboration: In order to address employee concerns that CRT's work was unnecessarily "siloed," CRT undertook a series of efforts to promote collaboration among CRT sections.

- AAG Perez and Acting AAG Samuels repeatedly emphasized to all section chiefs the need for greater collaboration. Inter-sectional collaboration has increased greatly since 2009.
- AAG Perez and Acting AAG Samuels promoted the use of Division-wide brownbags to allow CRT employees to share ideas about cross-cutting issues. Brown bags have been hosted by the Professional Development Office, CRT working groups and individual sections (e.g., the Policy and Strategy Section).
- Promoted creation of new working groups and reinstated several defunct working groups. Issued a new Working Group policy to ensure that a wider range of employees have the opportunity to hold leadership roles in working groups. The Working Group policy requires that each group have co-chairs, who must be from different sections, and limits the amount of time a person can serve as a co-chair.

Fairness/Non-Discrimination: In the wake of the 2009 OIG/OPR report on the Civil Rights Division, CRT undertook a number of significant actions to promote fairness and nondiscrimination. These actions included:

- Formed a Working Group of career managers to create revised Division-wide lateral hiring and promotion policies. Issued new written policies and posted them on the CRT Insider. The policies promote fairness and transparency in the hiring and promotions processes.
- Implemented a revised and updated Honors and Summer Law Intern Program hiring policy to further ensure transparency and merit-based hiring. The process reflected in the policy was developed by career attorneys and included input from those involved in the hiring process in the past, as well as the Division's Attorney Hiring/Promotion Working Group and experts from the Office of Attorney Recruitment and Management.
- In September 2009, issued a memorandum outlining in detail the Division's new hiring policy, which was posted on the Internet to ensure transparency in the Division's hiring practices.
- Required all job announcements to be posted on the CRT website and USAJobs (if the jobs are open to applicants outside of the Division).
- Issued a written policy on attorney compensation.
- Issued a memo in 2011 setting forth principles governing CRT case assignments. Sections developed case assignment policies that provided more specific guidance to employees and managers.
- In response to employee comments that intern applicants found the application process too confusing, CRT redesigned its website.

- Revamped the reasonable accommodations process to ensure greater consistency throughout the Division and to streamline and simplify the process for employees and managers.
- Hired a Disability Program Manager to manage CRT's reasonable accommodations process for employees.
- Issued the CRT Policy for Hiring Individuals with Targeted Disabilities in July 2012. Office of Employment Counsel provides ongoing training about hiring requirements and tips for interviewing and interacting with people who have targeted disabilities.
- In 2014, in response to employee complaints that competitive service hiring process was too complicated, created an HR SharePoint site to post position descriptions, template vacancy announcements and documents related to the competitive service hiring process.
- Office of Employment Counsel provides regular No FEAR Act training to inform all staff of non-discrimination laws and DOJ policies.

Diversity/Transparency: In order to address employee perceptions that the Division was insufficiently committed to diversity and that there was a lack of transparent decision-making about actions such as case assignments, awards and detail opportunities, the Division:

- Formed a Diversity Council, led by the Career DAAG, consisting of representatives from virtually every section and from a variety of job categories (managers, non-managers, attorneys, administrative professionals, clerical/support staff).
- Expanded diversity training; such training is now part of supervisors' training, hiring training, and annual mandatory EEO training.
- In 2013, instituted a creative new element to diversity training that focuses on microbehaviors: daily interactions between supervisors and employees that have an impact on diversity and inclusion.
- Publicizes DOJ and CRT diversity events on the CRT Insider and through group emails.
- Changed the awards process so that any employee may nominate someone for one of the Division's top awards. The announcement regarding employee nominations as well as criteria for each award is posted to the CRT Insider.
- Publishes the names of all CRT award recipients on the CRT Insider.

Professional Development for CRT Managers: CRT has taken several steps to improve managers' skills and their interaction with and feedback to the employees they supervise:

- Nearly every Division attorney manager and many PASS supervisors, as well as Front Office staff, have taken Foundations of Leadership (FOL). FOL focuses on issues such as learning to communicate more effectively with employees, providing feedback in an effective and constructive way, and motivating individuals.
- Several section management teams have participated in a three-day Team Building Training developed as a follow-on program to Foundations of Leadership.
- 90 managers participated in 360-degree reviews administered by OPM. In addition, approximately eight managers were offered the opportunity to participate in a one-hour session with an executive coach to discuss how to act on their 360 feedback.
- CRT developed a program to have more experienced section chiefs mentor newer chiefs.
- The PDO publicizes other leadership training opportunities for managers, including CRT's two-day supervisor/hiring training session as well as courses offered by DOJ and Treasury Executive Institute.
- Office of Employment Counsel has created a number of training programs to inform managers of their responsibilities as supervisors, including how to provide regular and substantive feedback to subordinates, understanding how manager behaviors impact employee retention and development, and how the failure to manage misconduct undermines employee morale and the efficiency of the federal service.

