

Written Questions for Bradley J. Schlozman
Submitted by Chairman Patrick Leahy
June 14, 2007

1. Mr. Schlozman, when you were Acting Assistant Attorney general in charge of the Civil Rights Division in 2005, you authorized a National Voter Registration Act suit against the State of Missouri and Missouri Secretary of State Robin Carnahan, a Democrat, accusing the state of failing to eliminate ineligible people from lists of registered voters. The Department filed this suit over the reservations of then-U.S. Attorney for the Western District of Missouri Todd Graves that the case lacked merit. After Mr. Graves' dismissal several months later, the Attorney General appointed you to replace him as interim U.S. Attorney and you prosecuted this case that you had approved as Acting Assistant Attorney General.

A. Did Mr. Graves' reservations about filing this suit to purge the voter rolls play any role in his dismissal or your replacement of him as U.S. Attorney?

I have no idea why Mr. Graves was dismissed. Nor do I have any reason to believe that this case had anything whatsoever to do with my appointment.

B. Did Mr. Graves' record on pursuing voter fraud allegations generally play a role?

I have no idea why Mr. Graves was dismissed.

2. Two months ago, U.S. District Court Judge Nanette K. Laughrey tossed out this suit, concluding, "It is ... telling that the United States has not shown that any Missouri resident was denied his or her right to vote as a result of deficiencies alleged by the United States. Nor has the United States shown that any voter fraud has occurred." Yet, inexplicably you have testified that "the suit did not allege fraud nor was fraud relevant in any way to the case."

A. Increased voter participation and elimination of fraud were the primary goals of Congress when it mandated that the States make reasonable efforts to maintain accurate voter registration lists. The absence of evidence of fraud or voter suppression during the relevant time period weighs heavily in favor of a finding that the Defendants' efforts have been reasonable. How can you maintain even after the court's decision that voter fraud is irrelevant to the case?

- B. Why did you authorize and then prosecute this case if you did not have evidence that out-dated registration roles led to ineligible voters at the polling place?

[Responding both to parts A and B] The lawsuit filed by the United States against the State of Missouri actually involved two separate claims. First, the lawsuit alleged that the State had failed to assure that registered voters would be notified, as required by the NVRA, prior to their removal from the poll lists. The State's failures in this regard were very serious: in one county alone, some 40 percent of the registered voters were removed from the active voter list without the notification required by the NVRA. Second, the lawsuit alleged that the State had failed to maintain a reasonable voter registration list maintenance system. Again, the State's failures were very serious, with some county voter lists containing more names than the entire population of the county.

To get more specific, consider that the data provided by the State of Missouri showed that 12 counties had dropped more than 20% -- and in one county, as noted above, a staggering 40% -- of their registered voters from active registration in a single nine-month period. These numbers strongly suggested improper removals. Moreover, in interviews with Justice Department attorneys, Missouri county clerks admitted that they were removing or suspending voters from the roles in ways that contravened the NVRA. One county clerk, for example, said that his office had suspended over 10,000 registrants merely on the ground that they had not voted in past elections, a decision which violates Sections 8(b)(2) and (d) of the NVRA. This same clerk told one of the Department's attorneys that he then allowed the removed voters to vote, but only if they produced identification; this demand for identification is not supported by the law. Meanwhile, clerks in other counties conceded that they had removed voters from the roles without sending those voters the formal notifications required by the NVRA. And still other county clerks admitted removing voters from the roles for failing to vote, or on the word of an election judge, or after a personal visit to a home, none of which is a sufficient basis under federal law.

It is the position of the United States that it is not necessary to prove actual fraud or, for that matter, the actual denial of the right to vote for any specific individual who was removed from the active voter list in violation of the NVRA. The Act sets forth practices and procedures by which States are required to maintain accurate and current voter registration rolls so as to avoid both improper removals and the listing of persons ineligible to vote.

