

# An Investigation of Allegations of Politicized Hiring and Other Improper Personnel Actions in the Civil Rights Division



**U.S. Department of Justice**  
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## TABLE OF CONTENTS

|  |    |
|--|----|
| CHAPTER ONE: INTRODUCTION.....   | 1  |
| CHAPTER TWO: BACKGROUND .....  | 4  |
| I.    Legal Standards .....  | 4  |
| II.   Organization of the Civil Rights Division.....   | 6  |
| III.  Leadership of the Civil Rights Division, 2001 to 2007 .....  | 9  |
| IV.  The Attorney Hiring Process in the Division.....  | 11 |
| A.    Hiring by Sections: 2001 to February 2002 .....  | 11 |
| B.    New Hiring Procedures: February 2002.....  | 11 |
| C.    Memorandum on Personnel Practices: June 2007.....  | 13 |
| CHAPTER THREE: ATTORNEY PERSONNEL DECISIONS: HIRING,<br>TRANSFERS, CASE ASSIGNMENTS, AND OTHER PERSONNEL<br>ACTIONS WITHIN THE CIVIL RIGHTS DIVISION ..... | 14 |
| I.    Hiring .....   | 15 |
| A.    Schlozman’s Role in the Hiring Process.....  | 16 |
| B.    Additional Evidence and E-mails .....  | 20 |
| C.    Schlozman’s Statements .....   | 25 |
| D.    Hiring in Civil Rights Division Sections Not Supervised by<br>Schlozman.....   | 26 |
| E.    Honors Program and Summer Law Intern Program Hiring.....   | 28 |
| F.    Statistical Overview of Hiring of Career Attorneys.....  | 32 |
| G.    Analysis.....  | 33 |
| II.   Transfers, Case Assignments, and Other Personnel Actions.....  | 35 |
| A.    Forced Transfers of Appellate Section Attorneys .....  | 35 |
| 1.    Transfers of Attorneys A, B, and C.....  | 36 |
| 2.    Replacement Attorneys.....   | 41 |
| 3.    Complaints About the Transfers .....   | 41 |
| 4.    Analysis .....   | 42 |
| B.    Case Assignments and Other Personnel Actions.....  | 43 |

|   |   |    |
|---|---|----|
| 1.  | Factual Overview.....   | 43 |
| 2.  | Analysis .....  | 45 |
| III.  | Management Failures.....  | 45 |
| A.  | Factual Overview .....  | 46 |
| B.  | Analysis.....   | 50 |
| CHAPTER FOUR: SCHLOZMAN’S FALSE STATEMENTS<br>TO CONGRESS .....             |   | 53 |
| I.  | Statements About Hiring.....  | 53 |
| II.   | Statements About Appellate Section Attorney Transfers .....                     | 59 |
| III.  | Additional Statement About Hiring While Interim<br>United States Attorney ..... | 60 |
| IV.   | Criminal Referral .....   | 63 |
| CHAPTER FIVE: CONCLUSIONS AND RECOMMENDATIONS .....                         |   | 64 |
| APPENDIX: Career Attorney Hiring, Civil Rights Division, 2003 – 2006 ...A-1 |   |    |

**INDEX OF TABLES AND FIGURE**

|           |  |    |
|-----------|--|----|
| Table 1:  | Civil Rights Division Responsibilities and Attorney Staffing<br>by Section (May 2008).....                 | 8  |
| Figure 1: | Civil Rights Division Management, July 2001 –<br>August 2007 .....   | 9  |
| Table 2:  | Political and Ideological Affiliations of Civil Rights Division<br>Attorneys Hired from 2003 to 2006 ..... | 33 |

## **CHAPTER ONE: INTRODUCTION\***

This report describes the results of the joint investigation by the Office of the Inspector General (OIG) and the Office of Professional Responsibility (OPR) into allegations that political or ideological affiliations were considered in hiring, transferring, and assigning cases to career attorneys in the Civil Rights Division of the Department of Justice (Department). Career attorney positions in the Department are subject to the merit system principles of the *Civil Service Reform Act*, which prohibit discrimination in the federal work place based on, among other things, political affiliation. See 5 U.S.C. § 2301, *et seq.* Complaints that politics was affecting the attorney hiring process in the Civil Rights Division received widespread public attention in April 2007 as a result of allegations by Civil Rights Division employees that Bradley S. Schlozman, a former senior Division official, hired lawyers for career positions based on their political or ideological affiliations.

Our investigation examined: (1) whether the Civil Rights Division used political or ideological affiliations in assessing applicants for career attorney positions, including the hiring processes for experienced attorneys and entry-level attorneys hired through the Attorney General's Honors Program; (2) whether political or ideological affiliations resulted in other personnel actions affecting career attorneys in the Division, such as attorney transfers and case assignments; (3) whether the Division's senior management failed to recognize and correct any improper consideration of political or ideological affiliations in the hiring and treatment of career attorneys; and (4) whether Schlozman made false statements in his testimony to Congress about these matters.

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\* We referred the findings from our investigation to the U.S. Attorney's Office for the District of Columbia in March 2008. We completed this written report of investigation in July 2008.

The U.S. Attorney's Office informed us on January 9, 2009, of its decision to decline prosecution of Schlozman. The Interim U.S. Attorney, Jeffrey Taylor, was recused from the matter and the decision.

We are now releasing our July 2008 report of investigation. The only changes we made to the report as completed in July 2008 are the correction of two typographical errors, and a few minor corrections based on suggestions by the U.S. Attorney's Office.

This OIG/OPR joint investigation was conducted by a team consisting of OIG and OPR attorneys, an OIG special agent, and OIG program analysts. Our investigation examined the hiring practices of the Civil Rights Division from 2001 to 2007. However, most of the allegations focused in particular on the period of Schlozman's tenure in the Division, May 2003 through March 2006.

The OIG/OPR team interviewed more than 120 current and former employees of the Civil Rights Division, including political appointees, career attorneys, and human resources personnel. We interviewed the current Acting Assistant Attorney General (AAG) and 3 former AAGs for the Civil Rights Division; all but one of the Deputy Assistant Attorneys General (DAAG) during the period of our investigation; all of the current and former section chiefs in the Division; and numerous attorneys, both career and politically appointed, who worked in the Division.<sup>1</sup> Many of those we interviewed are no longer employees of the Department.

We were unable to interview several former Civil Rights Division officials no longer employed at the Department who declined our request for interviews. For example, Bradley Schlozman, who served as DAAG, Principal Deputy Assistant Attorney General, and Acting AAG in the Division, declined our interview request through his counsel. In addition, J. Michael Wiggins, who also served as a Principal DAAG for the Civil Rights Division, and Hans von Spakovsky, former Counsel to the AAG, declined our requests to interview them as part of this investigation. Jason Torchinsky, former Counsel to the AAG, did not respond to our written request for an interview.

We reviewed thousands of pages of documents pertaining to the career attorneys hired in the Civil Rights Division from 2002 to 2007. The documents included position announcements, résumés and application materials, and other documents relating to interviews and hiring. The team also reviewed over 200,000 e-mails of relevant personnel in the Civil Rights Division, including Schlozman.<sup>2</sup> We also reviewed documents relating to the transfer or attempted transfer by Schlozman of three career attorneys from the Division's Appellate Section.

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<sup>1</sup> We interviewed 84 of the 112 attorneys hired in the Division's 8 major sections during the period from March 2003 to March 2006.

<sup>2</sup> The e-mails recovered do not represent the entire universe of e-mails sent or received by the relevant persons during the period. Because of the Department's procedure for backing up and preserving e-mails, some e-mails were not recoverable.

This report is divided into five chapters. Following this Introduction, we discuss in Chapter Two the laws, regulations, and Department of Justice policies applicable to the use of political or ideological affiliations in hiring or other treatment of career employees; the structure and management of the Civil Rights Division during the period of our investigation; and the hiring process in the Division.

Chapter Three contains our factual findings and analysis, focusing on the consideration of political or ideological affiliations in the hiring of career attorneys, the effect of such affiliations on the transfers and case assignments of career attorneys, and management failures that enabled the conduct we identified to occur. Chapter Four describes Schlozman's statements to Congress and the evidence that we believe demonstrates their falsity. Chapter Five summarizes our conclusions and recommendations.

## CHAPTER TWO: BACKGROUND

### I. Legal Standards

In this section we discuss the federal laws and Department policies relevant to the issue of whether it is illegal to consider political or ideological affiliations in hiring attorneys for career positions or in transferring or assigning cases to career attorneys. We conclude that federal law and Department policy prohibit the use of political or ideological affiliations to assess applicants for career attorney positions in the Department and in the management of career attorneys.

Positions for Department attorneys fall into two broad categories: political and career. It is not improper to consider political affiliations when hiring for political positions. However, as discussed below, both Department policy and federal civil service law prohibit discrimination in hiring for career positions on the basis of political affiliations. This prohibition applies to experienced attorneys, as well as entry-level attorneys hired for positions in the Attorney General's Honors Program.

The Department's policy on non-discrimination is contained in the Code of Federal Regulations, Section 42.1(a) of 28 C.F.R. Part 42, Subpart A, which states:

It is the policy of the Department of Justice to seek to eliminate discrimination on the basis of race, color, religion, sex, sexual orientation, national origin, marital status, **political affiliation**, age, or physical or mental handicap in employment within the Department and to assure equal employment opportunity for all employees and applicants for employment (emphasis added).

While the regulation does not define "political affiliation," courts have considered "political affiliation" to include "commonality of political purpose, partisan activity, and political support." *See, e.g., Curinga v. City of Clairton*, 357 F.3d 305, 311 (3d Cir. 2004).

The Office of Attorney Recruitment and Management (OARM), the Department component with primary responsibility for overseeing career attorney hiring, states on its website:

The U.S. Department of Justice is an Equal Opportunity/ Reasonable Accommodation Employer. Except where otherwise provided by law, there will be no discrimination

based on color, race, religion, national origin, **politics**, marital status, disability, age, sex, sexual orientation, status as a parent, membership or nonmembership in an employee organization, or personal favoritism (emphasis added).<sup>3</sup>

In addition to Department policies, the *Civil Service Reform Act* (CSRA) prohibits the Department from discriminating in hiring for career positions based on political affiliation. For example, the CSRA states that federal agencies must adopt hiring practices for career employees in which

selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

5 U.S.C. § 2301(b).

Moreover, the CSRA sets forth a series of merit system principles by which federal agencies are to manage personnel decisions. One principle directly addresses employment discrimination:

All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

5 U.S.C. § 2301(b)(2) (emphasis added).

Another section of the CSRA also prohibits the consideration of political affiliation in personnel matters involving career employees. Section 2302(b)(1)(E) prohibits “discriminat[ing] for or against any employee or applicant for employment . . . on the basis of . . . political affiliation, as prohibited under any law, rule, or regulation.”<sup>4</sup> Section 2302(b)(12) of the CSRA makes it unlawful to “take or fail to take any other personnel action if the taking or failure to take such action violates any law, rule, or regulation implementing, or directly concerning,

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<sup>3</sup> See [www.usdoj.gov/oarm/attvacancies.html](http://www.usdoj.gov/oarm/attvacancies.html).

<sup>4</sup> Use of political affiliation violates Section 2302(b)(1)(E) only when it also violates some other “law, rule or regulation.” We asked the Department’s Office of Legal Counsel (OLC) whether 28 C.F.R. 42.1(a) qualified as a predicate for a violation of Section 2302(b)(1)(E). OLC responded that “[o]ur informal conclusion is that 28 C.F.R. § 42.1 (2007) and the First Amendment constitute ‘law[s], rule[s] or regulation[s]’ that prohibit considering political affiliation in hiring career attorneys to Excepted Service Schedule A positions at DOJ.”



the merit system principles contained in section 2301 of this title.” As noted above, one merit system principle is that “all employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation . . . .” 5 U.S.C. 2301(b)(2).

These policies and laws do not define “political affiliation.” Nonetheless, identifying candidates as “liberal” or “conservative” by the activities or organizations with which they are affiliated can be used as a proxy for political affiliation and thus can violate CSRA’s prohibition. Using ideological affiliation can also create the appearance that candidates are being discriminated against based on political affiliation. In addition, using ideological affiliation can violate the requirement that the government use hiring practices for career positions that ensure it identifies the best qualified applicants through fair and open competition. See 5 U.S.C. §§ 2301 (b) (1) – (2).

As a result, Department policy and the CSRA both prohibit using political affiliation and may also prohibit using certain ideological affiliations in hiring and taking other personnel actions with regard to career attorneys.

## **II. Organization of the Civil Rights Division**

The Department’s Civil Rights Division is responsible for enforcing federal statutes prohibiting discrimination on the basis of race, sex, disability, religion, and national origin. As of May 2008, 324 attorneys and 324 support staff were assigned to the Division, all stationed in Washington, D.C. The Division is divided into eight major sections:

- Appellate,
- Criminal,
- Disability Rights,
- Educational Opportunities,
- Employment Litigation,
- Housing and Civil Enforcement,
- Special Litigation, and
- Voting.<sup>5</sup>

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<sup>5</sup> The Division has three additional sections that are very small: the Coordination and Review Section; the Office of Special Counsel for Immigration-Related  
(Cont.)

The attorneys in each of the sections are supervised by section chiefs and deputy section chiefs.

Table 1 shows the number of attorneys assigned to each section and the responsibilities of the sections as described by the Division's website.

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Unfair Employment Practices; and the Office of Complaint Adjudication. We did not review these sections because they collectively hired only two attorneys during the period of review, one of whom was promoted from a non-attorney position within the section after completing law school.

**Table 1: Civil Rights Division Responsibilities and Attorney Staffing by Section (May 2008)**

| <b>Section</b>  | <b>Responsibilities</b>  |
|---|--|
| <b>Office of the Assistant Attorney General</b><br>(9 attorneys, including Assistant Attorney General, Principal Deputy Assistant Attorney General, and 3 Deputy Assistant Attorneys General) | Establishes policy and provides executive direction and control over the enforcement actions and the administrative management activities within the Division.   |
| <b>Administrative Management</b><br>(2 attorneys)   | Provides administrative support to the Division.   |
| <b>Appellate</b><br>(21 attorneys, including chief, principal deputy chief, and 2 deputies)   | Handles civil rights cases in the federal courts of appeals and, in cooperation with the Solicitor General, in the United States Supreme Court. Also provides legal counsel to other components of the Department regarding civil rights law and appellate litigation.   |
| <b>Complaint Adjudication</b><br>(8 attorneys, including 1 supervisory attorney)  | Reviews cases provided to it by Department components or the Equal Employment Opportunity Commission alleging employment discrimination by employees of the Department and renders a final decision for the Department.  |
| <b>Coordination and Review</b><br>(9 attorneys, including chief and deputy)   | Coordinates the enforcement by federal agencies of various statutes that prohibit discrimination in programs that receive federal financial assistance. Also investigates complaints of discrimination against certain recipients of assistance from the Department.   |
| <b>Criminal</b><br>(54 attorneys, including chief and 5 deputies)   | Prosecutes violations of federal criminal civil rights statutes.   |
| <b>Disability Rights</b><br>(41 attorneys, including chief and 5 deputies)  | Implements the Department's responsibilities under Titles I, II, and III of the <i>Americans with Disabilities Act</i> .   |
| <b>Educational Opportunities</b><br>(16 attorneys, including chief and 2 deputies)  | Enforces federal statutes that prohibit public school officials from engaging in discriminatory practices involving both elementary and secondary schools and institutions of higher learning.   |
| <b>Employment Litigation</b><br>(36 attorneys, including chief and 5 deputies)  | Enforces against state and local government employers the provisions of Title VII of the <i>Civil Rights Act of 1964</i> and other federal laws prohibiting employment practices that discriminate on the basis of race, sex, religion, and national origin.   |
| <b>Housing and Civil Enforcement</b><br>(42 attorneys, including chief and 5 deputies)  | Enforces the <i>Fair Housing Act of 1968</i> , the <i>Equal Credit Opportunity Act</i> , and Titles II and III of the <i>Civil Rights Act of 1964</i> , which prohibit discrimination in places of public accommodations such as hotels, restaurants, and public facilities.   |
| <b>Office of Special Counsel for Immigration-Related Unfair Employment Practices</b><br>(14 attorneys, including special counsel and deputy)  | Investigates and prosecutes employers charged with national origin and citizenship status discrimination. Also investigates allegations of document abuse and retaliation as a result of the <i>Immigration Act of 1990</i> .  |
| <b>Special Litigation</b><br>(37 attorneys, including chief and 3 deputies)   | Protects the constitutional and federal statutory rights of persons confined in certain institutions owned or operated by state or local governments. Also investigates state and local law enforcement agencies regarding patterns or practices of violating citizens' federal rights and enforces the <i>Freedom of Access to Clinic Entrances Act</i> . |
| <b>Voting</b><br>(35 attorneys, including chief, principal deputy chief, and 5 deputies)  | Enforces the <i>Voting Rights Act of 1965</i> , the <i>Voting Accessibility for the Elderly and Handicapped Act</i> , and other statutory provisions designed to safeguard the right to vote.  |

Sources: Civil Rights Division website for responsibilities and Human Resources; Director, Civil Rights Division, for attorney staffing numbers.