Professional Development and Upward Mobility for Non-Managerial Career Staff: CRT has taken a number of actions in response to employee complaints that there were insufficient professional development opportunities for Division staff. These include:

Attorneys

- Since 2006, the Division has conducted a week-long attorney orientation program. That program includes sessions on: (1) role of the Front Office; (2) role of each section; (3) litigation support and e-discovery; (3) expectations for writing; (4) DOJ library resources; (5) government ethics; (6) professional responsibility (legal ethics); (7) government privileges; (8) FOIA and Privacy Act; (9) EEO; (10) outreach; and (11) public speaking skills. Generally, this program occurs three times per year.
- In 2011, the Division developed a training program in communication and leadership skills for non-management attorneys ("Best Practices for Leading Case Teams"). That program was developed in response to PASS employee concerns that

senior line attorneys were not providing adequate feedback to members of case teams.

- Individual Development Plans have been instituted in several sections for attorneys. Some sections have also extended IDPs to support staff. (CRT is required to consult with the union before implementing IDPs for bargaining unit employees.)
- CRT participates in OARM's mentoring program for attorneys with less than 5 years of experience. As part of that program, the Department recognizes "outstanding mentors" with an Attorney General letter each year. CRT actively encourages mentees to nominate outstanding mentors for recognition. Several CRT attorney mentors have been recognized by the Attorney General.
- Beyond the OARM mentoring program, it is Division practice to assign mentors to all new CRT attorneys, irrespective of their level of experience. Each year, PDO invites mentors and mentees to a group coffee or lunch to promote mentoring. Front Office personnel also attend that event.

PASS

- At the recommendation of the Diversity Council, in 2013, CRT hired a Program Manager to develop professional and support staff (PASS) training. (The AAG authorized this position in 2010. However, PDO was unable to complete the hiring process before DOJ implemented its hiring freeze.) In 2013, The Program Manager developed a two-day PASS orientation program that was initially offered in January 2014 to 48 employees. Future programs are planned in conjunction with PASS hiring.
- At the direction of the AAG, the Diversity Council established the Professional Staff Upward Mobility Project (PSUMP) to develop new ideas for PASS staff upward mobility. PSUMP recommended several initiatives, including the following:
 - **Offer CRT-led Flash Mentoring Event for Pass staff.** PSUMP recently held a flash mentoring event that was attended by 30 participants. The organizers presented a summary of the event at the October, 2014 Diversity Council meeting. Greg Friel requested that the organizers follow up with event participants to ensure that the lessons and positive momentum from the event continue by arranging for individual mentees who wish to follow up with the event mentors have an opportunity to do so.
 - **Offer Individual Development Plan (IDPs) Programs to PASS employees.** HCE and CRM have developed IDP programs for PASS staff and other sections are working on such programs.

- The PDO has offered a number of professional development courses of PASS employees, including: Business Etiquette; Dealing with the Elephant in the Room; Managing your money in tough times; Westlaw; Lexus; Professional Writing and Email Etiquette; Working Parents-How to Achieve Balance; Communication with Tact, Diplomacy and Professionalism; Business Writing.

Both

- At the request of the Division, the Justice Leadership Institute opened up the Foundations of Leadership program to non-supervisory attorneys and PASS employees. In addition to a number of attorneys, the President and Vice President of the Bargaining Unit, who are both CRT employees, also attended the program. The PDO plans to request continued expansion of the program.
- CRT implemented “Open Season” to allow incumbent employees to broaden their skills and knowledge and find jobs that better fit their career aspirations and work/life needs.
- Issued a new Working Group policy. (See Collaboration section, above.)
- In May 2013, CRT reinstated exit interviews conducted by the career DAAG.
- Conducts a periodic Division-wide survey of CRT employees and shares Section survey results with Section management.
- Created an anonymous AAG suggestion box to solicit the views of career staff.

Work/ Life Balance: In response to employee concerns that the Division did not offer sufficient flexibility for those who needed to achieve greater levels of work/life balance, the Division took a number of actions, including:

- Greatly expanding flexible work options, particularly telework.
- Issuing a “Flexible Work Options Policy”, establishing the general parameters for telework and flexible work schedules, and allowing sections chiefs to establish section-specific policies focused on their section’s particular needs. In Spring 2014, provided for additional flexible work schedule options in the Flexible Work Options policy.
- In Fall 2014, CRT entered into an agreement with the union to permit union members to begin work as early as 7:00 a.m. Until this change was made, the Collective Bargaining Agreement limited union members to later start times, which impacted their ability to participate in certain telework and flexible work schedules.
- Worked to improve technology that makes telework more efficient, including issuance of docking station laptops and improvements to the remote log-in system.

- Open Season (see Professional Development section, above).

Technology: In response to numerous employee complaints that CRT's technology and IT support lagged behind that of other components, CRT took the following steps:

- In 2010, began issuing laptops with remote access capability to attorney staff. In 2014, refreshed units that had reached their end of life.
- In 2014, CRT will begin a pilot program to test tablet computers.
- In 2014, CRT procured a document management system (iManage).
- In 2014, CRT implemented soft tokens from Blackberries and iPhones to allow users to more easily access into CRT's network.
- In 2014 CRT rolled out a prototype of the Adobe Connect to replace CRT's current AnyMeeting webinar capability.
- Significantly expanded the scope and services offered by CRT's litigation support group to ensure that attorneys have adequate tools and support when investigating and litigating cases.
- Expanded use of SharePoint to enable sharing of training materials and information.
- Entered into a contract with a new Help Desk provider to ensure greater responsiveness and improved customer service.
- Increased the number of Blackberry cell phones issued to CRT staff. In 2014, CRT began issuing iPhones to replace all of CRT's staff Blackberry cell phones. The iPhones now provide "hot-spots" to enable internet capability for the users on travel.
- Invested in improved VTC capabilities to allow some meetings to be conducted remotely.