The core issue in the case was whether the responsibility for compliance could be delegated by the State to its subdivisions, thereby allowing the State to disperse and avoid responsibility for the command of Congress that “the State shall” undertake the responsibilities of the NVRA. This is an important issue. Across the United States, individual states have as many as 1,800 subdivisions responsible for voter registration. If upheld on appeal, the position of the trial court would cripple enforcement of the NVRA, and undermine Congress’ laudable purposes in enacting the statute. Incidentally, the United States’ appellate brief, recently filed in the U.S. Court of Appeals for the 8th Circuit, can be found at: <http://www.usdoj.gov/crt/briefs/missouri.pdf>

3. Section 7 of the National Voter Registration Act (NVRA) requires state-funded public assistance agencies to provide voter registration services as well as offer assistance in completing all necessary registration forms. However, according to a report by the NVRA Registration Project, voter applications at public assistance agencies have declined significantly, from 2.5 million applicants from 1995-1996, to just over a million in 2003-2004—a nationwide drop of over 59 percent. What have you done as a U.S. Attorney or in your former role in the Civil Rights Division to enforce Section 7 of NVRA?

The Department did receive a report noting the sharp decline in voter registration applications submitted at state public assistance agencies. Respectfully, however, the statistics cited in the report you identify do not demonstrate widespread non-compliance by states with Section 7 of the NVRA. Indeed, a preliminary analysis indicated that over the same period, there had been an even sharper decline in beneficiary caseloads of one of the largest federal public assistance programs, AFDC/TANF, subsequent to Congress’ welfare reform legislation. With far fewer persons participating in this major public program, one would expect that fewer voter registration transactions would be generated.

Civil Rights Division personnel did meet with representatives of the groups that produced the referenced report and invited them to provide specific information of specific agency violations in particular states. The Division also noted and encouraged the groups’ success in working cooperatively with states to obtain voluntary compliance improvements.

*I would add that the Department has vigorously enforced all of the NVRA’s provisions, with the largest number of enforcement cases filed under the statute since the initial round of litigation after the Act became effective. In fact, during my own tenure in the Civil Rights Division, we filed a Section 7 case, *United States v. State of New York* (N.D.N.Y. 2004), alleging that the State of New York was violating the NVRA by failing to*

offer voter registration opportunities at those offices serving students with disabilities at the state's public universities and colleges, which the statute requires. (Incidentally, I also recall that in 2002, shortly before my arrival, the Division had filed suit against the State of Tennessee alleging that the State violated the NVRA by failing to implement voter registration opportunities in state public assistance offices and by failing to ensure that driver's license applications, including renewal applications, also serve as voter registration applications.)

During my tenure, based on my recollection, the Division also sent warning letters on at least two occasions to states or counties regarding possible violations of the NVRA, including Section 7, and worked effectively to bring those jurisdictions into compliance. The Division likewise devoted considerable time working with the Election Assistance Commission on NVRA issues, including work on the national voter registration form and the NVRA state survey. In addition, the Division frequently reached out to state and local election officials, and we made speakers available upon request to discuss the requirements of the NVRA so as to encourage voluntary compliance.

4. During the time the lawsuit was being authorized, filed and prosecuted, Missouri was considering passage of a restrictive voter ID law that it did eventually pass. Press reports have suggested that there was guidance from the White House or the Department to try to get this bill passed.

A. Did you or anyone else at the Department or White House have contact with proponents of voter ID in Missouri while that legislation was pending?

I do not recall discussing the proposed voter ID law in Missouri with any of its proponents while the legislation was pending. I have no knowledge of contacts by anyone else at the Department or White House regarding this legislation.

B. Was this lawsuit used or intended to be used as evidence to support passage of the Missouri voter identification law?

I certainly did not use it, nor did I intend for it to be used, for any purpose other than addressing the State of Missouri's alleged non-compliance with the requirements of the NVRA.