### III. Leadership of the Civil Rights Division, 2001 to 2007

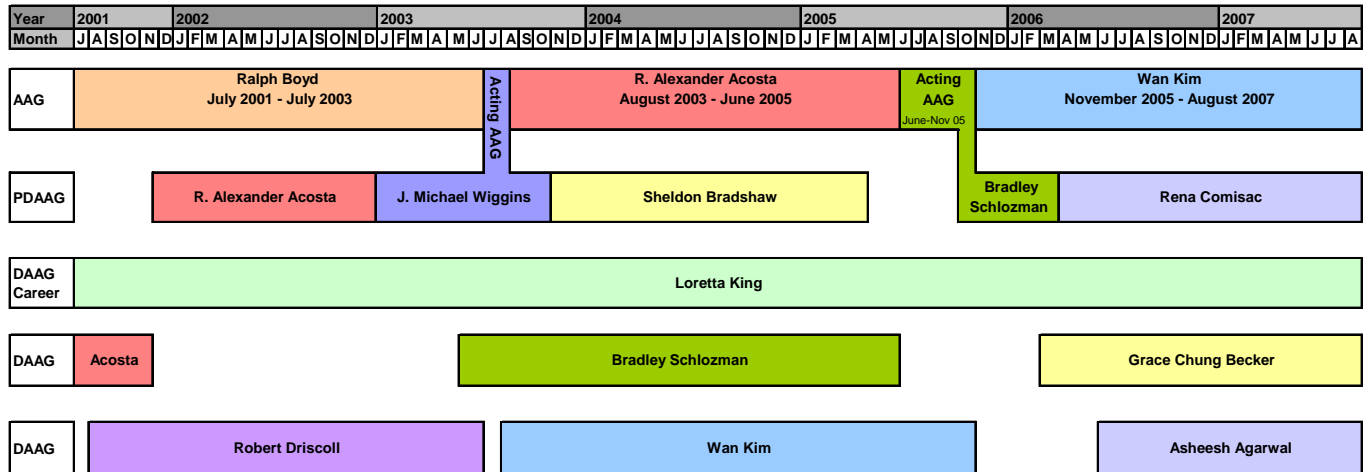
The Civil Rights Division is led by an Assistant Attorney General (AAG) appointed by the President and confirmed by the Senate. The AAG has four Deputy Assistant Attorneys General (DAAG), one of whom is the AAG’s principal deputy. Three of the DAAGs are “political” appointees, who typically are selected by the Attorney General or the White House. The *Civil Service Reform Act*, merit selection laws, and regulations do not apply to the selection process or tenure for these political appointees. The political DAAGs normally change with each administration. The fourth DAAG position is designated as a “career” appointment; that DAAG is selected by a merit selection process and remains in the position even after a change in administration.

The DAAGs are assigned responsibility for overseeing the management of the Division’s sections. Each DAAG has supervisory responsibility for one to three sections.

The Office of the AAG, which includes the DAAGs and several Counsel to the AAG and is often referred to collectively as the “front office,” establishes policy for the Division and provides executive direction for its management, enforcement actions, and administration.

Figure 1 displays the names and tenures of the Division’s AAGs and DAAGs from 2001 to 2007.

**Figure 1: Civil Rights Division Management, July 2001 – August 2007**



Source: Civil Rights Division, Administrative Management Section

Notes: Wiggins served as Acting AAG for less than 2 months after Boyd's departure.  
Schlozman was PDAAG for about 2 months after Bradshaw's departure, before becoming Acting AAG.  
Driscoll also served as AAG Boyd's Chief of Staff.

As depicted in Figure 1, the first AAG for the Civil Rights Division during the period of our investigation was Ralph F. Boyd, Jr. He was confirmed in July 2001 and served as AAG until July 2003. Boyd's DAAGs were, at various times, R. Alexander Acosta, J. Michael Wiggins, Robert Driscoll, Bradley Schlozman, and Loretta King. Throughout this period, King was the Division's career DAAG. Acosta was the Principal DAAG until he left the Department in December 2002, at which time Wiggins became the Principal DAAG.

Schlozman joined the Department in November 2001, serving initially in the Office of the Deputy Attorney General. He became a DAAG in the Civil Rights Division in May 2003.

Upon Boyd's departure, Acosta became the Division's AAG in August 2003. Wiggins, Schlozman, and King continued as DAAGs. In addition, Wan Kim was appointed a DAAG. When Wiggins moved to a position in the Office of the Associate Attorney General in October 2003, he was replaced as Principal DAAG by Sheldon Bradshaw. Bradshaw left the Department in April 2005, at which time Schlozman became the Principal DAAG.

In June 2005, Acosta was appointed as the United States Attorney in the Southern District of Florida. Schlozman served as Acting AAG for the Division for the next 5 months until Wan Kim was confirmed as AAG in November 2005. After Kim's confirmation, Schlozman again became Principal DAAG. King was the only other DAAG until early 2006, when Grace Chung Becker and Asheesh Agarwal were appointed to DAAG positions.

In March 2006, Schlozman was appointed to serve as the U.S. Attorney in the Western District of Missouri on an interim basis. Rena Comisac succeeded Schlozman as the Division's Principal DAAG.

Schlozman remained in the interim U.S. Attorney position for approximately 1 year, until the nomination and confirmation of a permanent U.S. Attorney (John F. Wood) in March 2007. Schlozman then returned to Washington and took a position in the Executive Office for United States Attorneys (EOUSA). He resigned from the Department on August 17, 2007.

#### **IV. The Attorney Hiring Process in the Division**

##### **A. Hiring by Sections: 2001 to February 2002**

Prior to 2002, hiring in the Division was initiated and carried out by each of the Division's eight major sections. When an opening for an attorney position arose within a section, the section chief sought authority from the Division's front office to advertise for the position. The postings were made for a specific position within a specific section of the Division. Once the application period closed, section managers (chiefs and deputies) screened applications, decided which candidates to interview, and conducted interviews without the involvement of the AAG or DAAGs.

Upon completing the interview process, the section chief recommended the section's choice to the Division front office and sought approval to hire that person. Typically, the AAG and the DAAGs did not interview the candidate or have any involvement in the process other than to approve this request. In fact, the section chiefs we interviewed could not recall any instance before 2002 in which their hiring recommendation was not approved.

##### **B. New Hiring Procedures: February 2002**

In February 2002, during the tenure of AAG Boyd, the Division changed its hiring procedures. Boyd directed the Executive Officer of the Division to issue a memorandum to all section chiefs entitled, "New Attorney Hiring Process." This memorandum described changes in the Division's process for the recruitment and selection of experienced attorneys. The memorandum stated that the changes were being made to create a more centralized system of recruitment and selection for experienced attorney positions in the Division. Boyd told us that he instituted these changes both to improve diversity and to ensure the consideration of applicants with broader educational backgrounds and work experience than were traditionally hired.

As set forth in the memorandum, the new procedures required section chiefs to obtain approval from their supervising DAAG to announce an attorney position. The Division's Human Resources Office would then announce the position publicly and also distribute it to minority bar associations (among other groups). Upon receipt of applications, the Human Resources Office would review and forward to the front office the applications of those candidates who met the minimum educational and professional qualifications as specified in the position announcement. Under the new procedures, the DAAGs had the responsibility for reviewing the applications and identifying applicants for

the section chief to interview. In addition, the DAAGs were instructed to forward copies of the applications for all of the applicants to the section chiefs.

The section chiefs' responsibilities, according to the new process, were to interview the candidates identified by the front office and to identify and interview other applicants they believed should be considered. After conducting interviews, the section chiefs were to provide a list to the DAAG with hiring recommendations. The list was to include individual written recommendations, addressed to the AAG, discussing the recommended applicants' backgrounds, qualifications, credentials, and references. The DAAGs were required to send both the section chief's recommendations and their recommendations (if different) to the AAG for review and approval. After obtaining AAG approval to hire an attorney applicant, the section chief would work with the Human Resources Office to determine the appropriate salary and make a tentative offer of employment (contingent on satisfactory completion of a background investigation).

Acosta told us that in 2003, when he served as AAG, he delegated hiring authority to Principal DAAG Bradshaw, which was a role often assigned to the Principal DAAG. Bradshaw, in turn, said he authorized Schlozman, who was a DAAG at the time, to handle most of the Division's hiring, although Bradshaw said he retained final authority. Bradshaw said Schlozman was very interested in hiring issues and was willing to put the time required into the assignment. Bradshaw also said that, during this period, he reviewed Schlozman's hiring recommendations, inquired about the recommendations of the section chiefs, and reviewed résumés for prior work experience and law school performance.

On December 1, 2003, AAG Acosta issued a memorandum revising the February 2002 hiring procedures. Acosta told us his main concern was ensuring that the hiring process moved forward expeditiously. Acosta's modification added the requirement that DAAGs obtain the concurrence of the Principal DAAG before sending the initial list of applicants to the section chief for interviews. Applicants sent to the sections by the DAAGs were expected to be interviewed by the section chiefs (and other personnel in the sections) within 2 weeks of their names being sent to the sections. In addition, section chiefs were only permitted to review applications in the Human Resources Office, which represented a change from long-standing Division practice. Section chiefs could not obtain their own copies of attorneys' applications. Acosta's memorandum also required the Principal DAAG to review the recommendations from the section chiefs and DAAGs before seeking approval to hire from the AAG, thus ensuring that Bradshaw, to whom

Acosta had delegated hiring authority, was not bypassed. Finally, the Acosta memorandum emphasized that consistency in setting starting salary levels was important and that only the Human Resources Office was authorized to discuss salary levels with prospective employees.

**C. Memorandum on Personnel Practices: June 2007**

In the wake of substantial media attention regarding allegations of questionable hiring practices within the Civil Rights Division, AAG Wan Kim issued a memorandum dated June 29, 2007, in which he stated that he was

fully committed to ensuring that all personnel decisions within the Civil Rights Division are consistent with principles of fairness as well as all applicable laws, rules and regulations . . . . Consistent with applicable law, Department policies and my own practice, there will be no discrimination based on color, race, religion, national origin, political affiliation, marital status, disability, age, sex, sexual orientation, status as a parent, membership or non-membership in an employee organization, or personal favoritism.

The memorandum, posted on the Division's Intranet site, also referred to the personnel practices prohibited by 5 U.S.C. § 2302, the law that prescribes merit system principles in government employment. Kim's memorandum did not make any specific changes to the hiring procedures developed by previous AAGs.



**CHAPTER THREE:  
ATTORNEY PERSONNEL DECISIONS:  
HIRING, TRANSFERS, CASE ASSIGNMENTS, AND  
OTHER PERSONNEL ACTIONS WITHIN  
THE CIVIL RIGHTS DIVISION**

In this section, we describe the evidence as to whether political or ideological affiliations were considered in attorney hiring and other personnel actions in the Civil Rights Division. We did not find evidence that political or ideological affiliations affected personnel decisions in the sections of the Division that were overseen by Deputy Assistant Attorneys General other than Bradley Schlozman. The career section chiefs of the Educational Opportunities Section, the Housing and Civil Enforcement Section, and the Disability Rights Section, which were not overseen by Schlozman, said the hiring of experienced attorneys in their sections was not affected by political or ideological affiliations, and the evidence in our investigation supported their statements. Career section managers and attorneys in these sections had greater roles in the process for hiring experienced attorneys. In addition, these section chiefs did not encounter any political interference from the Civil Rights Division's front office in other attorney personnel matters.

In contrast, we found that Schlozman inappropriately considered political and ideological affiliations in hiring experienced attorneys in the sections he supervised and entry-level attorneys throughout the Division for the Attorney General's Honors Program.<sup>6</sup> We also found that Schlozman considered political and ideological affiliations in transferring and assigning cases to career attorneys in the sections he supervised. Numerous Division employees said that shortly after Schlozman became a DAAG in 2003, he became deeply involved in attorney personnel matters for the five sections he supervised – the Special Litigation Section, the Employment Litigation Section, the Voting Section, the Criminal Section, and the Appellate Section. Several section chiefs supervised by Schlozman told us that Schlozman controlled hiring for career attorney positions, monitored case assignments, and directed section chiefs to assign important cases to attorneys he identified. Other officials in the Division said that Schlozman's responsibility for and influence over personnel matters expanded over time. For example,

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<sup>6</sup> The Attorney General's Honors Program is the means by which the Department hires recent law school graduates and judicial law clerks who do not have prior experience practicing law. The litigating divisions of the Department and several other components participate in the Honors Program hiring process, which is overseen by the Department's Office of Attorney Recruitment and Management (OARM).

several Division employees told us that Schlozman was assigned a significant role in screening, interviewing, and selecting Honors Program attorneys in 2003 and 2004. In 2005 Schlozman became the Acting Assistant Attorney General, and in that capacity he ordered three Appellate Section attorneys transferred to other sections in the Division based on improper considerations. According to many people we interviewed, throughout his tenure in the Division Schlozman considered political and ideological affiliations in hiring career attorneys and in other personnel actions such as attorney transfers and cases assignments.

The following sections discuss the evidence regarding the use of political considerations by Schlozman in the hiring, transfers, and case assignments of Civil Rights Division attorneys.

## **I. Hiring**

We found that Schlozman inappropriately considered political and ideological affiliations in hiring career attorneys. Based on the results of our interviews of Civil Rights Division section chiefs and many other attorneys in the Division, we learned that Schlozman favored applicants with conservative political or ideological affiliations and disfavored applicants with civil rights or human rights experience whom he considered to be overly liberal. In addition, he prevented many career section chiefs from reviewing résumés of the complete applicant pool, and he only provided to them résumés of applicants he interviewed. Five of the six section chiefs whom Schlozman supervised while DAAG, from May 2003 to June 2005, told us that Schlozman further minimized their roles in the hiring process by providing little advance notice of applicant interviews, discouraging their asking questions during the interviews, and ignoring their assessments and recommendations regarding attorney applicants.

Several Division attorneys told us that Schlozman expressed disdain for the career attorneys in the Division, believing them to be mostly liberal and Democrats. According to several of these attorneys, Schlozman expressed a desire to hire “real Americans” into the Division, a term that many people told us Schlozman used when referring to political conservatives. Several Division attorneys and officials said that Schlozman made statements to them about his hiring conservatives or Republicans into the Division. During his testimony before the Senate Judiciary Committee on June 5, 2007, Schlozman admitted that that he “probably ha[s] made statements like that.” We also found that prior to his testimony, Schlozman admitted to a section chief that he had made mistakes by “consider[ing] politics.”

The following sections provide evidence supporting these findings.

## **A. Schlozman's Role in the Hiring Process**

Former AAG Acosta and former Principal DAAG Bradshaw told us that Schlozman had a lead role in hiring for the Division from mid-2003 to early 2006, particularly in the sections he supervised: Special Litigation, Employment Litigation, Voting, Criminal, and Appellate.<sup>7</sup> Others in the Division told us that Schlozman conducted the hiring process with little supervision. For example, the Chief of the Special Litigation Section, Shanetta Cutlar, said that Acosta once told her that Bradshaw and Schlozman were in charge of hiring. Bradshaw told us that while he had to approve all hiring decisions, he relied heavily on Schlozman to run the process. When Schlozman became Acting AAG in June 2005, he maintained his active role in the hiring of Division attorneys.

The section chiefs supervised by Schlozman told us that he controlled hiring for their sections. Special Litigation Section Chief Cutlar, Employment Litigation Section Chief David Palmer, Criminal Section Chief Mark Kappelhoff, former Criminal Section Chief Albert Moskowitz, and former Voting Section Chief Joseph Rich said that they were not provided access to the résumés of all applicants who had applied for attorney positions in their sections; instead, the résumés were screened exclusively by Schlozman.

Cutlar said that on several occasions she asked Schlozman for all of the applicant résumés but he refused to provide them to her. Cutlar said that she once contacted the Division's Human Resources Office to request copies of the résumés for all the applicants to the section, but was told that she could not have them without the permission of the front office. Cutlar said she never received them.

Employment Litigation Section Chief Palmer said that he complained to Schlozman that the hiring procedures for attorney positions in his section differed from the procedures followed in other sections where, for example, the section chiefs were able to review résumés of all applicants to the section. Schlozman responded by telling Palmer that he was "entirely comfortable with our hiring procedures and the process will remain as it is."

Cutlar said that the applicants whose résumés she reviewed after they had been culled from the applicant pool by Schlozman or others in

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<sup>7</sup> According to Appellate Section Chief Diana Flynn, Schlozman did not formally supervise the Appellate Section until he became Acting AAG in June 2005. However, former Principal DAAG Bradshaw said that he delegated to Schlozman an active role in the hiring for and management of the Appellate Section.

the front office typically reflected membership in conservative organizations. She also said the most striking thing she noticed about the résumés was that the applicants generally lacked relevant experience. She said Schlozman minimized the importance of prior civil rights or human rights work experience. On that subject, Schlozman told Cutlar on one occasion, in the context of the hiring of volunteer interns in the Division, that relevant experience was not always a plus. In a voice mail to Cutlar in February 2006, Schlozman stated:

[W]hen we start asking about, “what is your commitment to civil rights?” . . . [H]ow do you prove that? Usually by membership in some crazy liberal organization or by some participation in some crazy cause. . . . Look, look at my résumé – I didn’t have any demonstrated commitment, but I care about the issues. So, I mean, I just want to make sure we don’t start confining ourselves to, you know, politburo members because they happen to be a member of some, you know, psychopathic left-wing organization designed to overthrow the government.