APPENDIX E: CIVIL RIGHTS STATUTES ENFORCED BY CRT

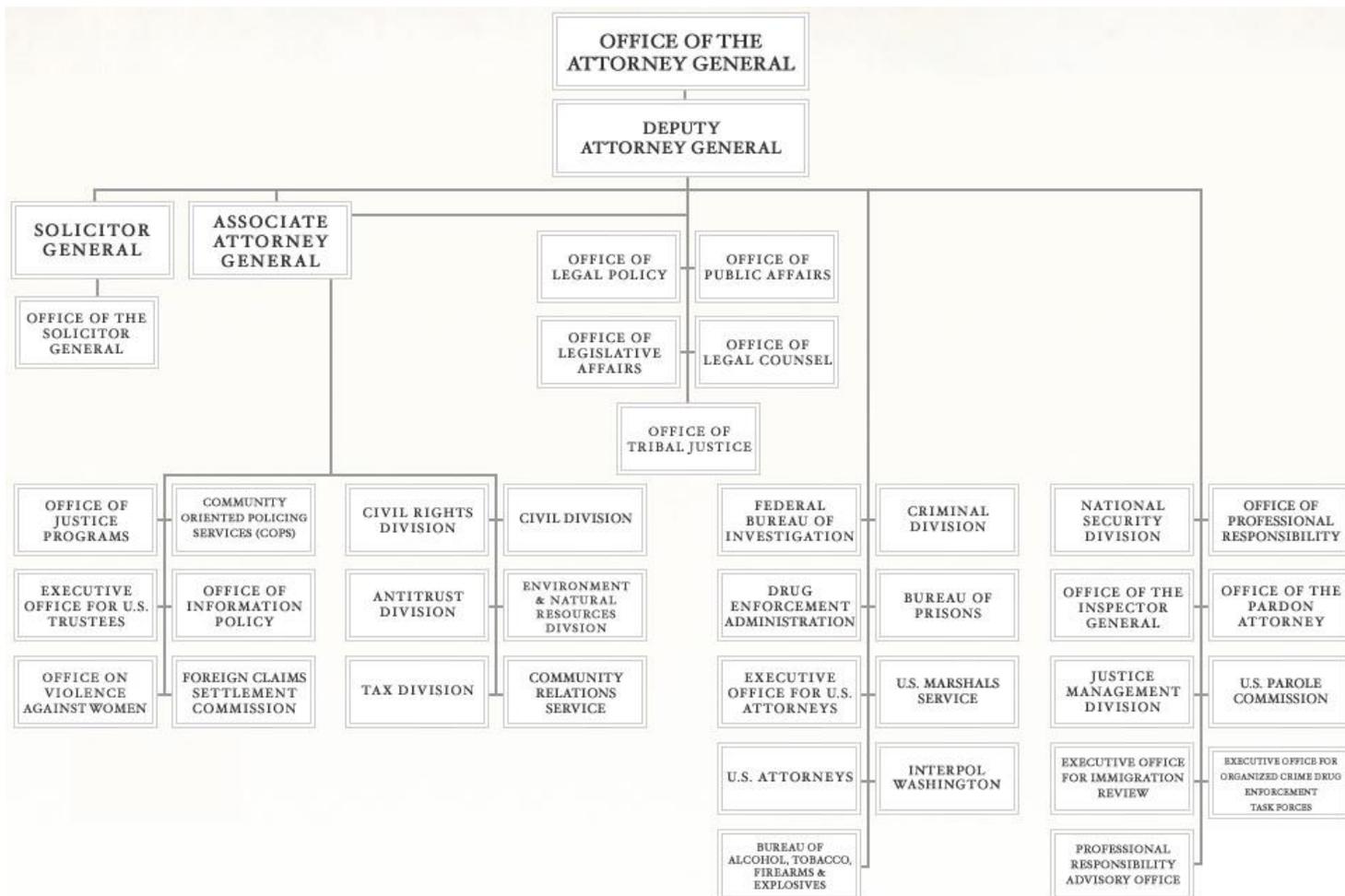
Statute	Enforcing Section	Type of Case
Americans with Disabilities Act, Title I	DRS	Title I of the Americans with Disabilities Act prohibits private employers, state and local governments, employment agencies, and labor unions from discriminating against qualified individuals with disabilities in recruiting, hiring, termination, promotion, compensation, job training, and other terms, conditions, and privileges of employment.
Americans with Disabilities Act, Title II	DRS	Title II of the Americans with Disabilities Act protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by state and local government entities.
Americans with Disabilities Act, Title III	DRS	Title III of the Americans with Disabilities Act protects qualified individuals with disabilities from discrimination with regard to use and enjoyment of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation. "Public accommodations" include stores, restaurants, hotels, inns, and other commercial spaces open to the public.
Rehabilitation Act of 1973	DRS & EOS	Section 504 of the Rehabilitation Act of 1973 prohibits the exclusion, the denial of benefits, and discrimination by reason of disability in programs or activities receiving federal funds. Section 508 requires Federal electronic and information technology to be accessible to people with disabilities, including employees and members of the public.
Civil Rights Act of 1964, Title VII	ELS	Title VII of the Civil Rights Act makes it unlawful to discriminate against someone on the basis of race, color, national origin, sex (including pregnancy), or religion. The Act also makes it unlawful to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