5. On November 2, 2006, the day after you brought indictments for filing false voter registration forms on the eve of the election, you were quoted in the Kansas City

Star newspaper referring to the indictments by saying: “the national investigation is very much ongoing.”

A. Is this “national investigation” still ongoing?

I no longer have any role whatsoever in the supervision of election crime prosecutions, so I am not in a position to know whether any investigations are ongoing or not.

B. Where else was this investigation going on?

See answer to 5.A.

C. How many convictions have resulted from it?

See answer to 5.A.

D. What evidence that ineligible voters were going to the polls was there to form the basis for a “national investigation?”

See answer to 5.A.

6. Before you issued the press statement on November 2, 2006, did you give any consideration to what effect it would have on the election or whether, in doing so, you might “cause the investigation itself to become a campaign issue” as warned about in the Justice Departments’ guidebook on “Federal Prosecution of Election Offenses”? How did you resolve this apparent conflict between your bringing of the indictments and then issuing a press release and the policy set forth in the guidebook?

As I noted at the hearing, I did not think these indictments would have any effect on the upcoming election nor do I think they did. Further, based on my office’s consultation with, and the suggestions of, the leadership of the Public Integrity Section’s Elections Crimes Branch, I thought it appropriate to go forward with the voter registration fraud indictments and allow the United States Attorney’s Office press officer to respond to press inquires in the manner he did. Incidentally, the United States Attorney’s Office did not issue any press release on this case; the district’s press officer did, however, respond to media inquiries.

7. Recently, the *New York Times* had two front page stories reporting that there is actually scant evidence of voter fraud despite the current Justice Department's intense focus on prosecutions this crime. Indeed, these articles describe how the Justice Department's inability to demonstrate any organized efforts to skew federal elections led to a politically-motivated effort to alter the draft of an Election Assistance Commission report because it found that little voter fraud existed around the nation. Why has the Justice Department prioritized the prosecution of individual cases of "voter fraud" when there is scant evidence that this crime is being committed or that there is any conspiracy to thwart or alter an election? What evidence is there of an organized effort to *change federal elections* by fraudulent voting?

I have no role in setting any Departmental priorities or policies on prosecuting election-related crimes.

8. According to the Justice Departments' guidebook on "Federal Prosecution of Election Offenses", "Criminal prosecution is appropriate only when the facts demonstrate that the *defendant's objective was to corrupt* the process by which voters were registered, or by which ballots were obtained, cast, or counted." With regards to the indictments you filed on November 1, 2006 alleging the filing of false voter registration applications, what specific evidence did you have of an objective to corrupt that demanded that you go against the weight of the evidence and decades old Justice Department policy?

Pursuant to Section 9-85.210 of the U.S. Attorney's Manual, my office consulted with the Elections Crimes Branch of the Public Integrity Section before bringing the voter registration fraud indictments. The leadership of that section advised that the indictments were appropriate under Justice Department policy. All four defendants charged in the case have since pleaded guilty. As far as policy shifts, I have no role in establishing Departmental policies in this area.

9. The Justice Department's guidebook on "Federal Prosecution of Election Offenses" clearly states that "voters should not be interviewed or other voter-related investigation done, until the election is over. Such overt investigative steps might chill legitimate voting activities." You testified that the filing of the November 1, 2006, indictments was not a violation of the guidebook's policy because no voters were interviewed. Are you saying that you didn't conduct any investigation before you filed the indictments? If so, do you normally indict cases without doing any investigation before you file an indictment?

The local FBI office conducted an investigation and presented the evidence it found to a grand jury. Significant evidence was also obtained from both ACORN and the Kansas City Board of Election Commissioners, each of which were extremely cooperative with the investigation. In this case there

were no voters to be interviewed, as the registration forms that underlay the charges were fakes.