Former Criminal Section Chief Moskowitz also said the candidates for career positions chosen by Schlozman had conservative political or ideological affiliations and rarely had any civil rights background, rarely expressed any interest in civil rights enforcement, and had very little or no federal criminal experience.<sup>8</sup>

Other witnesses told us and e-mails confirmed that Schlozman actively recruited applicants who were members of the Federalist Society. In 2004, Schlozman told Division officials and attorneys that he attended Federalist Society events, such as a student symposium and a law student picnic, to recruit applicants. In an e-mail to several Division front office personnel on February 18, 2004, Schlozman wrote about the symposium, “If we get a speaking role, it might be useful to spread the word and get more applications from these fine young americans.”

Section Chiefs Cutlar, Palmer, Kappelhoff, Rich, and Moskowitz also stated that all interviews of attorney applicants for their sections were conducted by Schlozman. They explained that when they were included in the interviewing process, they received an invitation to attend from Schlozman, usually on short notice. Rich said he had very little participation in the interviews other than to describe the work of the

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<sup>8</sup> Moskowitz served as Criminal Section Chief from 1999 until 2005, when AAG Kim reassigned him to a newly created training position. Mark Kappelhoff, who had previously served as a Deputy Section Chief before leaving the Department, returned to replace Moskowitz as the Section Chief.

section. Cutlar said that when she tried to ask questions at interviews Schlozman sometimes waved his hand dismissively at her and told her that she did not need to ask that question. In 2003, Cutlar complained to Schlozman that she was being cut out of the interview process entirely, and she requested that she be included in interviews, arguing in an e-mail that her lack of involvement in the final interview would adversely affect the work of the section she supervised. Schlozman responded: “I will think about it, but I make no promises. My position is that long-term hires are the prerogative of the leadership.”

According to Cutlar, Schlozman made the decision whether an applicant should be hired, often without soliciting any input from her about her impressions of the applicant. Cutlar said, for example, that by the time she returned to her office after an interview she often had received an e-mail from Schlozman directing the Division Human Resources Office to extend an employment offer to the applicant.

Cutlar said she vehemently objected to some of the candidates interviewed for the Special Litigation Section because she did not believe they were qualified, but said she was routinely overruled by Schlozman. For example, Cutlar said she objected to hiring a candidate who was the girlfriend of an attorney hired in the Division’s Educational Opportunities Section because the applicant was unqualified. The applicant, who was working as a contract paralegal at a law firm, was a member of both the Federalist Society and the Republican National Lawyers Association. Cutlar said she also noted a discrepancy in dates on the applicant’s résumé – specifically that during the period the applicant claimed to have been self-employed practicing law, she was not admitted to any state bar. When Cutlar sought an explanation from the applicant during the interview, Schlozman told her to “let it go.” Cutlar argued with Schlozman after the interview that the candidate had not been truthful and should not be hired. By the time she returned to her office, however, Cutlar had received an e-mail from Schlozman informing her that he was hiring the applicant.<sup>9</sup>

In another example, Cutlar said she objected to two candidates on the grounds that they were too inexperienced to work in her section. However, Schlozman said the two could serve as “junior attorneys” in the section, a position Cutlar said did not exist. One candidate was the niece of a former agency head in the Bush administration, while the other was a personal friend of a Counsel to Paul McNulty when he served as the U.S. Attorney for the Eastern District of Virginia. The Counsel

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<sup>9</sup> The applicant resigned her position at the Department before the end of her first year when faced with possible termination for poor performance.

described the applicant as a “solid conservative” in his referral e-mail to Principal DAAG Wiggins.<sup>10</sup>

Former Voting Section Chief Rich said there were occasions when he attended interviews, but he was never asked by Schlozman for his opinion of the applicant or for his recommendation of whether the applicant should be hired. Moskowitz said he had no meaningful role in the hiring decision process, and Kappelhoff said new attorneys sometimes just appeared on the section roster without explanation. He said they had been hired by the front office without him knowing about it and without him having any participation in the process.

Employment Litigation Section Chief Palmer said that he objected to offering positions to several applicants Schlozman wanted to hire, but the applicants met “minimal” qualification standards and were hired. However, in an e-mail dated November 2, 2005, Palmer expressed his reservations to Schlozman about an applicant Schlozman planned to hire. The applicant had been fired from a previous job. Palmer wrote: “I am lukewarm at best about this, Brad. He mentioned nothing during our interview about being fired from a job. I certainly would have liked to ask him about this during our interview.” Schlozman responded, “I support his hiring. Please let [Human Resources] know. Thx.”<sup>11</sup>

In contrast to what the other section chiefs told us, former Voting Section Chief John Tanner told us he was a full participant in the hiring process for attorney positions in the Voting Section after he became section chief.<sup>12</sup> Tanner said that he, Schlozman, and Hans von Spakovsky (who was Counsel to the Civil Rights Division AAG) each reviewed résumés, made recommendations for applicants to be interviewed, and conducted interviews. He said when the Voting Section was hiring for a number of positions, he conducted pre-interviews to narrow the number of candidates interviewed by the front office. Tanner asserted that the hiring decisions in the Voting Section were mainly made on a consensus basis and that Schlozman solicited his views about

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<sup>10</sup> The Counsel’s e-mail to Wiggins stated that the candidate “is a solid conservative but would be willing to work in [Civil Rights]. I think the criminal section might be best. I’m not sure if any of the other sections would tolerate her.”

<sup>11</sup> Palmer said that there were some instances in which applicants were not hired after he objected, but he could not recall the names of any such applicants.

<sup>12</sup> Tanner, who had previously worked in the Voting Section from 1979 to 1995 and returned to the Voting Section in 2002 as a Special Litigation Counsel, became Section Chief in June 2005, after Rich retired from the position. Tanner stepped down as the Section Chief in January 2008, and was detailed to the Division’s Office of Special Counsel, after comments he made during a speech about African American voters created a public controversy.

applicants and took his opinions into account. Tanner said there were candidates he did not like and that they were not hired. According to Tanner, attorney candidates were not screened for political affiliations. He said neither politics nor political affiliations were mentioned during interviews and there were no political litmus tests. Tanner also contrasted the hiring process with previous administrations' practices, where he said there was a virtual "ban on conservatives" and applicants were subjected to the litmus test of whether they were a "civil rights person."

Palmer, like Tanner, told us that he did not agree that there was a concerted effort to hire conservatives for career attorney positions in the Division. Palmer said it was his impression that Schlozman wanted to "broaden the pool" of applicants from what it had been prior to the Republican administration. According to Palmer, previously applicants were drawn from five major law schools, including Harvard and Yale, and the applicants typically had similar internship experiences. Palmer said that the Division had not recruited from or considered applicants from second and third tier law schools and had not recruited people with backgrounds in insurance or employment defense work. He said that Schlozman sought to find qualified attorneys from a broader pool. Palmer added that Schlozman did not instruct him to look for attorneys with conservative or Republican affiliations. He asserted that Schlozman was more concerned about hiring people who would not leak information to the media or undermine the Division's policies. Palmer said he was unaware of whether attorneys hired by Schlozman were generally more conservative. He noted, however, that many more members of the Federalist Society applied to the Division after the change in administration.

## **B. Additional Evidence and E-mails**

Notwithstanding Tanner and Palmer's statements, accounts from several other witnesses provide additional evidence that political and ideological affiliations were factors in Schlozman's hiring decisions throughout his tenure in the Division. An Appellate Section attorney whom Schlozman had recommended be hired into the Honors Program in the fall of 2004 told us that Schlozman told him that he was hoping to free up some slots in the Appellate Section for "good Americans."

Several attorneys in the Division also told us that Schlozman was open about his disdain for and lack of trust in the attorney staff of the Division.<sup>13</sup> Appellate Section Chief Diana Flynn told us that in

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<sup>13</sup> For example, in an e-mail on July 15, 2003, to a former colleague, Schlozman wrote, "I too get to work with mold spores, but here in Civil Rights, we call them Voting  
(Cont.)

conversations with her, Schlozman alternately referred to the Appellate Section lawyers hired during prior administrations as “Democrats” and “liberals,” and said they were “disloyal,” could not be trusted, and were not “on the team.” Flynn said Schlozman pledged to move as many of them out of the Division as he could to make room for the “real Americans” and “right-thinking Americans” he wanted to hire.

Accounts from numerous other Division employees and officials, including former AAG Wan Kim and Section Chiefs Cutlar and Flynn, as well as the context of Schlozman’s e-mails, indicate that his use of terms such as “real American,” “right-thinking American,” being “on the team,” and similar terms were Schlozman’s way of referring to politically conservative applicants and attorneys. For example, an e-mail dated July 17, 2006, from Schlozman to Monica Goodling, who at the time was Senior Counsel to the Attorney General and White House Liaison, sheds light on the meaning of Schlozman’s terms. In that e-mail, Schlozman recommended a friend who had interviewed with Goodling for a political position. Schlozman wrote, “I can assure you that [the applicant] is a good American. [The applicant] and Sheldon Bradshaw and I (and [one] other person) made up a four-member Vast Right-Wing Conspiracy at my former law firm.” In another e-mail sent to Goodling on December 4, 2006, in which Schlozman recommended a different friend for an Immigration Judge position, Schlozman wrote, “[D]on’t be dissuaded by his ACLU work on voting matters from years ago. This is a very different man, and particularly on immigration issues, he is a true member of the team.”<sup>14</sup>

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Section attorneys.” As part of the same e-mail exchange, on July 16, 2003, Schlozman wrote, “My tentative plans are to gerrymander all of those crazy libs rights out of the section.” In addition, while interim U.S. Attorney in the Western District of Missouri, Schlozman wrote an e-mail to a friend, dated June 15, 2006, contrasting his job as U.S. Attorney with his position in the Civil Rights Division. He wrote:

It has been months since I felt the need to scream with a blood-curdling cry at some commie, partisan subordinate (i.e., most of the [Voting] section staff until recently). And I feel like the people I now work with are all complete professionals. What a weird change. Granted, these changes are nice in many respects, but bitchslapping a bunch of [Division] attorneys really did get the blood pumping and was even enjoyable once in a while. I think now it’s all Good Cop for folks there. I much preferred the role of Bad Cop. . . . But perhaps the Division will name an award for me or something. How about the Brad Schlozman Award for Most Effectively Breaking the Will of Liberal Partisan Bureaucrats. I would be happy to come back for the awards ceremony.

<sup>14</sup> “ACLU” refers to the American Civil Liberties Union.



A May 9, 2003, e-mail provides additional evidence of the meaning of Schlozman's phrases. Luis Reyes, then Counsel to the AAG for the Civil Division, sent an e-mail to Schlozman in connection with a legal matter, endorsing an attorney in the Department's Office of Legal Policy as a "right thinking american to say the least." In an e-mail response, Schlozman wrote that he "just spoke with [the attorney] to verify his political leanings and it is clear he is a member of the team."<sup>15</sup>

Former AAG Kim said he recalled an instance while he was still a DAAG when a concern about improper hiring considerations by Schlozman was brought to his attention. Kim said that in about March 2004 he had received a telephone call "out of the blue" from Andrew Lelling, who at the time was an Assistant U.S. Attorney in the Eastern District of Virginia. Lelling had previously worked in the Civil Rights Division front office as Counsel to AAG Boyd. Kim was not acquainted with Lelling, but knew of his prior association with the Division. Kim said the call was memorable. He said that Lelling told him of a telephone conversation Lelling had just had with Schlozman. According to Kim, Lelling said, "I want to call you because I just spoke with Brad [Schlozman] recently and something that he said bothered me." Lelling told Kim that he had called Schlozman to recommend a colleague at the U.S. Attorney's Office who was interested in a position in the Criminal Section of the Civil Rights Division. Lelling told Kim that Schlozman had asked Lelling, "Well, is this guy conservative?" or something to that effect. Lelling said he had replied, "I don't know. I don't think so. I'm not sure," and Schlozman told him, "Then he probably won't be hired."

Kim said he recalled that Lelling next said, "I don't agree with that. I just wanted to call you, I don't want to go around Schlozman, I don't want him to think I'm going around his back, but I just don't think that's fair." Kim told us that at the time he thought, "This is crazy." Kim said he told Lelling he agreed with him. Kim also suggested to Lelling that he tell his colleague to provide his application information to Kim when he

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<sup>15</sup> In contrast to this evidence, as a follow-up to his June 5, 2007, testimony before the Senate Judiciary Committee, Schlozman supplied a written answer to a question posed by Senator Kennedy asking what Schlozman meant by the term "good American." Schlozman wrote "I frequently use the term 'Great American.' I use the phrase casually as a term of endearment. Indeed, anyone who knows me well knows that I refer to Democratic and Republican friends/colleagues alike as 'great Americans.'" Former Principal DAAG Bradshaw and former Voting Section Chief Tanner also told us that they did not consider Schlozman to be attaching political or ideological meaning to such terms. Bradshaw and Tanner maintained that the terms "good American" and "fine American" were ideologically neutral, meaning simply that the person was a hard worker or a "good guy." Tanner said that the terms were used simply as terms of endearment.

applied for the position, and Kim said he would make sure he gets a “fair shake.”<sup>16</sup>

Kim told us Lelling’s call bothered him because he was not sure whether Schlozman “was applying the right kind of criteria” to hiring decisions. Within a week of speaking to Lelling, Kim said he brought the subject up in a conversation with Schlozman. Kim told us that he made clear to Schlozman that it would be unlawful and impermissible to make hiring decisions based on political affiliations. Kim said he “basically parrot[ed] to Schlozman the requirements of the CSRA,” referring to the *Civil Service Reform Act*. Kim said that Schlozman reacted with what Kim described as “a double-take with his head.” Kim said he followed up by adding that the statute is enforced by the Office of Special Counsel, and Scott Bloch, the Special Counsel, whom he knew to be a friend of Schlozman. Kim said that Schlozman looked at Kim and said, “You know, I don’t do that.”<sup>17</sup>

Further evidence that Schlozman considered political factors in hiring is found in other e-mails. For example, in November 2003, when a Department attorney forwarded to Schlozman the résumé of a recent law school graduate who was clerking for a federal judge and was interested in a position at the Department, Schlozman forwarded the résumé to a Counsel in the front office of the Civil Rights Division, commenting that “this has lib written all over it. let’s discuss[.]”<sup>18</sup>

On November 13, 2003, Principal DAAG Wiggins forwarded an e-mail to Schlozman containing a magistrate judge’s recommendation of his law clerk for a position in the Division. The magistrate judge described his clerk as “a very able lawyer” who would be “a good addition to your staff.” Wiggins noted to Schlozman, “We need to hire this guy[.]” In a one-word e-mail reply to Wiggins, Schlozman asked: “conservative?”

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<sup>16</sup> Kim said he spoke to Lelling again a few weeks later and learned that his colleague had decided not to apply for a position in the Civil Rights Division. When we interviewed that individual, he said he had no knowledge of Lelling’s concerns or the conversation with Kim.

<sup>17</sup> When we interviewed Lelling, now an Assistant U.S. Attorney in Boston, he said he did not recall speaking with Schlozman. He said he did recall contacting Kim to discuss his colleague’s suitability for a position in the Division. Lelling said he knew of Schlozman’s reputation for being very conservative and called Kim instead because he did not believe that Schlozman would be fair in assessing his colleague’s credentials.

<sup>18</sup> The applicant’s résumé showed prior employment for three Democratic Members of Congress, as well as positions in the Department of Education and the Office of Justice Programs during the Clinton administration. The applicant was not hired.

In another e-mail to a Division front office Counsel dated January 12, 2004, Schlozman inquired about an attorney being referred as a candidate for a career civil service position by asking, “how does he view the world, if you know what I mean?” In the e-mail, Schlozman added, “(and for God’s sake, don’t forward this email!).”

In a January 30, 2004, e-mail to Kim, Schlozman declined an invitation to join Kim for lunch, noting, “Unfortunately I have an interview at 1 with some lefty who we’ll never hire but I’m extending a courtesy interview as a favor.” In another e-mail, dated March 5, 2004, Schlozman wrote to a front office Counsel that a Criminal Section deputy “has recommended several other commies for permanent positions in [the section]. [Criminal Section Chief Moskowitz] probably would concur with his recommendations. But as long as I’m here, adherents of Mao’s little red book need not apply.”

Schlozman wrote an e-mail to Kim, dated March 15, 2004, that stated:

We need to start thinking about [Criminal Section] lateral hires. I fear that [Moskowitz] and his minions will be sorting through the résumés looking for [name of attorney] clones who are big libs and would enforce certain of our statutes only with great reluctance. In talking to Alex, he is of the view (as am I) that our new folks should be individuals with a background in, or genuine commitment to prosecuting trafficking cases. Also, any candidate must profess his/her willingness to zealously prosecute both death penalty and PBA cases. I strongly suspect that we have plenty of former prosecutors in the batch, so I would prefer not to see a bunch of public defenders that think like Al. Thoughts?