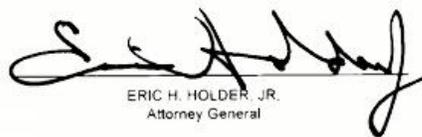
Uniformed Services Employment and Reemployment Rights Act (USERRA)	ELS	The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) seeks to ensure that service members are entitled to return to their civilian employment upon completion of their military service. Service members should be reinstated with the seniority, status, and rate of pay that they would have obtained had they remained continuously employed by their civilian employer.
Civil Rights Act of 1964, Title IV	EOS	Title IV of the Civil Rights Act prohibits discrimination on the basis of race, color, sex, religion, or national origin by public elementary and secondary schools and public institutions of higher learning.
Equal Education Opportunities Act of 1974 (EEOA)	EOS	Section 1703(f) of the EEOA requires state educational agencies and school districts to take action to overcome language barriers that impede English Language Learner students from participating equally in school districts' educational programs.
Civil Rights Act of 1964, Title VI	FCS	Title VI prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.
Education Amendments of 1972, Title IX	FCS & EOS	Title IX states that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.
Civil Rights Act of 1964, Title II	HCE	Title II prohibits discrimination in certain places of public accommodations, such as hotels, restaurants, nightclubs, and theaters.
Fair Housing Act (FHA)	HCE	The Fair Housing Act prohibits discrimination by direct providers of housing, such as landlords and real estate companies as well as other entities, such as municipalities, banks or other lending institutions and homeowners insurance companies whose discriminatory practices make housing unavailable to persons because of race or color, religion, sex, national origin, familial status, or disability.

<p>Equal Credit Opportunity Act (ECOA)</p>	<p>HCE</p>	<p>The Equal Credit Opportunity Act (ECOA) prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age, because an applicant receives income from a public assistance program, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act.</p>
<p>Religious Land Use and Institutionalized Persons Act (RLUIPA)</p>	<p>HCE & SPL</p>	<p>The Religious Land Use and Institutionalized Persons Act (RLUIPA) prohibits local governments from adopting or enforcing land use regulations that discriminate against religious assemblies and institutions or which unjustifiably burden religious exercise. It also requires that state and local institutions (including jails, prisons, juvenile facilities, and government institutions housing people with disabilities) not place arbitrary or unnecessary restrictions on religious practice.</p>
<p>Servicemembers Civil Relief Act (SCRA)</p>	<p>HCE</p>	<p>The Servicemembers Civil Relief Act (SCRA) provides protections in housing, credit, and taxes for military members as they enter active duty. It also temporarily suspends judicial and administrative proceedings while military personnel are on active duty.</p>
<p>Immigration and Nationality Act § 274B</p>	<p>OSC</p>	<p>This section of the Immigration and Nationality Act (INA) prohibits: (1) citizenship status discrimination in hiring, firing, or recruitment or referral for a fee; (2) national origin discrimination in hiring, firing, or recruitment or referral for a fee; (3) document abuse (unfair documentary practices) during the employment eligibility verification process; and (4) retaliation or intimidation.</p>
<p>Civil Rights of Institutionalized Persons Act (CRIPA)</p>	<p>SPL</p>	<p>The Civil Rights of Institutionalized Persons Act (CRIPA) protects the rights of people in state or local correctional facilities, nursing homes, mental health facilities, and institutions for people with intellectual and developmental disabilities.</p>
<p>Violent Crime and Law Enforcement Act § 14141</p>	<p>SPL</p>	<p>Section 14141 of the Violent Crime and Law Enforcement Act prohibits law enforcement officials or government employees involved with juvenile justice from engaging in a pattern or practice of deprivation of constitutional rights, privileges, and immunities.</p>

Omnibus Crime and Safe Streets Act	SPL	The Omnibus Crime Control and Safe Streets Act of 1968 prohibits discrimination on the grounds of race, color, religion, national origin, or sex by law enforcement agencies receiving federal funds.
Voting Rights Act	VOT	The Voting Rights Act of 1965 prohibits any voting practices that discriminate on the basis of race, color, or membership in a language minority group. The Act requires certain jurisdictions with significant populations of language minority citizens to provide bilingual written materials and other assistance and prohibits practices that prevent individuals from exercising their right to vote, such as voter intimidation, or denial of assistance to voters who have disabilities or are illiterate.
Voting Accessibility for the Elderly and Handicapped Act	VOT & DRS	The Voting Accessibility for the Elderly and Handicapped Act of 1984 generally requires polling places across the United States to be physically accessible to people with disabilities for federal elections.
Uniformed and Overseas Citizens Voting Act (UOCAVA)	VOT	Uniformed and Overseas Citizens Voting Act (UOCAVA) requires that the states and territories allow certain U.S. citizens who are away from their homes, including members of the uniformed services and the merchant marine, their family members, and U.S. citizens who are residing outside the country to register and vote absentee in federal elections.
National Voter Registration Act (NVRA)	VOT (civil portions)	The National Voter Registration Act (NVRA) requires states to make voter registration opportunities for federal elections available through the mail and when people apply for or receive driver licenses, public assistance, disability services and other government services.
Help America Vote Act (HAVA)	VOT	The Help America Vote Act (HAVA) establishes minimum standards for states to follow in several key aspects of administration of federal elections, including voting systems, provisional ballots, voter information posters on election days, first time voters who register to vote by mail, and statewide voter registration databases.

APPENDIX F: DOJ ORGANIZATIONAL CHART



Approved by  Date 11/26/12
 ERIC H. HOLDER, JR.
 Attorney General

Source: DOJ website

APPENDIX G: ORGANIZATIONAL CHANGE BEST PRACTICES

Heart of Change¹²³ (Kotter/Cohen)	Implementation Steps to Assist Mergers and Organizational Transformations (GAO July 2003) ¹²⁴	Transforming Organizations (Abramson/Lawrence) ¹²⁵
Create a sense of urgency so that people start telling each other, "Let's go; we need to change things!"	Ensure top leadership drives the transformation.	Select the right person.
Pull together a guiding team powerful enough to guide a big change.	Establish a coherent mission and integrated strategic goals to guide the transformation.	Clarify the mission.
Create clear, simple, uplifting visions and sets of strategies.	Focus on a key set of principles and priorities at the outset of the transformation.	Get the structure right.
Communicate the vision through simple, heartfelt messages sent through multiple channels so that people begin to buy into the change.	Set implementation goals and a timeline to build momentum and show progress from day one.	Seize the moment (urgency / right time).
Empower people by removing obstacles to the vision.	Dedicate an implementation team to manage the transformation process.	Communicate, communicate, communicate.
Create short-term wins that provide momentum.	Use the performance management system to define responsibility and assure accountability for change.	Involve key players.
Maintain momentum so that wave after wave of change is possible.	Establish a communication strategy to create shared expectations and report related progress.	Engage employees.
Make change stick by nurturing a new culture.	Involve employees to obtain their ideas and gain their ownership for the transformation.	Persevere.

¹²³ Dan Cohen and John Kotter, *The Heart of Change* (Boston: Harvard Business School Press, 2002).

¹²⁴ U.S. Government Accountability Office, *Report to Congressional Subcommittees, Results Oriented Cultures: Implementation Steps to Assist Mergers & Organizational Transformations* GAO-03-669. (Washington, D.C.: July 2003), 2-3.

¹²⁵ Marc A. Abrahamson and Paul R. Lawrence, *Transforming Organizations* (Lanham, MD: Rowman and Littlefield Publishers, 2001).

APPENDIX H: ACADEMY SURVEY QUESTIONS¹²⁶

Section 1: Personal Work Experience

1. I know how my work relates to my division's goals and priorities.
2. I know what is expected of me on the job.
3. I am involved in decisions that affect my work.
4. I have enough information to do my job well.
5. I have adequate opportunity for professional development.
6. I receive performance feedback and an annual performance appraisal.
7. My performance appraisal is a fair reflection of my performance.
8. I am held accountable for achieving results.
9. In my section, steps are taken to deal with a poor performer.
10. I can disclose a suspected violation of law, rule or regulation without fear of reprisal.
11. I understand the process for disclosing a suspected violation of law, rule or regulation.

Section 2: Mission Priorities and Processes (*note: Managers/leaders in CRT refer to the front office leadership team including the AAG, DAAGs and special counsels who serve in a leadership/management role. Managers/leaders in the sections refer to the section chief, deputies and special counsels who serve in a leadership/management role.*)

12. My section enforces federal civil rights laws fairly and impartially.
13. Managers communicate CRT's goals and priorities.
14. Managers communicate section goals and priorities.
15. Managers review and evaluate CRT's progress toward meeting its goals and objectives.
16. Managers communicate CRT and section policies and procedures.
17. In CRT, leaders solicit and value input from career staff.
18. In my section, leaders solicit and value input from nonsupervisory staff.
19. Managers encourage different viewpoints and discussion.
20. Employees have a feeling of personal empowerment with respect to work processes.

¹²⁶ With the exception of Section 7 (Demographics), respondents were asked to answer all questions by selecting one of the following options: Strongly Agree; Agree; Neither Agree nor Disagree; Disagree; Strongly Disagree; and No Basis to Judge.

21. In CRT, effective mechanisms are in place to ensure my concerns are heard and addressed.

Section 3: Teamwork, Collaboration and Communications *(note: Managers and management refer to both the front office leadership team including the AAG, DAAGs and special counsels who serve in a leadership/management role and managers in the sections including the section chief, deputies, and special counsels who serve in a management role.)*

22. The people I work with cooperate to get the job done.
23. Employees in my section share job knowledge with each other.
24. Conflict between staff members and management is handled appropriately.
25. Managers promote communication among different sections across CRT.
26. Effective communication occurs between CRT's front office and my section.
27. Managers communicate changes or decisions that affect my work.
28. Managers support collaboration across sections and units to accomplish work objectives.