Also on March 15, 2004, Schlozman wrote an e-mail expressing his uncertainty to a Division attorney about whether an applicant for the Division’s Special Litigation Section was conservative because she had interned at the American Civil Liberties Union (ACLU).<sup>19</sup> When contacted for this investigation, the applicant told us that Schlozman had called her and questioned her about her internship and asked whether she was a member of the ACLU. She assured him that she was not a member and that she had interned with the ACLU to learn about constitutional law. According to Special Litigation Section Chief Cutlar, Schlozman considered not hiring the applicant when he thought she was a member

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<sup>19</sup> In the March 15, 2004, e-mail from Schlozman to a Division attorney, Schlozman also wrote, “if [the applicant] is so conservative, how is it that she was a member of the ACLU in Tennessee during law school?”

of the ACLU. Cutlar said Schlozman hired the applicant, even though Cutlar had objected for other reasons, once Schlozman was satisfied that the applicant was not an ACLU member.

In an e-mail dated May 27, 2005, Employment Litigation Section Chief Palmer asked Schlozman whether he was aware that a new Honors Program attorney assigned to the section had worked for the Lawyer's Committee for Civil Rights. Schlozman responded to Palmer that he "kn[e]w all about him. He will be okay. (He worked as intern in [W[hite] H[ouse] Counsel's Office.) But he was forced on us anyway and got the nod over my objection. Still, I expect you to monitor him very, very carefully."

### **C. Schlozman's Statements**

According to Special Litigation Section Chief Cutlar, in approximately March 2007, Schlozman admitted to her that he had "considered politics" in hiring career attorneys. In March 2007, Schlozman had returned to Washington to work at the Executive Office for United States Attorneys (EOUSA) after serving as interim U.S. Attorney for the Western District of Missouri for about 1 year. At the time, there were media reports regarding allegations of political considerations affecting personnel decisions at the Department. During this period, Schlozman unexpectedly visited Cutlar in her office. Cutlar said Schlozman discussed with her the allegations of partisan hiring in the Division. According to Cutlar, Schlozman said, "You know, I was thinking I probably made some mistakes . . . . I probably considered politics when I shouldn't have." Cutlar stated that later in the same conversation Schlozman said, "Well, I'm just saying I got caught up in the group mentality. You know how it is." Cutlar said that Schlozman concluded this conversation by again admitting, "Maybe I've made some mistakes. Maybe I considered politics when I shouldn't have."

In a subsequent telephone conversation with Cutlar during the same time frame, however, Schlozman retreated from his admissions about his consideration of politics in hiring. Cutlar said that in this follow-up conversation Schlozman told her, "You know I didn't do anything wrong." Cutlar said Schlozman repeated several times that he wanted her to know and remember that he considered her to be "a close and personal friend."

When he testified before the Senate Judiciary Committee on June 5, 2007, Schlozman admitted that he had boasted about hiring

Republicans and conservatives in the Civil Rights Division.<sup>20</sup> We also found that Schlozman made statements boasting to others about using political and ideological affiliations in hiring for career Civil Rights attorney positions. One example is an e-mail dated January 6, 2004, from Schlozman to an attorney hired by Schlozman in the Division. Shortly after being hired, the attorney sent an e-mail to Schlozman expressing his happiness in the Special Litigation Section, noting that his “office is even next to a Federalist Society member.” Schlozman replied by e-mail, “Just between you and me, we hired another member of ‘the team’ yesterday. And still another ideological comrade will be starting in one month. So we are making progress.”

Former AAG Kim told us of Schlozman’s statements regarding Division attorneys who attended Federalist Society meetings. Kim said that when Schlozman returned from Federalist Society meetings or events, he commented that there were now Civil Rights Division attorneys at the meetings when there never had been before. Employment Litigation Section Chief Palmer told us that he heard Schlozman express pleasure about his bringing “RTAs,” meaning “right-thinking Americans,” and Republicans into the Division. Palmer added, “I don’t want to say that [Schlozman] had a preference, but [he] liked hiring conservatives.” Andrew Lelling, former front office Counsel to AAG Boyd, told us that Schlozman “was always very unapologetically clear about the kind of people he wanted hired into the Department . . . . [H]e want[ed] people in the Department who [were] conservative on the legal issues, maybe conservative period.”

An applicant Schlozman recruited for a career attorney position in the Division said Schlozman told him that there were too many liberal, Democratic trial attorneys in the Voting Section and that he was trying to “remedy” the situation by identifying conservative applicants and selecting them outside the official application process.

#### **D. Hiring in Civil Rights Division Sections Not Supervised by Schlozman**

By contrast, according to the chiefs of Division sections not supervised by Schlozman – Educational Opportunities, Housing and Civil Enforcement, and Disability Rights – hiring of experienced attorneys in their sections was not affected by consideration of political or ideological

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<sup>20</sup> Senator Schumer: Did you ever boast to anyone that you hired a certain number of Republicans or conservatives for any division or section at the Justice Department?

Mr. Schlozman: I mean, I probably have made statements like that.

affiliations.<sup>21</sup> These section chiefs told us that their supervising Deputy Assistant Attorneys General allowed them and other career section managers and attorneys to participate meaningfully in the process for hiring experienced attorneys for their sections.<sup>22</sup> In these sections, the career managers and attorneys reviewed résumés of all applicants, recommended applicants for interviews, conducted interviews independent of front office personnel, and made hiring recommendations to the front office. The section chiefs said that experienced attorneys hired for these sections were recommended by the sections and approved by the front office, and applicants were not hired over the objection of section managers. We did not find evidence that political or ideological affiliations were factors in the hiring for these sections.

For example, Educational Opportunities Section Chief Jeremiah Glassman told us that he had access to the résumés of all applicants and he, with assistance from other attorneys in the section, picked the candidates to interview. Glassman said that while on occasion the front office identified a candidate to be interviewed, all of the experienced attorneys hired were the choice of the section staff.

According to Housing Section Chief Steven Rosenbaum, the front office reviewed résumés of applicants for his section and sent him a list of applicants that would be interviewed. However, Rosenbaum said he and other section attorneys added applicants to that list based upon a review of all the résumés. He said that the front office conducted the first round of interviews of all applicants, while the second round was conducted jointly by Rosenbaum and front office staff, sometimes including Schlozman. Subsequent interviews were conducted by section attorneys. According to Rosenbaum, at least two and possibly all three of the experienced attorneys hired for the section were favorably recommended by the section after they interviewed with section attorneys.

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<sup>21</sup> Schlozman did not have a formal role in supervising the Appellate Section until he became the Acting AAG in June 2005. After that, he took a very active role in managing the Appellate Section. Even after becoming Acting AAG, however, Schlozman did not become involved to any significant extent in the management of the Educational Opportunities, Housing and Civil Enforcement, and Disability Rights Sections.

<sup>22</sup> The sections that were not supervised by Schlozman had autonomy in hiring experienced attorneys. However, because Schlozman oversaw the Honors Program hiring for all of the Civil Rights Division during 2003 and 2004, the section chiefs said Schlozman selected the entry-level attorneys hired for career positions through that program, regardless of the section to which they were assigned. We discuss the Civil Rights Division's Honors Program hiring in the next section of this report.

Disability Rights Section Chief John Wodatch said that the section was largely successful in having its hiring choices approved by the front office. He told us he had recommended to the front office all five of the experienced attorneys hired during the period we reviewed, two of whom had previously worked in the section and two others who were referred by a section deputy.

#### **E. Honors Program and Summer Law Intern Program Hiring**

The Attorney General's Honors Program is the means by which the Department hires recent law school graduates and judicial law clerks who do not have prior experience practicing law. The litigating divisions of the Department and several other components participate in the Honors Program hiring process, which is overseen by the Department's Office of Attorney Recruitment and Management (OARM) and occurs in the fall of each year. The Summer Law Intern Program (SLIP) is the Department's hiring program for paid summer interns and is also overseen by OARM.

The OIG and OPR conducted a joint investigation into whether political and ideological affiliations of applicants were improperly considered in making selections for the Honors Program and SLIP from 2002 to 2006.<sup>23</sup> In the course of that investigation, several Civil Rights Division officials and attorneys told us that Schlozman had a significant role in screening, interviewing, and selecting Honors Program and SLIP attorneys in 2003 and 2004. For example, former AAG Acosta said that Schlozman was "the point person on the Honors Program" throughout Acosta's tenure as AAG. Two Division front office Counsel were also significantly involved in Honors Program and SLIP hiring during that time period.

Based on our interviews of Civil Rights Division participants in the Honors Program and SLIP hiring process and the e-mails we reviewed, we concluded that Schlozman improperly considered political and ideological affiliations in selecting attorneys for the two programs. In this section, we describe the evidence that led to this conclusion.

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<sup>23</sup> Our separate report on the Honors Program and SLIP hiring contains a complete description of the programs, the hiring processes, and the manner in which the various components of the Department participated in the programs. That report also contains our findings as to whether Department officials from components and offices other than the Civil Rights Division improperly considered political and ideological affiliations of applicants in making selections for the Honors Program and SLIP from 2002 to 2006. See *An Investigation of Allegations of Politicized Hiring in the Department of Justice Honors Program and the Summer Law Intern Program* (June 2008), [www.usdoj.gov/oig/special/s0806/final.pdf](http://www.usdoj.gov/oig/special/s0806/final.pdf).

Our investigation of the Honors Program and SLIP hiring process during the periods before and after Schlozman's tenure in the Division uncovered no evidence that political and ideological affiliations were considered. In 2001, according to an administrator who attended all of the meetings of the committee that handled Honors Program and SLIP hiring for the Division, the committee was composed entirely of career staff. This administrator told us that discussion of the applicants by committee members focused on their academic qualifications and prior civil rights experience. She said that political or ideological affiliations were never discussed in evaluating applicants.

In 2002, Attorney General Ashcroft changed the Honors Program and SLIP application process for the entire Department to require greater involvement by the AAGs and their front office staffs. Robert Driscoll, AAG Ralph Boyd's Chief of Staff and a DAAG, was the person in charge of Honors Program hiring in the Civil Rights Division during 2002. He reviewed the applications and determined which candidates the Division would interview. Driscoll said that he evaluated the candidates on the basis of their academic qualifications and did not take into account political or ideological affiliations. Driscoll said that during the interview phase of the selection process, he asked questions designed to find candidates who would strictly interpret, apply, and enforce the civil rights laws. Front office Counsel Andrew Lelling also told us he conducted interviews of Honors Program applicants in 2002 and that politics was not a consideration in evaluating candidates. Lelling said he was looking for applicants who were smart, had good grades, had provided good writing samples, and wanted to work in the Division.

By contrast, we found that in 2003 and 2004, political and ideological affiliations were considered by the Division in the Honors Program and SLIP hiring process and for screening applications during the 2005 hiring cycle before Wan Kim became the AAG. Two front office Counsels, Jason Torchinsky and Matt M. Dummermuth, and Schlozman were primarily responsible for reviewing applications to determine who to interview in 2003 and 2004.<sup>24</sup> Most section chiefs told us that Schlozman excluded them from Honors Program and SLIP interviewing. Only Voting Section Chief John Tanner, Employment Litigation Section Chief David Palmer, and Special Litigation Section Chief Shanetta Cutlar said they participated in the Honors Program process.

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<sup>24</sup> Dummermuth was sworn in as interim U.S. Attorney for the Northern District of Iowa in January 2007. He was nominated for the position by the President in December 2007.



Dummermuth, one of the front office Counsels who participated in the screening and interviewing of Honors Program and SLIP applicants for the Division, said that the hiring committee was “looking for candidates who would focus on enforcing the law as it stood and not necessarily pursuing the most creative interpretations of the law as possible.” He said he thought membership in certain organizations, such as the American Constitution Society and Americans United for Separation of Church and State, “would have been associated with more of an activist approach to law enforcement,” and he would have taken membership in those organizations as a negative factor. Dummermuth said that membership in the Federalist Society would have been a “positive factor” because he knew from personal experience that the group stood for taking a more “judicious” approach rather than an activist approach to the law. However, he said he did not have any knowledge about how Schlozman viewed membership in these organizations when evaluating candidates.<sup>25</sup>

However, contemporaneous e-mails indicate that Schlozman considered political or ideological affiliations in the evaluation of these candidates. For example, in an e-mail to Schlozman on December 19, 2003, Special Litigation Section Chief Cutlar reported that she had received unfavorable information from a judge she contacted in checking references for an Honors Program applicant to the Division. Schlozman responded to Cutlar on the same date:

Okay, but just remember, Republican judges are generally far more demanding of quality, accuracy, and faithful adherence to statute and constitutional text than liberals, for whom activism and advocacy are the hallmarks of acceptability.<sup>26</sup>

Dummermuth told us that in 2004 he gave a list of suggested interviewees to Principal DAAG Bradshaw. He said Bradshaw later told him that Schlozman had proposed cutting some applicants from the list because Schlozman considered them to have “too much of an activist résumé.” Dummermuth said that based on discussions and disagreements within the Division’s front office, he interpreted Schlozman’s comment to mean that the applicants were affiliated with

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<sup>25</sup> Torchinsky left the Department in October 2005. He did not respond to our written request for an interview about the screening criteria he used and his involvement in the Honors Program and SLIP hiring process.

<sup>26</sup> The Honors Program applicant had clerked for two judges, both appointed by President George W. Bush.

liberal causes. He said, however, that he did not discuss Schlozman's comment with either Bradshaw or Schlozman.

In another e-mail, dated May 27, 2005, Employment Litigation Section Chief Palmer asked Schlozman if he knew that a recently hired Honors Program attorney assigned to Palmer's section had worked for the Lawyers' Committee for Civil Rights. Schlozman replied:

I know all about him. He will be okay. (He worked as intern in [the Bush administration's] W[hite] H[ouse] Counsel's Office.) But he was forced on us anyway and got the nod over my objection. Still, I expect you to monitor him very, very carefully.

In an e-mail dated September 9, 2003, Schlozman directed Torchinsky to contact a member of the Federalist Society "to get direct referrals from [the member] and other helpful friends so that we know who to look for." In an e-mail dated February 18, 2004, from Schlozman to various front office attorneys, Schlozman inquired whether anyone was planning to attend an upcoming Federalist Society student meeting at Vanderbilt University. Schlozman wrote, "If we get a speaking role, it might be useful to spread the word and get more applications from these fine young americans." Schlozman also sent an e-mail directly to Federalist Society officials, dated June 30, 2004, requesting an invitation to a summer event. In that e-mail, Schlozman stated that he would like to "use the event as a way to encourage some Federalist Society student members to apply to the Department of Justice as part of the Attorney General's Honors Program." We did not find evidence of any similar outreach efforts to any other organization in our review of Schlozman's e-mails.

The 2005 Honors Program and SLIP hiring process began in the fall while Schlozman was the Division's Acting AAG. The screening of applications to determine who to interview was conducted primarily by Torchinsky. Kim became the AAG before the interviewing of Honors Program and SLIP candidates began. A career attorney detailed to the Division front office to assist with, among other things, Honors Program and SLIP hiring told us that Kim told her "he wanted the best for his Honors class . . . he wanted good grades, he wanted participation" in civil rights, but "other considerations were not to be used." This attorney said that by the time Kim made these comments, allegations had surfaced in the media about improper considerations in Civil Rights Division hiring. Kim said he told his staff at the beginning of the hiring process for the Honors Program and SLIP that he wanted "really smart people. Academic qualifications were number one[;] clerkships were preferable."

In sum, the evidence showed that Schlozman improperly considered political and ideological affiliations in screening and selecting attorneys for the Honors Program and SLIP.

## **F. Statistical Overview of Hiring of Career Attorneys**

In this section we present a statistical overview of the political and ideological affiliations of the attorneys hired in the Civil Rights Division from 2003 to 2006, the period of Schlozman's involvement in the hiring process. This overview covers both the hiring of experienced attorneys and the Attorney General's Honors Program attorneys. Our analysis is based on data gathered from résumés, application materials, e-mails, and interviews of Division employees.<sup>27</sup> We believe it further corroborates our conclusion that Schlozman improperly considered political and ideological affiliations in hiring attorneys in the Civil Rights Division.

As shown in Table 2, a total of 112 career attorneys were hired in the Division's 8 main sections from 2003 to 2006. The new hires accounted for approximately 35 percent of all attorneys in the Division. For much of that period, Schlozman supervised several of the largest sections of the Division, and he also oversaw hiring for the entire Division of entry-level career attorneys through the Honors Program. Consequently, Schlozman participated in the hiring of 99 of the 112 attorneys. Only 13 attorneys were hired in the Division without Schlozman's involvement during his tenure in the Division. Although the number of career attorneys Schlozman was involved in hiring is much greater than the number of attorneys he did not participate in hiring, comparison of the statistics is nonetheless noteworthy.

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<sup>27</sup> In compiling this data, we reviewed the applicants' résumés and application credentials. We examined whether a hired attorney's résumé or application listed work experience with a Republican or Democratic politician or membership in an organization specifically affiliated with a political party, such as the Republican National Lawyers Association. We also considered whether an attorney's application materials cited membership in or employment by any organization generally considered to be conservative or liberal. The appendix lists the groups we included in each category. In several instances we also considered other information provided by the applicants or their references during the hiring process. For example, we counted as Republican or conservative applicants whose references stated that they were a "dependable conservative," or a "solid conservative," or had "always shown himself to be an extremely solid conservative and supporter of the President." For 40 successful applicants (approximately 36 percent of the career attorneys hired in the Division from 2003 to 2006), we did not find information to place them in any category, and they are included in Table 2 as Unknown.

**Table 2: Political and Ideological Affiliations of Civil Rights Division Attorneys Hired from 2003 to 2006**

|                            | <b>Schlozman Hires</b> | <b>Non-Schlozman Hires</b> |
|----------------------------|------------------------|----------------------------|
| Republican or conservative | 63 (64%)               | 4 (31%)                    |
| Democrat or liberal        | 2 (2%)                 | 3 (23%)                    |
| Unknown                    | 34 (34%)               | 6 (46%)                    |
| Total                      | 99 (100%)              | 13 (100%)                  |

Source: OIG/OPR review of relevant materials.

As shown in Table 2, virtually all of the attorneys (97 percent) hired by Schlozman whose political and ideological affiliations were evident in the hiring process were Republican or conservative (63 of 65). Schlozman hired only 2 attorneys who had Democratic or liberal affiliations.<sup>28</sup> By contrast, when Schlozman was not involved in the hiring process, the results were more balanced: 4 Republican or conservative attorneys and 3 Democratic or liberal attorneys were hired.

Attorneys hired by Schlozman were more than twice as likely to be Republican or conservative than those attorneys Schlozman was not involved in hiring (64 percent compared to 31 percent). Moreover, while only 2 percent of the attorneys hired by Schlozman had Democratic or liberal affiliations, 23 percent of the attorneys hired without Schlozman’s involvement listed such affiliations on their résumés.

### **G. Analysis**

In sum, we concluded, based on the results of our investigation, that Schlozman improperly considered political and ideological affiliations in the recruitment and hiring of career attorneys in the Civil Rights Division, and in doing so, he violated Department policy and federal civil service laws, and committed misconduct.

We found evidence that Schlozman told others in the Department about his success in hiring conservatives. In addition, in his testimony before the Senate Judiciary Committee, Schlozman admitted making such boasts. Numerous e-mails from Schlozman described above also

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<sup>28</sup> Although Schlozman was involved in the hiring process for both of the Democratic or liberal attorneys counted in Table 2 as “Schlozman Hires,” we found that those hiring decisions were made by others. In one case, AAG Kim recommended the attorney be hired for a supervisory position. In the other case, Schlozman stated in an e-mail to the chief of the section to which the attorney was assigned: “He needs to be put under a very watchful eye . . . , all of [his work] should be no-brainer crap.”

demonstrate that he sought conservative candidates and rejected liberal ones. Further, Schlozman admitted to Special Litigation Section Chief Cutlar in March 2007, after allegations of partisan hiring surfaced in the media: “I probably made some mistakes. . . . I probably considered politics when I shouldn’t have.” Moreover, a statistical overview of the political and ideological affiliations of attorneys hired in the Division during his tenure showed that Schlozman hired far more Republican or conservative attorneys than Democrats or liberals. At the same time, political and ideological affiliations did not appear to have been a factor when attorneys were hired without Schlozman’s involvement.

Indeed, we found no evidence that the consideration of political or ideological affiliations affected hiring of experienced attorneys in the sections of the Division that were not overseen by Schlozman. In those sections – Educational Opportunities, Housing and Civil Enforcement, and Disability Rights – section chiefs and line attorneys reviewed résumés of all applicants, made recommendations of applicants to be interviewed, conducted interviews, and made hiring recommendations to the front office. Experienced attorneys hired for these sections were, for the most part, recommended by the sections and approved by the front office, and attorneys were not hired over the objection of section managers.

In contrast, Schlozman controlled the hiring process and precluded meaningful input from the career section chiefs in the sections he supervised and for the Honors Program. Schlozman and the front office screened applicants’ résumés for those positions, and Schlozman chose the applicants to be interviewed. Moreover, Schlozman made most attorney hiring decisions without consulting with and sometimes over the objections of the section chiefs.

The evidence showed that in his hiring decisions, Schlozman considered whether candidates were “real Americans,” “right thinking,” “solid,” “on the team,” and other similar terms, which we concluded referred to his consideration of political and ideological affiliations. The language of the e-mails, and the common understanding of virtually all of the people we interviewed who heard Schlozman use such terms, indicated that the terms had a political and ideological meaning. However, Bradshaw and Tanner maintained that the terms “good American” and “fine American” were ideologically neutral, meaning simply that the person was a hard worker or a “good guy,” and Tanner said that the words were used simply as terms of endearment. Schlozman’s September 6, 2007, written response to congressional questions adopted a similar approach. However, we did not find credible the interpretations offered by Bradshaw and Tanner in our interviews of them or by Schlozman in his response to the Senate. As discussed

above, the plain language of Schlozman's e-mails and the common understanding held by most Division attorneys we interviewed about Schlozman's use of such terms contradicted Schlozman's claim.

The evidence also indicated that Schlozman knew his consideration of political and ideological affiliations in hiring decisions was improper. According to then-DAAG Kim, he warned Schlozman in approximately March 2004 that considering politics in hiring for career attorney positions violated the *Civil Service Reform Act*. While Schlozman told Kim he was not doing so, the evidence, both before and after that conversation, showed that he was doing just that.

## **II. Transfers, Case Assignments, and Other Personnel Actions**

Based on the results of our investigation, we concluded that Schlozman considered political and ideological affiliations in transferring three career attorneys out of the Appellate Section between June 2005 and December 2005.

We also found that Schlozman considered political and ideological affiliations in other personnel actions affecting career attorneys, such as case assignments and awards. Several section chiefs told us that Schlozman directed them not to assign important cases to attorneys he identified as liberal, and one section chief said he instructed her to nominate the conservative attorneys he had hired for awards.

In this section, we first discuss the evidence supporting our conclusion that Schlozman considered political and ideological affiliations in transferring three career attorneys out of the Appellate Section. We then describe the evidence supporting our conclusion that Schlozman considered political or ideological affiliations in making case assignments and awards to career attorneys.

### **A. Forced Transfers of Appellate Section Attorneys**

Appellate Section Chief Flynn told us that as early as 2004, when Schlozman was a DAAG with no supervisory responsibility for the Appellate Section, he often came to Flynn's office to talk about the attorneys in the section. According to Flynn, Schlozman was very critical of the Appellate staff and commented to Flynn that many of the career attorneys in the Appellate Section were "disloyal," "against us," "not on the team," and "treacherous." Flynn said Schlozman stated on several occasions that when he "came into power," he wanted to move those people out of the section to make way for "real Americans."

According to Flynn’s handwritten notes of conversations she had with Schlozman in early 2005, which she wrote around the time of the conversations, Schlozman named three attorneys – who we call Attorneys A, B, and C – that he wanted to transfer out of the section.<sup>29</sup> Flynn wrote that Schlozman said “when he was in charge, he would at least get [Attorney A]” and “when he took over, people would ‘be out one way or another.’” Flynn said Schlozman told her that Attorney A had come to the section after working in the Civil Rights Division front office of the Clinton administration and was “not on the team.”

In later notes, Flynn wrote that Schlozman “viewed [Attorney A] as a political opponent. Said she ha[s] had [a] ‘free ride’ here.” In other notes, Flynn wrote that Schlozman “[o]ften brought up Attorney A – and politics. Said when he obtained power, he would get her out.” Flynn’s notes of another conversation state that Schlozman again identified Attorneys A and C, and three others, as “disloyal,” and that Schlozman “also apparently has problems with [two other named attorneys, Attorney B], etc.” Flynn also noted that Schlozman expressed the view that most Appellate Section lawyers were Democrats.

Another Appellate Section attorney, hired in February 2003, told us that in about January 2004, Schlozman asked him what it was like to work in the Appellate Section with “people who supported [Howard] Dean and think that he’s not liberal enough.” This attorney also described a voice mail message he received from Schlozman in June 2004. In the message, Schlozman asked him to informally mentor two young lawyers who had recently been hired in the Appellate Section. According to the attorney, in the message Schlozman told him to tell the new attorneys “who to avoid, like [an Appellate Section deputy chief] and [Attorney C].” This attorney also recalled Schlozman once asking him if he was aware that Attorney A had worked in the Civil Rights Division front office during the Clinton administration.

## **1. Transfers of Attorneys A, B, and C**

### **a. Attorney A**

Attorney A was the first of three Appellate Section lawyers who was forced to transfer. Appellate Section Chief Flynn told us that at a meeting on June 17, 2005, two days after Schlozman became the Acting AAG, Schlozman told Flynn that the Appellate Section was losing three

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<sup>29</sup> Flynn made handwritten notes about her discussions with Schlozman and eventually used them to draft a misconduct referral of Schlozman while he was Acting AAG. However, Flynn said she never filed the referral for fear of retaliation.

slots and that three attorneys would have to be transferred out of the section. At the meeting, Flynn said Schlozman identified Attorney A as the first attorney to be transferred. Flynn said Schlozman had previously described Attorney A as a “political opponent” because she had worked in the Civil Rights Division front office of the Clinton administration. According to Flynn, at the meeting he said that Attorney A was incompetent. Flynn said she disagreed with this assessment and told Schlozman that section management considered Attorney A to be a good appellate attorney.<sup>30</sup> According to Flynn, Schlozman raised his voice and said that Attorney A had gotten a “free ride” and that it was a “good run but it was over.”

Flynn’s notes of the meeting, made shortly afterwards, reflect that Schlozman rejected her observations and suggestions for avoiding attorney transfers. Her notes also reflect that Schlozman stated that this was an opportunity to replace some poor attorneys and attorneys who were opposed to his “agenda” and to bring in some “real Americans.” According to Flynn’s notes, Schlozman said that if more people left, he would be able to replace them with people he wanted. Flynn also said that Schlozman told her that if Flynn wanted to remain the section chief, she would do things his way.

Special Litigation Section Chief Cutlar told us that Schlozman also talked to her about Attorney A’s transfer. According to Cutlar, Schlozman said that Attorney A was “a Democrat in hiding and is not going to hide in my Appellate Section.” Cutlar also told us that Schlozman said that Attorney A “wrote in Ebonics,” “was an idiot,” and “was an affirmative action thing.”

## **b. Attorney B**

Attorney B was also transferred from the Appellate Section. According to her, beginning in about November 2004 – about a year before her transfer out of the Appellate Section – she was assigned Office of Immigration Litigation (OIL) cases in which the government was

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<sup>30</sup> Attorney A graduated *magna cum laude* from a top law school. She was initially hired by the Department to work in the Office of Legal Counsel as an attorney advisor. She left the Department to accept a 1-year clerkship on the U.S. Court of Appeals for the District of Columbia Circuit and returned to a career position in the Civil Rights Division front office. She began work in the Appellate Section in August 2001. Attorney A had received positive annual performance appraisals for the period 2001 through 2004 while in the Appellate Section, including a notation that she had “strong analytical and writing skills” and a commendation for “an excellent job in . . . one of the most important Establishment Clause cases decided by the Supreme Court in recent years . . . .”



defending on appeal the deportation of an alien.<sup>31</sup> Over the following 8 months, Attorney B handled eight appeals of OIL matters. During this same period, all of the civil rights cases she had been handling were transferred to other attorneys in the section.<sup>32</sup>

Attorney B told us that in June 2005 she asked Section Chief Flynn why she was no longer being assigned civil rights cases. Attorney B said she told Flynn she was concerned because of Attorney A's recent transfer from the Appellate Section. According to Attorney B, Flynn told her that Schlozman had ordered Flynn to reassign all of Attorney B's civil rights cases to other attorneys and to assign her only OIL cases. Flynn told us that Schlozman had criticized Attorney B as not being "one of us" and that Schlozman had directed her to reassign Attorney B's civil rights cases to other attorneys and to assign her only OIL cases.

Attorney B said that upon learning this information she applied for and subsequently was offered a position as a detailee on the staff of Senator Charles Schumer. Attorney B received approval for the detail from the Civil Rights Division front office.

While Attorney B was on the detail, an October 13, 2005, e-mail to Schlozman from a Division front office Counsel asked if Schlozman had seen a question posed to the Division by Senator Kennedy. According to the Counsel, the question was about internal deliberations within the Appellate Section.<sup>33</sup> The Counsel commented in her e-mail, "That too is probably straight from [Attorney B]." Schlozman forwarded the e-mail to Wan Kim, who had been nominated but not yet confirmed as AAG, commenting: "Once again, these [Civil Rights Division] detailees to the Hill act unprofessionally. This is the woman who we will be moving from [Appellate] to [Special Litigation]. The change on the books will be

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<sup>31</sup> In about November 2004, the Department announced a plan to reduce the large backlog of OIL appeals by distributing these cases to attorneys in all Department components and U.S. Attorneys' Offices around the country.

<sup>32</sup> Attorney B graduated *magna cum laude* from law school. She clerked for a year on the U.S. Court of Appeals for the Fourth Circuit and was hired into the Department's Honors Program and assigned to the Appellate Section. All of Attorney B's annual performance appraisals for the period 2001 through 2004 were positive, including notations that she was a "very good appellate attorney," "energetic and hard working," and "an excellent writer."

<sup>33</sup> We were unable to locate a document containing the question Senator Kennedy posed to the Division.

effective next week and it will be implemented if she ever comes back. Unbelievable!!”<sup>34</sup>

About 1 month later, on November 15, 2005, Attorney B said she received a telephone call from the Division’s Human Resources Office. Attorney B said she was told that she should report her time and attendance to the Special Litigation Section because she had been transferred to that section from Appellate a month earlier. According to Attorney B, the Human Resources Officer said the transfer decision had been made by the front office. Prior to this call, Attorney B said no one in the Division had discussed with her the possibility of a transfer out of the Appellate Section. Appellate Section Chief Flynn told us she was not consulted about Attorney B’s transfer and learned about the transfer after Attorney B did.

After receiving this call, Attorney B sent an e-mail to Kim, who had been confirmed as AAG, asking for a meeting to discuss her transfer. After exchanging several e-mail messages, Kim assured Attorney B that he would seek to accommodate her preference, consistent with the needs of the Division, when she returned from her detail. Kim copied Schlozman on the final e-mail message he sent to Attorney B. Schlozman replied to Kim that Kim’s position was fair, but “the belligerence [Attorney B] displayed in her email was consistent with her uncompromising positions in [the Appellate Section] when she was there. Endless headaches were created by her refusal to follow directives from leadership.” In a subsequent e-mail to Kim, Schlozman added:

I would note one other thing for the record. [Attorney B]’s writing skills are perfectly acceptable. If she is assigned to cases where she will not be able to use (as she often does) her political ideology to thwart positions advocated by the Division’s leadership, she is fine in [Appellate]. She was moved simply [because] I did not think it was wise to continue encumbering that spot during the entire length of her detail.

### **c. Attorney C**

Another attorney in the Appellate Section, Attorney C, went on maternity leave in June 2005 and was scheduled to be on leave for 6 months. Attorney C was forced to transfer out of Appellate upon returning from maternity leave in December 2005.

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<sup>34</sup> Kim said he had no reason to believe at that time that the transfer was politically motivated. The Counsel said that Schlozman told her of Attorney B’s transfer, but did not provide any explanation for it.

In late November 2005, while Attorney C was on maternity leave, Schlozman sent an e-mail to AAG Kim criticizing Attorney C's writing skills, stating, "Her skills are negligible and, in my judgment, she is simply incapable of doing the work of the [Appellate] Section. Accordingly, I would continue to strongly urge her reassignment following her return."

Appellate Section Chief Flynn said that Schlozman told her at a meeting on December 12, 2005, that he wanted Attorney C to be transferred out of the section, but that he did not want it to be an involuntary transfer. Flynn said that Schlozman told her that when Attorney C returned from maternity leave, Flynn should put her on a performance improvement plan with dismissal as a possible outcome. According to Flynn's handwritten notes, Schlozman also instructed her not to tell Attorney C of his or the front office's involvement in her planned reassignment. Flynn said she told Schlozman it was not possible to put Attorney C on a performance improvement plan because she had always received satisfactory performance appraisals in the past and the section had not issued a performance appraisal for her in the past year.<sup>35</sup> According to Flynn, Schlozman then told her to inform Attorney C that she could avoid any problems by agreeing to transfer to another section.

An Appellate Section attorney and an Appellate deputy chief said they learned of Schlozman's instructions to Flynn about moving Attorney C out of the section and informed Attorney C. Attorney C told us that she knew that Attorney A had been transferred and that Attorney B had also been transferred a few months earlier while on a detail. Moreover, Attorney C said she had heard from other attorneys in the section that Schlozman planned to move three attorneys out of Appellate. Attorney C said she called Flynn in December 2005 and told her that she was feeling coerced into transferring out of the Appellate Section and asked what Schlozman might do to her if she stayed. According to Attorney C, Flynn told her that she could not say or she would be fired. For these reasons, Attorney C said she decided to transfer to the Civil Rights Division's Complaint Adjudication Office.