Section 4: Hiring, Promotions, Assignments *(note: Managers and management refer to both the front office leadership team including the AAG , DAAGs and special counsels who serve in a leadership/management role as well as managers in the sections including the section chief, deputies, and special counsels who serve in a management role.)*

29. My section is able to recruit people with the right skills.
30. Hiring in my section is based on merit.
31. Promotions in my section are based on merit.
32. Case assignments are handled fairly.
33. Managers have demonstrated that a diverse workforce is a priority in CRT.
34. Arbitrary action, personal favoritism and coercion for partisan political purposes are not tolerated.
35. Management takes allegations of discrimination seriously and addresses them swiftly and appropriately.
36. Discrimination or harassment based on political affiliation is not occurring.
37. Prohibited personnel practices (e.g., discriminating for or against any applicant, obstructing a person's right to compete for employment, knowingly violating veterans' preference requirements) are not tolerated.
38. Policies and procedures are applied equally to all employees in the section.

Section 5: Leadership (*note: Supervisor refers to your immediate supervisor. Leaders/senior leaders in CRT refer to the front office leadership team including the AAG, DAAGs and special counsels who serve in a leadership role. Leaders in the sections refer to the section chief, deputies and special counsels who serve in a leadership role.*)

- 39. My supervisor treats me with respect.
- 40. I have trust and confidence in my supervisor.
- 41. In my section, leaders generate high levels of motivation and commitment to the workplace.
- 42. In CRT, leaders generate high levels of motivation and commitment to the workplace.
- 43. My section's leaders maintain high standards of honesty and integrity.
- 44. CRT leaders maintain high standards of honesty and integrity.
- 45. In my section, leaders communicate the importance of professional conduct and the consequences for misconduct.
- 46. I have a high level of respect for CRT senior leaders.

Section 6: Morale/Overall Satisfaction

- 47. I am satisfied with the level of my involvement in decisions that affect my work.
- 48. I am satisfied with the information I receive from management on what's going on in my organization.
- 49. I am satisfied with the policies and practices of my senior leaders.
- 50. I am satisfied with my organization.

Section 7: Demographics

- 51. I work in the following office/section (please select one):
 - Administrative Management Section (ADM)
 - Appellate Section (APP)
 - Complaint Adjudication Office (CAO)
 - Criminal Section (CRM)
 - CRT AAG's Office
 - Disability Rights Section (DRS)
 - Educational Opportunities Section (EOS)
 - Employment Litigation Section (ELS)
 - Federal Coordination and Compliance (FCC)
 - Housing and Civil Enforcement Section (HCE)
 - Office of Employment Counsel (OEC)

- Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC)
- Policy and Strategy Section (POL)
- Special Litigation Section (SPL)
- Voting Section (VOT)

52. My position is (please select all that apply)

- Attorney
- PASS
- Manager/Supervisor
- Non-Supervisor

APPENDIX I: PROGRAM EXAMPLES OF KEY MANAGEMENT REVIEW ELEMENTS

This appendix provides examples of how federal agencies have implemented the seven elements of a management review described in Chapter 6.

Agency Examples of Management Review Programs						
	Federal Bureau of Investigation (FBI)	Drug Enforcement Agency (DEA)	United States Attorneys' Offices (USAOs)	Offices of Inspectors General (OIG)	Department of Energy (DOE), Office of Science and Technology (OST)	Government Accountability Office (GAO)
Type of Review	Internal	Internal	Internal	External	External	Internal and External
Reviewing Entity	FBI, Office of Inspections	DEA, Office of Inspections	Executive Office of United States Attorneys (EOUSA), Evaluation and Review Staff (EARS)	Council of the Inspectors General on Integrity and Efficiency (CIGIE)	American Society of Mechanical Engineers (ASME)	<p>Internal Inspection: GAO assistant directors serve on the inspection team under the supervision of Chief Quality Officer.</p> <p>External Peer Review: International Organization of Supreme Audit Institutions (INTOSAI)</p>

Element 1: Quality Assurance Approach
<p>Federal Bureau of Investigation (FBI)</p> <p>The FBI's enforcement standards are based on an annual national threat assessment process that establishes enforcement priorities (e.g., human trafficking, terrorism, mortgage fraud, etc.). Based on the threat assessment, field offices are expected to allocate the majority of resources to the highest rated threats.¹²⁷ Evaluations are conducted to assess resource allocation and results against the identified national and specific field office priorities. Field offices are also evaluated for compliance with Attorney General Investigative Guidelines.¹²⁸</p>

¹²⁷ It is important to note that the prioritization process allows for adjustments when unexpected threats occur and resources must be shifted in response. Furthermore, field offices in geographic areas experiencing higher incidents of a threat ranked among those in the top three highest national priorities may shift their resources accordingly. (Interview notes)

¹²⁸ U.S. Federal Bureau of Investigation, Office of the Inspector General, *The Federal Bureau of Investigation's Compliance with the Attorney General's Investigative Guidelines*. (Washington, D.C.: September 2005), 9.

Executive Office for United States Attorneys (EOUSA), Evaluation and Review Staff (EARS)

USAOs are evaluated by EARS evaluation teams to determine whether they are in compliance with the management standards established by executive leadership at EOUSA in addition to DOJ policies and priorities.

Government Accountability Office (GAO)

The four key components of GAO's quality assurance framework are leadership, human capital, engagement performance, and monitoring/policy and peer review.¹²⁹ GAO's annual inspections (internal reviews) include assessing compliance by audit teams with the agency's established standards in each assessment area in addition to compliance with GAO policy and GAGAS (generally accepted government auditing standards).