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<sup>35</sup> Attorney C graduated from a top law school. She clerked for two federal judges and worked at a national law firm for 4 years before joining the Appellate Section. Attorney C's annual performance appraisals were consistently positive. In 2001, she received a special commendation award for her work on a civil rights case. Attorney C's 2004 performance appraisal stated that she "can be counted on to perform a wide range of assignments with relatively little supervision. Her writing is good, and her legal and factual research abilities are impressive."

## **2. Replacement Attorneys**

Flynn said that Schlozman had told her the reason for the three transfers was to reduce the size of the Appellate Section. However, Schlozman hired two attorneys for the Appellate Section after he began transferring the three attorneys from the section.

The first replacement attorney was hired in September 2005, after Attorney A's transfer but before the transfers of Attorneys B and C. An Appellate Section attorney who was hired into the Honors Program and joined the Appellate Section in the fall of 2004 told us that Schlozman told him he was hoping to free up some slots in the Appellate Section for "good Americans."

The second replacement attorney was hired in March 2006, after all three of the attorneys had been transferred. Flynn said Schlozman invited her to an interview he was conducting of an applicant. After the interview, Schlozman asked Flynn if she had any objection to hiring the applicant to work in the Appellate Section. Flynn told us that she was not aware that there were any openings in the section at that time and that she recalled that Schlozman had told her Attorneys A, B, and C were transferred because the section was being reduced in size. Flynn said the applicant seemed to have excellent qualifications, and under the circumstances she did not object. The applicant had clerked for two federal judges and had worked at a law firm with Gregory Garre, who had recently been appointed as Principal Deputy Solicitor General. Garre had recommended the applicant in an e-mail to AAG Kim and Schlozman, praising the applicant's work and noting, "We have had many conversations about the matters of the day, and [the applicant] has always shown himself to be an extremely solid conservative and supporter of the President." The applicant was hired.

## **3. Complaints About the Transfers**

Attorneys A, B, and C all eventually returned to the Appellate Section after Schlozman left the Division. Attorney A filed a formal Equal Employment Opportunity complaint in 2005 about her transfer. AAG Kim told us he decided to settle the matter shortly after being confirmed as AAG in November 2005 and transferred Attorney A back to the Appellate Section in October 2006.

In November 2006, after more than a year on the Senate detail, Attorney B said she contacted Kim about returning to the Appellate Section. Kim said he approved her request.

Attorney C told us she met with Kim in April 2007 upon her second request to return to the Appellate Section. Kim told us that after

a thorough review of the circumstances surrounding Attorney C's transfer out of the Appellate Section, he agreed to allow her to return to the section.

#### **4. Analysis**

We concluded that Schlozman inappropriately considered political and ideological affiliations when he forced three career attorneys to transfer from the Appellate Section.

As noted above, Schlozman frequently criticized the attorney staff in the Appellate Section and talked of his plan, when he "came into power," to move certain attorneys from the section to make room for "real Americans." Based on our interviews and our review of numerous e-mails, we found that Schlozman used the term "real Americans" to refer to individuals with conservative political views. Appellate Section Chief Flynn also told us that Schlozman named Appellate Section Attorneys A, B, and C as among several in the section whom he considered to be "disloyal," "not one of us," "against us," "not on the team," or "treacherous" and whom he wanted to move out of the section. In particular, Schlozman told Flynn that he viewed Attorney A as a "political opponent" because she had worked in the front office of the Division during the Clinton administration. Flynn said Schlozman "[o]ften brought up Attorney A – and politics. Said when he obtained power, he would get her out."

Despite telling Flynn the transfers were required because the section was losing three attorney positions, Schlozman hired two attorneys for the Appellate Section after he began transferring attorneys from the section. The first replacement attorney was hired in September 2005, a few months after Attorney A's transfer. An Appellate Section attorney told us that Schlozman had asked him to solicit conservative lawyers to work in the Division and that the Appellate attorney had recommended the first replacement attorney. The second replacement attorney was recommended in an e-mail as being "an extremely solid conservative and supporter of the President."

We found unpersuasive and pretextual Schlozman's efforts to justify the transfers of Attorneys A and C on the basis of their performance. Section Chief Flynn told us that she did not want either attorney to be transferred and said she told Schlozman that at the time he ordered their transfers. In addition, both attorneys had consistently received favorable annual performance appraisals, including commendations for their work on particular civil rights cases. We also found pretextual Schlozman's e-mail suggesting that he transferred Attorney B to enable a replacement attorney to be assigned to the

Appellate Section while Attorney B was on detail. Attorney B sought the detail because all of her civil rights cases had been reassigned to other attorneys and her caseload was composed entirely of OIL briefs. Flynn told us that Schlozman had directed her not to assign any important matters to Attorney B because she was not “one of us.” In addition, when AAG Kim told Attorney B that she could return to the Appellate Section at the end of her detail, Schlozman confirmed that Attorney B’s politics had been a factor in her transfer. He told Kim that Attorney B would be fine in Appellate “[i]f she is assigned to cases where she will not be able to use (as she often does) her political ideology to thwart positions advocated by the Division’s leadership[.]”

In sum, we believe that Schlozman’s transfer of these attorneys violated Department policy and federal law, and also constituted misconduct.

## **B. Case Assignments and Other Personnel Actions**

### **1. Factual Overview**

We also concluded that Schlozman considered political or ideological affiliations in his handling of case assignments and awards for career attorneys.

Appellate Section Chief Flynn told us that after Schlozman became Acting AAG in June 2005, he became very involved in the day-to-day assignment and staffing of cases in the Appellate Section. According to Flynn, Schlozman directed her to assign important cases to new, inexperienced attorneys he had hired. In an e-mail from Schlozman to Flynn dated December 4, 2003, Schlozman wrote, “Please let me know when you decide who is going to argue this 4th Circuit voting appeal. If [specific Appellate attorney] is going to do it, that’s fine. If it’s the other atty on the case, I will have either Hans [von Spakovsky] (or possibly myself) do it instead. The potential stakes are too great to entrust this to either a lib or an idiot.”

Flynn also said that Schlozman directed her not to assign important cases to certain attorneys. For example, she said that a Civil Rights Division front office Counsel told her that Schlozman was not comfortable with a particular Appellate attorney working on anything significant.<sup>36</sup> Flynn considered that attorney to be among the best

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<sup>36</sup> The front office Counsel told us she did not know why Schlozman made the decision to restrict assignments to that attorney. She said she thought the attorney was talented and she did not agree with the decision to limit the attorney’s caseload, but that it was “not her call to make.”

lawyers in the section. Flynn said, however, that Schlozman had often commented about the attorney that she was “not on the team” and was “against us.”

In addition, according to Flynn, Schlozman precluded one of the Appellate Section deputy chiefs from reviewing any important cases. An Appellate Section attorney told us that Schlozman had also commented to him that the deputy was liberal and not trustworthy. The attorney said Schlozman told him he should not trust any of the Appellate Section’s management except Flynn, whom Schlozman described as conservative because she was promoted to section chief during the Reagan administration.<sup>37</sup>

Special Litigation Section Chief Cutlar told us that Schlozman directed her to add a column to her section’s weekly report to the front office that described staffing of cases so that he could see who was assigned to which cases. Cutlar said that if Schlozman did not like the case assignment he would direct her to make a change in the staffing. Cutlar said Schlozman told her not to assign any important cases to an attorney whom Schlozman had heard had an anti-Bush bumper sticker posted in her office. Cutlar said Schlozman accused her of “trying to circumvent [him]” when she assigned an important case to that attorney. She said Schlozman made her reassign the matter. In an August 27, 2003, e-mail to Cutlar, Schlozman inquired whether Cutlar had told him that a Special Litigation Section attorney “was going to be promoted to senior counsel? I may have just forgotten. She is a nice girl, but I know her politics and she will require close supervision if she is now a reviewer.”

Other e-mails demonstrated that Schlozman considered politics in his management of case assignments in the Division’s Employment Litigation Section. For example, in an e-mail dated December 17, 2004, regarding a case involving the New York City fire department, Schlozman inquired of Employment Litigation Section Chief Palmer about the lead attorney assigned to the case: “[The section attorney] is a pinko. So why is she leading this impt [important] case?” In another e-mail to Palmer dated November 18, 2004, regarding case referrals from the president and general counsel of the Center for Equal Opportunity, a conservative advocacy group, Schlozman commented on the attorney staff in the Employment Litigation Section: “Now that you have a stable of

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<sup>37</sup> Two other persons we interviewed told us that Schlozman expressed concern about whether several career attorneys could “be trusted” because he believed they had not voted for President Bush in the 2004 election.

conservatives, I hope you are assigning each of these referrals to an attorney.”

The evidence also indicated that Schlozman considered the politics of attorneys in the Division’s Voting Section. In an e-mail dated November 28, 2003, to front office Counsel von Spakovsky and Principal DAAG Bradshaw, Schlozman wrote about a particular Voting Section attorney, “If I recall correctly, [Voting Section attorney] is a crazy lib hans, am I right?” and “a detail would be a great way to get him out of our hair for 6 months.”

Special Litigation Section Chief Cutlar said that Schlozman also considered politics in determining which attorneys would receive performance awards. Cutlar described an occasion when Schlozman called her while she was on vacation to discuss her award nominations. Cutlar told us that while she tried to point out to Schlozman the things the attorneys had done to deserve the awards, Cutlar said all Schlozman wanted to know about was their politics. According to Cutlar, when she told Schlozman she did not know the politics of the attorneys she supervised, Schlozman responded, “Stop telling me that. This is Washington.”

## **2. Analysis**

We concluded that Schlozman inappropriately used political and ideological affiliations in managing the assignment of cases to attorneys in the sections of the Division he oversaw. According to Section Chiefs Flynn, Cutlar, and Palmer, Schlozman placed limitations on the assignment of cases to attorneys whom Schlozman described as “libs” or “pinkos,” and he requested that “important” cases be handled by conservative attorneys he had hired. In addition, Schlozman expressly inquired about the politics of Cutlar’s nominees for performance awards.

In contrast, we found no evidence of political or ideological affiliations affecting attorney transfers or case assignments in the Division sections not supervised by Schlozman. The chiefs of the Educational Opportunities, Housing and Civil Enforcement, and Disability Rights Sections said that front office personnel did not involve themselves in such matters or otherwise interfere with their management of the sections.

## **III. Management Failures**

The evidence described previously in this section demonstrated that Schlozman considered political and ideological affiliations in hiring, transferring, and assigning cases to career attorneys while in the Civil



Rights Division from 2003 to 2006. In this section, we examine whether Schlozman's supervisors exercised sufficient oversight of his personnel actions, which we found violated federal law and Department policy.

### **A. Factual Overview**

As Figure 1 in Chapter Two illustrates, there were three Assistant Attorneys General for the Civil Rights Division appointed by the President and confirmed by the Senate from 2001 through 2007. Ralph F. Boyd, Jr., served as AAG from July 2001 to July 2003; R. Alexander Acosta served in that position from August 2003 to June 2005; and Wan Kim was the AAG from November 2005 to August 2007.

Two Principal Deputy Assistant Attorneys General supervised Schlozman when he was a Deputy Assistant Attorney General in the Division: (1) J. Michael Wiggins from May 2003, when Schlozman joined the Division, until October 2003, and (2) Sheldon Bradshaw from October 2003 through April 2005. Schlozman succeeded Bradshaw as Principal DAAG and remained in that position until becoming Acting AAG in June 2005. After Kim was confirmed as AAG in November 2005, Schlozman returned to the Principal DAAG post.

We found that the Civil Rights Division hiring process operated without significant controversy during AAG Boyd's tenure. Boyd issued a memorandum in February 2002 altering the hiring procedures in the Division and increasing the involvement of the front office in hiring. He told us he did so to broaden the pool of applicants considered for career positions. Boyd said his goals in hiring were both quality and diversity. He said he saw the need immediately upon becoming AAG to improve the diversity of attorneys within the Division, both in supervisory and line positions. Boyd resigned from the Department in July 2003, shortly after Schlozman joined the Division.

Acosta told us that while he was AAG, the hiring process in the Division remained largely the same as it had been under Boyd. He altered the process slightly in a December 1, 2003, memorandum by setting specific deadlines and requiring that the Principal DAAG be included in the hiring process. He said he delegated responsibility for hiring along with the day-to-day management of the Division to Principal DAAG Bradshaw. Acosta told us he was not involved in the attorney hiring process and that attorneys were often hired without him knowing about it.

Acosta acknowledged that Schlozman had significant responsibility for hiring during Acosta's tenure as AAG. Acosta said he was not aware that Schlozman acted inappropriately in the hiring process. Acosta said

he believed that all attorneys hired in the Division were recommended by the section chief and the DAAG overseeing that section. Acosta said no one complained to him that inappropriate hiring practices were taking place.

However, Special Litigation Section Chief Shanetta Cutlar told us she complained directly to Acosta about Schlozman's intent to hire as her deputy an applicant whom she considered unqualified even for a line attorney position. Cutlar said she also told Acosta that Schlozman had hired a number of applicants she considered unqualified, although she told us she was not "bold enough" to tell Acosta she believed Schlozman was considering applicants' political and ideological affiliations in making hiring decisions. Acosta, on the other hand, told us he had no recollection of Cutlar complaining to him about Schlozman's hiring practices. According to Cutlar, Acosta declined to get involved, referring her instead to Principal DAAG Bradshaw. Cutlar said that when she complained to Bradshaw, he told her Schlozman handled hiring decisions.

Acosta acknowledged that during his tenure as AAG he became aware of some problems with Schlozman's management approach and conduct. He said Schlozman was "very loose with his language" and sometimes made inappropriate jokes. For example, Acosta described an instance in which Schlozman passed along an inappropriate e-mail.<sup>38</sup> Acosta also said that he became concerned about Schlozman's judgment and "appropriateness" in approximately December 2004, when Acosta received notice of an attorney's grievance regarding his performance appraisal. Acosta could not remember the name of the attorney or the specifics of his concerns, but said he asked Bradshaw to review the matter and grievances of other performance appraisals Schlozman had approved. Acosta said he became more concerned about Schlozman's judgment around the time he was preparing to leave the Division in mid-2005 as a result of discussions Acosta had with retiring Voting

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<sup>38</sup> In that incident in August 2004, Voting Section Chief John Tanner sent an e-mail to Schlozman asking Schlozman to bring coffee for him to a meeting both were scheduled to attend. Schlozman replied asking Tanner how he liked his coffee. Tanner's response was, "Mary Frances Berry style – black and bitter." Berry is an African-American who was the Chairperson of the U.S. Commission on Civil Rights from November 1993 until late 2004. Schlozman forwarded the e-mail chain to several Department officials (including Principal DAAG Bradshaw) but not Acosta, with the comment, "Y'all will appreciate Tanner's response." Acosta said that when he was made aware of the incident, he required Schlozman to make a written apology to him for his role in forwarding the e-mail and that Schlozman did so. Acosta said that he believed Schlozman wrote him the apology in an e-mail, but we were unable to retrieve Acosta's e-mails and did not find such an e-mail among Schlozman's recovered e-mail messages.

Section Chief Joseph Rich about Schlozman's management.<sup>39</sup> Yet, Acosta took no action to alert those in his chain of command.

As noted above, Wiggins served as Principal DAAG from December 2002 to October 2003. He left the Department in May 2004 before our investigation began. Wiggins declined our request to be interviewed and because he was no longer a Department employee we could not compel him to cooperate with our investigation. In our investigation, however, we found several e-mails to or from Wiggins relating to Schlozman and hiring in the Division. For example, Wiggins received an e-mail from a federal judge on November 13, 2003, recommending his law clerk for an attorney position. Wiggins forwarded the e-mail recommendation to Schlozman, stating, "We need to hire this guy." Schlozman's e-mail reply inquired of Wiggins, "conservative?" Wiggins's response was that the "Judge is. We can check this guy."

Bradshaw was the Principal DAAG for Acosta from October 2003 to April 2005. As noted above, Acosta delegated responsibility for hiring to Bradshaw. Bradshaw said neither he nor Schlozman considered impermissible factors in hiring. He said that there was an effort to hire people who would not attempt to expand the scope of the law or create policy. Bradshaw said that during his tenure the Civil Rights Division hired "plenty" of liberal attorneys and promoted a large number of career attorneys, an overwhelming number of whom he believed were liberal. Bradshaw also said it was not a problem in his view to hire conservatives. It would only be a problem, he said, if conservatives were hired and liberals were excluded. Bradshaw believed that any tendency toward hiring conservatives in the Division was likely explained by the tendency of conservatives to apply during a Republican administration.

Bradshaw acknowledged that he heard Schlozman call people "libs and commies," but said Schlozman did not do so in the context of hiring. As noted previously, Bradshaw also stated that Schlozman's use of terms such as "good American," "fine American," and "on the team" was ideologically neutral, meaning simply that the person was a hard worker or a "good guy."