International Organization of Supreme Audit Institutions (INTOSAI)

Under GAGAS, GAO is required, at least once every three years, to obtain an external peer review which incorporates additional quality assurance standards. INTOSAI external peer review team conducts external reviews of GAO consistent with the Code of Ethics and INTOSAI-issued auditing standards.¹³⁰ The external review is to be sufficient in scope to determine whether GAO's system of quality control is suitably designed and whether GAO is complying with its quality control system in order to achieve reasonable assurance of conforming to applicable professional standards.¹³¹

Council of the Inspectors General on Integrity and Efficiency (CIGIE)

OIG audit organizations must have a system of quality control in place to provide reasonable assurance that the organization and its personnel comply with GAGAS and applicable legal and regulatory requirements. The CIGIE external peer review team is responsible for reaching a conclusion as to the adequacy of the policies and procedures and determining whether the OIG's audit quality control and assurance program is adequately designed and implemented.¹³²

Element 2: Leadership Support of the Review Process

Federal Bureau of Investigation (FBI)

At the FBI, once an inspection is complete, the findings are reported to the FBI Director and Bureau executives, and a meeting is scheduled between the Director and the head of the organization that was inspected. In addition, pertinent parts of the more extensive final report are disseminated throughout the Bureau to those entities having operational or

¹²⁹ U.S. Government Accountability Office, "Quality Assurance Framework." (Document provided to the study team.)

¹³⁰ U.S. Government Accountability Office, *International Peer Review of the Performance Audit Practice of the United States Government Accountability Office*. (Washington, D.C.: April 2005), 13.

¹³¹ U.S. Government Accountability Office, *Government Auditing Standards: 2011 Revision* GAO-12-331G. (Washington, D.C.: December 2011), 66.

¹³² U.S. Council of the Inspectors General on Integrity and Efficiency Audit Committee, *Guide to Conducting External Peer Reviews of the Audit Organizations of Federal Offices of Inspector General*. (Washington, D.C.: March 2009), 11-13.

administrative responsibilities addressed in the report. This sends a clear message that leadership reinforces the quality control and accountability principles the review process is intended to ensure are being followed. In fact, top FBI leadership stated that the inspection process has contributed significantly to transformational leadership at the Bureau.¹³³

Executive Office for United States Attorneys (EOUSA), Evaluation and Review Staff (EARS)

Prior to an evaluation, U.S. Attorneys emphasize the importance of the EARS evaluation process and encourage staff cooperation. After completion of an evaluation, the EARS staff produces a final evaluation report that is reviewed by the director of EOUSA. EOUSA provides a briefing to the Deputy Attorney General regarding the evaluation findings.

Government Accountability Office (GAO)

Top leadership at GAO emphasizes the importance of adhering to the quality assurance framework in all aspects of its work to ensure that core values are upheld. Most notably, the requirements of independence, impartiality, and integrity are routinely emphasized throughout the agency. The Chief Operating Officer is kept regularly apprised of the effort and inspection teams brief the GAO Executive Committee (the Comptroller General, Chief Operating Officer, General Counsel, and Chief Administrative Officer) and a Professional Practices Advisory Committee (comprising advisors external to GAO) of the results of the inspection.

Element 3: Transparency of the Review Process

Federal Bureau of Investigation (FBI)

The FBI provides questions that will be asked and documentation that will be reviewed in advance of the evaluation process. For its national program reviews, the FBI will send a unit a detailed set of interrogatories to be completed before the inspection process begins. Prior to the start of an inspection, the FBI team will review the entire inspection process with the special agent in charge (SAC) and his/her management team so that it is transparent and expectations are clear. At the conclusion of FBI on-site inspections, the field office is provided a draft written report for review and participates in a closing conference held on the last day of the inspection. The field office is then given thirty days to respond to each finding, instruction, and recommendation contained in the draft report.¹³⁴

Executive Office for United States Attorneys (EOUSA), Evaluation and Review Staff (EARS)

EARS provides details on the evaluation process through the intranet. EARS staff also contacts the field office to be reviewed several months in advance to begin collecting information for the review team. If a particular field office has someone who has previously served as a reviewer, that individual assists managers in preparing for the review process. The EARS process provides for open communication between the review team leader and

¹³³ Interview notes.

¹³⁴ U.S. Federal Bureau of Investigation, Office of the Inspector General, *The Federal Bureau of Investigation's Compliance with the Attorney General's Investigative Guidelines*, 10.

the U.S. Attorney in advance of a review. At the end of an evaluation, a draft report is provided to the district office for review.

Department of Energy (DOE)

DOE independent assessments include a pre-assessment meeting, entrance meeting, and exit meeting. The pre-assessment process includes scheduling individual interviews, clarifying document handling and disposition protocols, and working out logistical problems.¹³⁵ The entrance meeting is held immediately before the assessment and allows the assessed organization's managers to meet the assessment team and discuss protocols and answer questions about the process. The assessment team presents the assessment summary at the exit meeting and provides the assessed organization an opportunity to express any concerns.¹³⁶

Government Accountability Office (GAO)

GAO provides questions that will be asked and documentation that will be reviewed in advance of the evaluation process. At GAO, there is broad acceptance of the inspection process because it is transparent and teams already know what questions will be asked.¹³⁷ All GAO employees have access to key inspection tools including inspection checklists, standard inspection forms, and staff questionnaires. And employees are informed of the results of the annual inspection.