Former AAG Kim said that during the time he was a DAAG, from August 2003 to November 2005, Bradshaw and Schlozman made most of the final decisions on attorney hiring. As described above, Kim recalled an instance while he was a DAAG when a concern about improper hiring

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<sup>39</sup> Acosta added that when he learned in early 2007 that Schlozman was being considered for the position of Director of EOUSA, he told Kyle Sampson, the Chief of Staff to the Attorney General, that he did not believe Schlozman was suitable for the position.

considerations by Schlozman was brought to his attention by former Civil Rights Division front office Counsel Andrew Lelling. According to Kim, in about March 2004 Lelling told him that Lelling had recommended a colleague for a position in the Civil Rights Division to Schlozman, and Schlozman asked him whether his colleague was conservative. When Lelling said he did not think so, Schlozman told him that “he probably won’t be hired.”

Kim said Lelling’s call bothered him and within a week of speaking to Lelling, Kim raised the subject of improper hiring considerations with Schlozman. Kim said he made clear to Schlozman that it would be unlawful and impermissible under the *Civil Service Reform Act* to make hiring decisions based on political affiliations. However, Kim said he did not report the call from Lelling or his concerns about Schlozman to his supervisors at the time – either Bradshaw or Acosta. Kim said he thought that Schlozman had not been aware of the requirements of the law concerning hiring, and by making Schlozman aware of the law, Kim believed he had appropriately addressed the issue. Kim said this was the only conversation he had with Schlozman on this issue.

We found two e-mails about hiring that Schlozman sent to Kim while both were DAAGs that should have raised further concerns for Kim about Schlozman’s hiring practices. As discussed previously, in a January 30, 2004, e-mail, Schlozman declined an invitation from Kim to join him for lunch, noting, “Unfortunately I have an interview at 1 with some lefty who we’ll never hire but I’m extending a courtesy interview as a favor.” Kim said he was disturbed when he found this e-mail in preparation for his interview with us. He said he did not recall the e-mail and said he had never had a conversation with Schlozman that was similar in substance to the e-mail.

In a second e-mail, dated March 15, 2004, Schlozman told Kim, “We need to start thinking about [Criminal Section] lateral hires. I fear that [Criminal Section Chief] Al [Moskowitz] and his minions will be sorting through the résumés looking for [name of attorney] clones who are big libs and would enforce certain of our statutes only with great reluctance.” Again, Kim said he had no recollection of the e-mail and said he probably ignored it when he received it.

Kim told us that when he became the AAG in November 2005, he had concerns about Schlozman serving as his principal deputy. He said it was not his decision to make Schlozman the principal deputy. He said he was told by the Presidential Personnel Office when he became AAG that Schlozman would be his Principal DAAG. Kim said he did not delegate his hiring authority to Schlozman and was “very clear” with Schlozman about how he was to handle matters on Kim’s behalf.

Kim said he learned after he became the AAG that Schlozman had executed a plan to transfer three attorneys from the Appellate Section whom he considered to be “liberal” and “disloyal” so he could replace them with “real Americans.” Kim told us that was the “last straw.” He said Schlozman was taking actions as his Principal DAAG that were inconsistent with his interests. However, Kim said he never discussed the transfers with Schlozman. Kim said he had stopped speaking to Schlozman by that time as Schlozman was about to leave the Division to become the interim U.S. Attorney for the Western District of Missouri. Many of the Division attorneys we interviewed, including Kim, said they were relieved when Schlozman left the Division.

Kim said that when Schlozman’s tenure as interim U.S. Attorney for the Western District of Missouri was coming to an end in early 2007, Kim learned that Schlozman was being considered for the position of Director of EOUSA. Kim contacted Courtney Elwood, Deputy Chief of Staff and Counselor to the Attorney General, to tell her he thought it was a “bad idea” to put Schlozman in that position. Kim said he was “really concerned about Schlozman’s fitness to serve.”

Kim also described Schlozman as being “ridiculously brash” and someone who often would say things to make himself seem important. Kim said that people who knew Schlozman often discounted what he said. Kim added that not everything Schlozman did was politically motivated.

## **B. Analysis**

We believe that AAGs Acosta and Kim and Principal DAAGs Bradshaw and Wiggins had indications of potential problems in Schlozman’s actions and judgment, and that each had sufficient information about Schlozman’s conduct to have raised red flags warranting closer supervision of him. Indeed, Kim, Wiggins, and Bradshaw were informed of specific instances that should have raised concerns that Schlozman was using impermissible political considerations in making hiring decisions. Despite the warnings, they took no action to investigate, bring the matter to the attention of their supervisors, or change Schlozman’s role in hiring for the Division.

For example, Cutlar said that in 2004 she told Acosta about Schlozman hiring applicants she considered to be unqualified. At that time, Acosta also became aware of an attorney grievance filed against Schlozman about his performance appraisal and learned that Schlozman forwarded an inappropriate, racially insensitive e-mail to other Department officials. Although these incidents did not directly relate to the consideration of political or ideological affiliations in hiring, these

matters should have put Acosta on notice of potential problems with Schlozman's conduct and judgment.

However, Acosta did not take sufficient action in response to the information. Acosta asked for Schlozman to apologize to him for forwarding the offensive e-mail, but he did not ensure that Schlozman was more closely supervised. Acosta's response to Cutlar's complaint was also passive. According to Cutlar, Acosta told her that Bradshaw handled hiring and that she should discuss the matter with him. With respect to an attorney's grievance of a performance appraisal that was approved by Schlozman, Acosta also delegated further inquiry of the matter to Bradshaw. At the same time, Acosta allowed Schlozman to continue to control the hiring responsibilities for the sections he supervised and for the Honors Program.

While Acosta said he developed greater concerns about Schlozman's management by the middle of 2005, shortly before Acosta left the Division to become U.S. Attorney for the Southern District of Florida, it was not until 2007, based on this same information, that Acosta expressed his concerns to anyone at the Department. At that time, he informed the Office of the Attorney General of his concerns about Schlozman's suitability to become Director of EOUSA. Yet, Acosta took no steps while AAG to more closely manage Schlozman or reduce his role in hiring within the Division, and we found no evidence that Acosta raised any concerns before Schlozman became Acting AAG for the Civil Rights Division or interim U.S. Attorney for the Western District of Missouri.

In addition, as outlined above, both Wiggins and Bradshaw, as Schlozman's direct supervisors when they were Principal DAAGs, had direct knowledge that Schlozman considered political or ideological affiliations in hiring, as evidenced by e-mails described in this report. For example, in an e-mail exchange with Schlozman about an applicant recommended by a judge, Wiggins responded to Schlozman's inquiry as to whether the applicant was conservative by stating that the recommending judge was conservative and that he could find out about the applicant. Bradshaw joined Schlozman in the use of terms such as "good American," "fine American," "right thinking American," and being "on the team." As we previously noted, we concluded from the plain language of these e-mails, and the common understanding of virtually all of the people we interviewed who heard Schlozman use such terms, that they had a political and ideological meaning.

Moreover, we found Bradshaw's assertion that the terms "good American" and "on the team" were ideologically neutral and simply meant that the person was a hard worker or a "good guy" was not

credible. We also did not find credible Bradshaw's assertion that Schlozman described attorney staff in the Civil Rights Division as being "libs" and "commies," but never used such terms in the context of hiring. The e-mail evidence and statements of numerous Division attorneys described in this report show that Schlozman referred to applicants in such terms in the context of hiring and that Bradshaw was aware of his doing so.

We also found that AAG Kim could and should have taken additional action to prevent Schlozman's improper conduct. In March 2004, when Kim and Schlozman were both DAAGs, Kim received the complaint from Lelling about Schlozman's comment on an applicant who was not conservative. Kim handled the complaint by meeting with Schlozman and informing him of what constituted a prohibited personnel action. Kim did not notify Principal DAAG Bradshaw, AAG Acosta, or anyone else (including the OIG, OPR, or the Office of Special Counsel). In addition to Lelling's complaint, e-mails around the same time from Schlozman to Kim demonstrated that Schlozman was considering political and ideological affiliations in hiring decisions, and Kim did not take any action to address these concerns either.

More significantly, when Kim became AAG, Schlozman remained in an influential position as Principal DAAG before becoming interim U.S. Attorney for the Western District of Missouri. When Kim learned that Schlozman had transferred career attorneys from the Appellate Section because he believed they were "liberal" and "disloyal," Kim never discussed the transfers with Schlozman because he had stopped speaking to him by then. Although Kim later reinstated the attorneys to the Appellate Section, he took no action against Schlozman at the time he first learned of Schlozman's improper conduct. Only when Kim learned that Schlozman was being considered for the position of Director of EOUSA did he express his concern about Schlozman to Department officials.

We concluded that Acosta and Kim did not sufficiently supervise Schlozman. In light of indications they had about Schlozman's conduct and judgment, they failed to ensure that Schlozman's hiring and personnel decisions were based on proper considerations. In addition, Bradshaw and Wiggins both had knowledge of Schlozman's improper consideration of political and ideological affiliations in hiring, and they also failed to take action to ensure that Schlozman's hiring decisions were consistent with the law and Department policy.

## **CHAPTER FOUR: SCHLOZMAN'S FALSE STATEMENTS TO CONGRESS**

On June 5, 2007, Schlozman testified under oath before the Senate Judiciary Committee in connection with its investigation into the use of political considerations in the hiring and firing of career attorneys at the Department of Justice. At the time of his testimony, Schlozman was Associate Counsel to the Director of EOUSA.<sup>40</sup>

On September 6, 2007, after resigning from the Department, Schlozman responded by letter to supplemental questions for the record posed to him in writing by several Senators as a follow-up to his Senate Judiciary testimony.

We believe that Schlozman made false statements to the Senate Judiciary Committee, both in his sworn testimony and in his written responses to the supplemental questions for the record. In this section, we describe Schlozman's statements and the evidence that we believe demonstrates their falsity. The evidence cited below has been described in previous sections of this report. However, we describe it again here to compare his statements with the evidence supporting our conclusion that the statements were false.

### **I. Statements About Hiring**

During the June 5, 2007, hearing before the Senate Judiciary Committee, Schlozman stated in response to questions from Senator Charles Schumer:

Senator Schumer: Mr. Schlozman, is the policy against considering political and ideological affiliations in the hiring of career department employees formal or informal?

Mr. Schlozman: I think it is pursuant to a civil service statute for career employees -- the *Hatch Act*.

Senator Schumer: So it's formal

Mr. Schlozman: Yeah.

Senator Schumer: Yeah. Did you ever violate it?

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<sup>40</sup> As discussed above, Schlozman had left the Civil Rights Division in March 2006 to become interim U.S. Attorney for the Western District of Missouri, a position he held until he was replaced in March 2007. At that time, he was transferred to EOUSA. He left the Department in August 2007.



Mr. Schlozman: I did not.

Senator Schumer: Did you ever, quote, “cross the line,” as Ms. Goodling has admitted doing?

Mr. Schlozman: I did not.

Schlozman’s answers show that he was aware that consideration of political and ideological affiliations was prohibited in hiring attorneys for career civil service positions at the Department. As discussed above, then-DAAG Wan Kim had also warned him about engaging in such practices. Kim said he told Schlozman around March 2004 that it was unlawful and impermissible to make hiring decisions for career positions based on political affiliations.<sup>41</sup>

According to Kim, he brought this prohibition to Schlozman’s attention because of a telephone call Kim had received from Andrew Lelling, who had previously worked in the front office of the Civil Rights Division as Counsel to AAG Ralph F. Boyd, Jr. In the telephone call, Lelling complained to Kim that Schlozman was considering political or ideological affiliations when making hiring decisions. Kim said Lelling told him that Schlozman had asked Lelling whether a colleague whom Lelling was recommending for a position in the Division’s Criminal Section was conservative. When Lelling indicated that he did not think his colleague was conservative, Schlozman said he would not be hired.

Schlozman’s testimony in response to Senator Schumer’s question that he did not violate the law, or “cross the line,” by considering political factors in attorney hiring is contradicted by other evidence. Most directly, Schlozman admitted to Special Litigation Section Chief Shanetta Cutlar in approximately March 2007 that he had considered politics. According to Cutlar, Schlozman told her, “You know, I was thinking I probably made some mistakes . . . . I probably considered politics when I shouldn’t have.” Later in the same conversation, Schlozman said, “Well, I’m just saying I got caught up in the group mentality. You know how it is.” Cutlar said that Schlozman concluded this conversation by again admitting that “maybe I’ve made some mistakes. Maybe I considered politics when I shouldn’t have.”<sup>42</sup>

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<sup>41</sup> Kim said he “basically parrot[ed] the requirements of the CSRA” to Schlozman. In his testimony, Schlozman erroneously referenced the *Hatch Act*, a federal statute that regulates partisan political activity by federal employees, rather than the *Civil Service Reform Act*, 5 U.S.C. § 2301, *et seq.*

<sup>42</sup> In a subsequent telephone conversation with Cutlar during the same time frame, Schlozman retreated from his admissions about his consideration of politics in hiring. Cutlar said in this follow-up telephone conversation Schlozman told her, “You

(Cont.)

The evidence also showed that Schlozman boasted to others about using political and ideological affiliations in hiring for career Civil Rights Division attorney positions. For example, during his June 5 Senate testimony, Schlozman acknowledged that he had boasted about his hiring of Republicans and conservatives in the Division.<sup>43</sup>

Another example is an e-mail dated January 6, 2004, from Schlozman to an attorney hired by Schlozman in the Civil Rights Division. Shortly after being hired, the attorney sent an e-mail to Schlozman expressing his happiness in the Special Litigation Section, noting that his “office is even next to a Federalist Society member.” Schlozman replied, “Just between you and me, we hired another member of ‘the team’ yesterday. And still another ideological comrade will be starting in one month. So we are making progress.”

Employment Litigation Section Chief David Palmer also told us that he heard Schlozman express pleasure about his bringing “RTAs,” meaning “right-thinking Americans,” and Republicans into the Division. Palmer added, “I don’t want to say that [Schlozman] had a preference, but [he] liked hiring conservatives.” Lelling told us that Schlozman “was always very unapologetically clear about the kind of people he wanted hired into the Department . . . . [H]e want[ed] people in the Department who [were] conservative on the legal issues, maybe conservative period.”

Accounts from several other people we interviewed and e-mails provided further evidence that political and ideological affiliations were factors in Schlozman’s hiring decisions throughout his tenure in the Civil Rights Division. According to Appellate Section Chief Diana Flynn, Schlozman was open about his disdain for and lack of trust in the attorney staff of the Appellate Section. She told us that in conversations with her Schlozman alternately referred to the Appellate Section lawyers hired during prior administrations as “Democrats” and “liberals” and said they were “disloyal,” could not be trusted, and were not “on the team.” Flynn said Schlozman pledged to move as many of them out of the Civil Rights Division as he could to make room for the “real Americans” and “right-thinking Americans” he wanted to hire. As discussed previously, based on accounts from numerous Division

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know I didn’t do anything wrong.” Cutlar also told us that during that telephone conversation Schlozman repeated several times that he wanted her to know and remember that he considered her to be “a close and personal friend.”

<sup>43</sup> Senator Schumer: Did you ever boast to anyone that you hired a certain number of Republicans or conservatives for any division or section at the Justice Department?

Mr. Schlozman: I mean, I probably have made statements like that.

employees and officials – including Kim and Section Chiefs Cutlar and Flynn – and from the context of Schlozman’s use in e-mails of terms such as “real American,” “right-thinking American,” and being “on the team,” the evidence indicated that these terms were Schlozman’s way of referring to politically conservative applicants and attorneys.

A May 9, 2003, e-mail provides additional evidence of the meaning of Schlozman’s phrases. Luis Reyes, then Counsel to the AAG for the Civil Division, sent an e-mail to Schlozman in connection with a legal matter, endorsing an attorney in the Department’s Office of Legal Policy as a “right thinking american to say the least.” In an e-mail response, Schlozman wrote that he “just spoke with [the attorney] to verify his political leanings and it is clear he is a member of the team.”

Other e-mails showed that Schlozman viewed applicants unfavorably who were Democrats or deemed liberal. For example, in November 2003, when a Department attorney forwarded to Schlozman the résumé of a recent law school graduate clerking for a federal judge who was interested in working at the Department, Schlozman forwarded the résumé to a Division front office Counsel, commenting that “this has lib written all over it. let’s discuss[.]”<sup>44</sup>

On November 13, 2003, Principal DAAG J. Michael Wiggins sent an e-mail to Schlozman containing a magistrate judge’s recommendation of his law clerk for a position in the Civil Rights Division. The magistrate judge described his clerk as “a very able lawyer” who would be “a good addition to your staff.” Wiggins noted to Schlozman, “We need to hire this guy[.]” In a one-word e-mail reply to Wiggins, Schlozman wrote: “conservative?”

In an e-mail to a Division front office Counsel dated January 12, 2004, Schlozman inquired about an attorney being referred as a candidate for a career civil service position by asking, “how does he view the world, if you know what I mean?” Schlozman added in the e-mail “(and for God’s sake, don’t forward this email!).”

On January 30, 2004, Schlozman sent an e-mail to Kim declining an invitation to join Kim for lunch, noting, “Unfortunately I have an interview at 1 with some lefty who we’ll never hire but I’m extending a courtesy interview as a favor.” In another e-mail dated March 5, 2004, Schlozman wrote to a Division attorney that a Criminal Section deputy

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<sup>44</sup> The applicant’s résumé showed prior employment for three Democratic members of Congress as well as positions in the Department of Education and the Office of Justice Programs during the Clinton administration. Although the applicant appeared to be qualified for the position, she was not hired.

“has recommended several other commies for permanent positions in [the section]. [Criminal Section Chief Moskowitz] probably would concur with his recommendations. But as long as I’m here, adherents of Mao’s little red book need not apply.”

Schlozman sent another e-mail to Kim dated March 15, 2004, stating in part, “We need to start thinking about [Criminal Section] lateral hires. I fear that [Moskowitz] and his minions will be sorting through the résumés looking for [name of attorney] clones who are big libs and would enforce certain of our statutes only with great reluctance.”

Also on March 15, 2004, Schlozman sent an e-mail expressing his uncertainty about whether an applicant for the Division’s Special Litigation Section was conservative because she had interned at the ACLU.<sup>45</sup> The applicant told us that Schlozman called and questioned her about her internship and asked whether she was a member of the ACLU. She said she assured him that she was not a member and that she had interned with the ACLU to learn about constitutional law. According to Special Litigation Section Chief Cutlar, Schlozman hired the applicant, even though Cutlar objected for other reasons, once Schlozman was satisfied that the applicant was not an ACLU member.

In an e-mail dated May 27, 2005, Employment Litigation Section Chief Palmer asked Schlozman whether he was aware that a new Honors Program attorney who had been assigned to the section had worked for the Lawyers’ Committee for Civil Rights. Schlozman’s reply e-mail stated that he “kn[e]w all about him. He will be okay. (He worked as intern in [the Bush administration’s] W[hite] H[ouse] Counsel’s Office.) But he was forced on us anyway and got the nod over my objection. Still, I expect you to monitor him very, very carefully.”

The evidence outlined above also supports the finding that Schlozman made false statements in his written responses to a question for the record from Senator Leahy asking whether Schlozman ever considered political or ideological affiliations in hiring for career attorney positions. Senator Leahy’s question and Schlozman’s response were as follows:

Q: When considering, recommending or approving candidates for appointment to career positions at the Department, did you ever consider applicants’ political party affiliation, ideology, membership in a nonprofit organization

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<sup>45</sup> March 15, 2004, e-mail from Schlozman to Civil Rights Division Counsel Matt Zandi: “Matt, if [the applicant] is so conservative, how is it that she was a member of the ACLU in Tennessee during law school?”

or loyalty to the President, or otherwise screen potential career hires for political allegiance? If so, please provide details. Are you aware of whether others at the Department considered those factors in making decision regarding career hires? If so, whom?

A: During my tenure, all candidates for career attorney employment were judged individually based on a comprehensive review of their academic background, legal and analytical skills, unique life experiences, interest in the work of the Department, and a personal interview. Applicants were not hired based on their political party affiliation, membership in a nonprofit organization, or loyalty to the President.

With respect to ideology, I did not employ any sort of ideological litmus test. I sought instead to hire individuals who would vigorously enforce the laws under the Civil Rights Division's jurisdiction, irrespective of their own political or ideological views. Of course, to the extent an applicant expressed a strong interest, or had a particularly developed background, in one of the Division's enforcement priorities – e.g., religious liberties, human trafficking, minority language issues, institutional reform, etc. – I considered that to be a positive.

We believe the evidence summarized above shows that Schlozman's answer was false, particularly when he stated, "Applicants were not hired based on their political party affiliation, membership in a nonprofit organization, or loyalty to the President," and that he did not "employ any sort of ideological litmus test." We found several instances in which Schlozman inquired directly if an applicant was "conservative" and many more in which he used such substitute phrases as "good American," "right-thinking American," or being "on the team" in assessing whether the applicant should be hired. Moreover, several of the career section chiefs supervised by Schlozman told us that Schlozman routinely ignored applicants' qualifications for the job and the assessments and recommendations of the career supervisors when making hiring decisions.

In sum, we believe the evidence in our investigation contradicts Schlozman's testimony and written responses to supplemental questions for the record. The evidence shows that Schlozman also violated Department policy and federal law that prohibits considering political and ideological affiliations in hiring career employees.

## II. Statements About Appellate Section Attorney Transfers

We also concluded that Schlozman made false statements about the transfer of the three Appellate Section attorneys, which we described in Chapter Three of this report. We believe that Schlozman answered falsely the following question for the record posed to him by Senator Dianne Feinstein:

Q: Was your decision to order or suggest the transfer of any attorney out of the Appellate Section based, in whole or in part, on an intent to fill the position with an attorney who would adopt more conservative views?

A: No.

Special Litigation Section Chief Cutlar told us that Schlozman talked to her about moving Attorney A, the first attorney transferred from the Appellate Section. Cutlar said Schlozman referred to Attorney A as “a Democrat in hiding and is not going to hide in my Appellate Section.” An Appellate Section attorney also told us that after he had begun working in the section, Schlozman told him that he was hoping to free up some slots in the Appellate Section for “good Americans.”

Appellate Section Chief Flynn also told us that Schlozman said many of the career attorneys in the Appellate Section were “disloyal,” “against us,” “not on the team,” and “treacherous.” Flynn said that Schlozman remarked to her on several occasions that when he “came into power” he wanted to move these career people out of the section to make way for “real Americans.” According to handwritten notes made by Flynn around the time of conversations she had with Schlozman in early 2005, Schlozman named two of the three Appellate Division attorneys (Attorneys A and C) who were later forced to transfer from the Appellate Section as among several he wanted to transfer out of the section. In her notes, Flynn also recorded that Schlozman said “when he was in charge, he would at least get [Attorney A]” and “when he took over, people would be out one way or another.’”

Flynn said that Schlozman told her that Attorney A had come from the front office of the prior administration and was “not on the team.”<sup>46</sup> In later notes made by Flynn before Schlozman became Acting AAG and assumed supervisory responsibility for the Appellate Section in June 2005, Flynn wrote that Schlozman “viewed [Attorney A] as a political

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<sup>46</sup> This evidence also contradicts Schlozman’s response to Senator Kennedy’s supplemental question that the transfer of Attorney A had “nothing to do with her prior employment.”

opponent. Said she ha[s] had [a] ‘free ride’ here.” In other notes, Flynn wrote that Schlozman “[o]ften brought up [Attorney A] – and politics. Said when he obtained power, he would get her out.” Flynn’s notes also state that Schlozman had identified other Appellate Section attorneys, including Attorneys A and B, as being “disloyal” and that he “also apparently has problems with [Attorney C, among others].”

Flynn also told us that within days of Schlozman becoming Acting AAG in June 2005, he met with Flynn and announced his plan to reduce the size of the Appellate Section by transferring three attorneys. Flynn’s notes of the meeting, made shortly afterwards, indicate that Schlozman stated that this was an opportunity to replace some poor attorneys and attorneys who were opposed to his “agenda” and bring in some “real Americans.” Flynn told us that Schlozman identified Attorney A as the first of the attorneys to be involuntarily transferred. Flynn said that Schlozman became irritated by her suggested alternatives to transferring attorneys from the section, which Flynn opposed, or transferring more junior attorneys if anyone had to be transferred. Flynn’s notes of the meeting also reflect that Schlozman said he was not concerned about maintaining the morale of the attorney staff in the Appellate Section. He said that from his perspective if more people left he would be able to replace them with people he wanted.

Schlozman hired two attorneys for the Appellate Section after he began transferring attorneys purportedly to reduce the size of the section. The first replacement attorney was hired in September 2005, after Attorney A’s transfer. An Appellate Section attorney whom Schlozman had previously hired told us that the front office asked him to solicit conservative lawyers to work in the Division. The Appellate attorney recommended the replacement attorney that Schlozman subsequently hired.

A second replacement attorney was hired in March 2006. This attorney was recommended in an e-mail to Kim and Schlozman by Gregory Garre, Principal Deputy Solicitor General, as being “an extremely solid conservative and supporter of the President.”

In sum, we believe the evidence contradicts Schlozman’s statements that he did not order the transfer of any attorney from the Appellate Section so that he could replace them with more conservative attorneys.

### **III. Additional Statement About Hiring While Interim United States Attorney**

We analyzed another statement Schlozman made during his testimony before the Senate Judiciary Committee concerning his hiring practices while he was the interim U.S. Attorney for the Western District of Missouri. Schlozman was asked about the factors he considered in hiring when he was the interim U.S. Attorney. After explaining that he was not authorized to hire career Assistant U.S. Attorneys (AUSA) without authorization from EOUSA, Schlozman testified as follows:

Senator Schumer: Did you ever consider political affiliation or ideology [in hiring while you were a U.S. Attorney]?

Mr. Schlozman: I did not.

We found an e-mail Schlozman sent on December 22, 2006, when he was an interim U.S. Attorney, to EOUSA in which he sought authority to fill vacant career AUSA positions. In the e-mail, Schlozman advocated for his top three choices, stating that they were all “rock-solid Americans” who would be a “hugely positive legacy for this Administration in this District.” Schlozman then discussed the qualifications of each candidate. Regarding the first applicant, Schlozman wrote that his “involvement with the Bush/Cheney campaign speaks for itself.” Regarding the second candidate, Schlozman noted that he met the applicant during the applicant’s clerkship with a “43-appointee,” a reference to a federal appellate judge appointed by President George W. Bush. Schlozman’s e-mail described the candidate as “a rock star talent in addition to being hard core (in the most positive sense of that phrase) on the issues[.]” Schlozman described the third applicant as “an obvious conservative of incredible intellect.”

In his written response to Senator Leahy’s question for the record, Schlozman addressed the hiring of AUSAs in the U.S. Attorney’s Office and his December 22, 2006, e-mail to EOUSA. Senator Leahy’s question and Schlozman’s response were as follows:

Q: When considering, recommending or approving candidates for appointment to career positions at the Department, did you ever consider applicants’ political party affiliation, ideology, membership in a nonprofit organization or loyalty to the President, or otherwise screen potential career hires for political allegiance? If so, please provide details. Are you aware of whether others at the Department considered those factors in making decision regarding career hires? If so, whom?



A: . . . As I noted at the hearing, I had heard rumors that Ms. Goodling considered political affiliation in approving hiring decisions for career positions. I also knew that, although the decision to authorize the hiring of AUSAs by interim U.S. Attorneys was technically vested in EOUSA, Ms. Goodling exercised great control in this area. Knowing this, and in order to maximize the chances of obtaining authority to hire an additional AUSA, I recall once noting the likely political leanings of several applicants in response to a query from EOUSA about the candidates being considered for the position. However, none of the individuals I referenced was hired, nor do I believe they were even interviewed. Indeed, I adopted an apolitical hiring process in which I completely turned over the process (i.e., selecting candidates to be interviewed, interviewing candidates, and recommending a candidate to be hired) to a hiring panel consisting of three veteran career prosecutors in my office – the First Assistant U.S. Attorney, the Senior Litigation Counsel, and a Supervisory [AUSA]. I had no role in the selection of candidates to be interviewed nor did I participate in the interviews; all of that was done by the three career prosecutors. The only thing I did was to formally make an offer to the candidate recommended by the hiring panel.

We investigated the explanation Schlozman provided in this response. As an interim U.S. Attorney, Schlozman did not have authority to hire AUSAs without permission from the Department, through EOUSA. Schlozman's e-mail to EOUSA touted the applicants' political affiliations, and he received permission to fill certain AUSA vacancies. However, we determined that the subsequent hiring process at that office did not result in any of the applicants described in the e-mail receiving an offer of employment.

We also determined that the hiring process for career AUSAs in the Western District of Missouri during Schlozman's tenure as interim U.S. Attorney was handled by a panel of career AUSAs and that Schlozman was not involved in the hiring process beyond getting permission to fill the positions. Accordingly, we concluded that Schlozman's response to Senator Leahy's question for the record did not constitute a false statement regarding the hiring of the AUSAs in Missouri.

However, we believe his response is misleading in that he suggested that his request to fill the AUSA positions was the only time he considered political affiliations in the hiring process. ("I recall once noting the likely political leanings of several applicants in response to a

query from EOUSA about the candidates being considered for the position.”) In fact, as detailed above, he often considered political and ideological affiliations in hiring decisions while in the Civil Rights Division.

#### **IV. Criminal Referral**

We have referred this matter to the U.S. Attorney’s Office for the District of Columbia for a decision on whether the evidence warrants a criminal prosecution. We provided to the prosecutor the evidence we gathered in the course of our investigation, including transcripts of interviews and relevant documents and e-mails.

## **CHAPTER FIVE: CONCLUSIONS AND RECOMMENDATIONS**

Our investigation examined whether:

- (1) the Civil Rights Division improperly used political or ideological affiliations in assessing applicants for career attorney positions, including hiring for both experienced attorneys and entry-level attorneys through the Honors Program;
- (2) political or ideological affiliations resulted in other personnel actions that affected career attorneys in the Division, such as attorney transfers and attorney case assignments;
- (3) the Division's senior management exercised appropriate oversight of Schlozman's actions in the hiring and treatment of career attorneys; and
- (4) Schlozman made false statements in his testimony to Congress about these matters.

The evidence in our investigation showed that Schlozman, first as a Deputy Assistant Attorney General and subsequently as Principal Deputy Assistant Attorney General and Acting Assistant Attorney General, considered political and ideological affiliations in hiring career attorneys and in other personnel actions affecting career attorneys in the Civil Rights Division. In doing so, he violated federal law – the *Civil Service Reform Act* – and Department policy that prohibit discrimination in federal employment based on political and ideological affiliations, and committed misconduct. The evidence also showed that Division managers failed to exercise sufficient oversight to ensure that Schlozman did not engage in inappropriate hiring and personnel practices. Moreover, Schlozman made false statements about whether he considered political and ideological affiliations when he gave sworn testimony to the Senate Judiciary Committee and in his written responses to supplemental questions from the Committee.

Schlozman is no longer employed by the Department and, therefore, is not subject to disciplinary action by the Department. We recommend, however, that, if criminal prosecution is declined these findings be considered if Schlozman seeks federal employment in the future. We believe that his violations of the merit system principles set forth in the *Civil Service Reform Act*, federal regulations, and Department policy, and his subsequent false statements to Congress render him unsuitable for federal service.

We also recommend that the Department consider taking additional action in light of the findings in this report. According to a March 2008 memorandum from the Attorney General, beginning in the summer of 2007, new political employees at the Department are briefed on “Merit System Principles and Prohibited Personnel Practices” as part of their orientation process. In the memorandum, the Attorney General expressed a commitment to “ensur[e] that all serving political appointees are provided the same information” and that they must acknowledge that they understand the principles.

In addition to these positive steps already taken, we recommend that the Department regularly provide training on merit system principles and prohibited personnel practices in the *Civil Service Reform Act*, federal regulations, and Department policies to personnel with a role in hiring or supervising career employees. Most of the Department attorneys we interviewed who had a role in the hiring process told us they received no such training on the applicable laws, regulations, and Department policies regarding the consideration of political and ideological affiliations or other impermissible factors. Most also said they only had a general sense of what considerations were prohibited. We believe that training should be provided to employees when they enter supervisory positions and when they assume any hiring responsibilities. The Department should also provide periodic refresher training reinforcing the law regarding impermissible factors in hiring and personnel actions.

We also recommend that the Department consider issuing periodic statements to all employees about what constitutes prohibited personnel practices under federal law, regulations, and Department policy. These statements should affirm that the Department, as an employer, is committed to compliance with all laws, regulations, and policies. The Department should provide information to employees about how they can report violations and where they can seek redress.

In sum, our report found that Schlozman considered political and ideological affiliations when hiring and taking other personnel actions relating to career attorneys, in violation of Department policy and federal law, and his actions also constitute misconduct. We also believe he made false statements to Congress about his actions.

We believe that the Department should take action, including implementing our recommendations, to help ensure that such conduct does not occur in the future.

**APPENDIX:  
CAREER ATTORNEY HIRING, CIVIL RIGHTS DIVISION,  
2003 – 2006**

Listed below are affiliations found on applicants' résumés or application material credentials that resulted in our counting an applicant as Republican, conservative, Democrat, or liberal:

**Republican**

Membership in Republican group

- Republican National Lawyers Association
- Republican Student Lawyers Association
- College Republicans
- Young Republicans
- Republican Women
- Filipino-American Republicans

Employment or internship with Republican Member of Congress or state legislator

Employment or internship with Republican organization

- Republican National Committee
- Republican Policy Committee of the U.S. House of Representatives
- National GOP Congressional Committee

Participated in Republican political campaign

- Elected GOP councilman
- Ran for delegate to GOP convention
- Bush/Cheney volunteer
- Worked as staff on GOP candidate's campaign

Employment at Bush White House

Participation on George W. Bush presidential library steering committee

**Conservative**

Federalist Society

Coalition for Life

Blackstone Fellowship

**Democrat**

Employment with Democratic Member of Congress

Political appointee during Democratic administration

**Liberal**

Employment or internship with group

American Civil Liberties Union

Homeless Advocacy Project

Washington Legal Clinic for the Homeless