Council of the Inspectors General on Integrity and Efficiency (CIGIE)

CIGIE external peer review teams conduct a series of pre-site review steps that also include requests for information.¹³⁸ Exit conferences are held to discuss the results of the peer review, the opinion to be expressed, and any areas of noncompliance. The responsible individuals of the OIG that was reviewed have an opportunity to provide their views in order to ensure objectivity, accuracy, and completeness of the findings. Furthermore, all preliminary draft findings and conclusions must be presented during the review to the official(s) designated by the OIG to avoid any misunderstandings and to help ensure that all material facts are considered before the draft report is prepared.¹³⁹

Element 4: Independence of Reviewers

Federal Bureau of Investigation (FBI)

FBI inspection teams are composed of individuals outside of the field office being assessed.¹⁴⁰

¹³⁵ U.S. Department of Energy, *Management and Independent Assessments*, 22.

¹³⁶ *Ibid.*, 25.

¹³⁷ Interview notes.

¹³⁸ U.S. Council of the Inspectors General on Integrity and Efficiency Audit Committee, *Guide to Conducting External Peer Reviews of the Audit Organizations of Federal Offices of Inspector General*, 11.

¹³⁹ *Ibid.*, 11-13.

¹⁴⁰ U.S. Federal Bureau of Investigation, Office of the Inspector General, *The Federal Bureau of Investigation's Compliance with the Attorney General's Investigative Guidelines*, 27.

Executive Office for United States Attorneys (EOUSA), Evaluation and Review Staff (EARS)

Reviewers for the EARS process come from a different USAO than the one they are evaluating and reviewers are not allowed to evaluate the same field office more than once.

Department of Energy (DOE)

Assessment personnel performing independent assessments do not perform or supervise the activities being assessed and are not directly responsible for the activities. Independence is determined based on an individual not having bias rather than on organizational affiliation.¹⁴¹

Government Accountability Office (GAO)

Team captains are responsible for ensuring that they do not inspect engagements done by their own mission team.¹⁴²

Element 5: Accountability of Reviewed Organizations

Federal Bureau of Investigation (FBI)

When deficiencies are identified in the course of an FBI inspection, the field office is given instructions to fix them and is provided 60 days to respond as to how they will address the deficiency. A field office inspection does not get cleared until a field office responds to all of the identified issues. If necessary, a re-inspection will be conducted, though this does not happen often.¹⁴³

Executive Office for United States Attorneys (EOUSA), Evaluation and Review Staff (EARS)

District offices are given 28 days to respond to draft evaluation reports. EARS staff will coordinate with other EOUSA staffs to provide assistance to USAOs with issues in program areas for which EOUSA staffs are responsible (for example, budgeting, human resources, and the like). EOUSA engages in active follow-up until all issues raised in the report are resolved with the USAO under review.¹⁴⁴

Department of Energy (DOE)

At DOE, managers responsible for the activities assessed are also responsible for the development of effective corrective actions for the problem areas/deficiencies discovered during the assessment, including measures to correct each deficiency.¹⁴⁵

¹⁴¹ U.S. Department of Energy, *Management and Independent Assessments*, 14.

¹⁴² U.S. Government Accountability Office, "Annual Inspections." (Document provided to the study team.)

¹⁴³ Interview notes.

¹⁴⁴ Interview notes.

¹⁴⁵ U.S. Department of Energy, *Management and Independent Assessments*, 26.

Government Accountability Office (GAO)

At GAO, action plans are prepared in response to inspection findings. Management then determines how to address the inspection results and how to implement an action plan. Progress on actions taken is monitored.

Element 6: Minimum Interference of Evaluation Process with Operations

Federal Bureau of Investigation (FBI)

The FBI's Manual of Investigative Methods requires inspection teams to use the least intrusive methods available. For this reason, requests for information are sent well in advance of inspections to allow sufficient time for response. Case management files, which are accessible electronically, are reviewed in advance as well. The FBI also conducts surveys following an inspection to measure whether the process was intrusive, fair, and transparent.

Executive Office for United States Attorneys (EOUSA), Evaluation and Review Staff (EARS)

The EARS evaluation process includes surveys and requests for information months in advance of a review and solicits feedback on the evaluation process from USAOs.

Government Accountability Office (GAO)

GAO conducts internal inspections annually and inspects only completed engagements to avoid interference with active audits.

Element 7: Inspectors Provided Opportunity for Advancement

Federal Bureau of Investigation (FBI)

At the FBI, an agent must obtain inspection certification in order to become an Assistant Special Agent in Charge (ASAC). This requires that an agent participate in at least five inspections and one Office of Professional Responsibility (OPR) investigation.¹⁴⁶ Top leadership at both the DEA and FBI stated that service as an inspector provides an opportunity for excellent management training and career development.

Drug Enforcement Agency (DEA)

DEA agents must spend three years as a field supervisor before becoming eligible to be an inspector. Individuals who demonstrate leadership potential are often selected to serve as inspectors.¹⁴⁷

Government Accountability Office (GAO)

At GAO, selection to serve on an inspection team is regarded as career enhancing.¹⁴⁸

¹⁴⁶ U.S. Federal Bureau of Investigation, Office of the Inspector General, *The Federal Bureau of Investigation's Compliance with the Attorney General's Investigative Guidelines*, 237, footnote 354.

¹⁴⁷ Interview notes.

¹⁴⁸ Interview notes.

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