10. You brought the November 1, 2006, indictments just days before the election and targeted individuals who submitted registration forms weeks before. Your rush to indict them was so hurried that one of the four people you indicted turned out to be the wrong person. On November 1, 2006, your office charged Stephanie Davis with causing a false registration form to be submitted. Later, your office dismissed the charges against Stephanie Davis, and filed charges against Carmen Davis.

- A. Was Stephanie Davis erroneously indicted by your office?

Following Ms. Davis' indictment, law enforcement authorities learned that she was the victim of identity theft. As a result, the charges against Ms. Davis were dropped, and the individual actually responsible for committing the crimes was charged with both voter registration fraud and identity theft. That individual has pleaded guilty.

- B. Did you interview her or conduct any sort of investigation before indicting her?

There was an investigation that preceded the indictment.

11. During your June 5 appearance, you testified at least nine times that you filed the criminal charges against four individuals on November 1, 2006—on the eve of a national election- “at the direction of” of Craig Donsanto in the Election Crimes Branch of the Department’s Public Integrity Section. In a June 11 letter you reversed this testimony, telling the Committee that you were, in fact, not directed to do so by the Election Crimes Branch. Rather, you directed the Assistant U.S. Attorney working on the case to consult with that branch.

- A. Please describe any contacts or communications between your office and the Election Crimes Branch of the Public Integrity Section, including Mr. Donsanto. Please include the date or dates of any contacts, who was involved, and what was communicated to or from you or anyone in your office regarding these matters.

At my direction and consistent with the Justice Department’s Election Crimes Manual, almost immediately after receiving allegations of voter registration irregularities in Kansas City during the first week of October 2006, the Assistant U.S. Attorney assigned to the case

contacted Mr. Donsanto in the Public Integrity Section's Election Crimes Branch. She discussed with him both the substance and timing of the indictments.

- B. What advice or guidance did Mr. Donsanto give to you or anyone in your office regarding the timing of filing the indictments and in what form was this advice or guidance communicated?

Mr. Donsanto stated to the Assistant U.S. Attorney assigned to the case that, if the office had an indictable case, his recommendation would be to indict right away.

- C. To your knowledge, did anyone else in the Department of Justice or the White House speak with Mr. Donsanto or anyone else in the Election Crimes Branch about this case or these indictments, including about the timing of filing the charges? If so, who, and on what date or dates, and in what form?

I have no knowledge of any such contacts.

12. You testified that you spoke with Michael Elston, the Deputy Attorney General's Chief of Staff, regarding the investigation that led to the indictments of these four individuals on November 1, 2006.

- A. On what dates did you speak with Mr. Elston regarding this matter?

I believe I spoke with him on October 31 and November 1, 2006.

- B. Why did you contact Mr. Elston regarding this matter?

I did not contact Mr. Elston; he phoned me.

- C. What did you communicate to Mr. Elston regarding this matter and what did he communicate to you?

I described the nature of the investigation and my office's communications with the Public Integrity Section's Election Crimes Branch.

- D. To your knowledge, what action did Mr. Elston take regarding this matter after speaking to you?

I do not know what specific actions Mr. Elston took.

- E. Did you speak with Michael Elston regarding any other indictments filed while you were U.S. Attorney for the Western District of Missouri? If so, which indictments?

Mr. Elston, who is a former federal prosecutor and appellate chief in the U.S. Attorney's Office for the Eastern District of Virginia, and I are personal friends and we spoke about various cases from time to time. I am certain that, given his position as chief of staff to the Deputy Attorney General, Mr. Elston spoke with many U.S. Attorneys about their cases and other matters affecting U.S. Attorneys' Offices.

13. Did you or anybody from your office speak to or otherwise communicate with anyone in the White House regarding the investigation that led to the indictments of these four individuals on November 1, 2006. If so, whom, on what date or dates, in what form, and what was communicated?

I did not speak with anyone in the White House regarding this case, nor am I aware of anyone else speaking with the White House regarding the case.

14. Did you or anybody from your office speak to or otherwise communicate with anyone in the Department of Justice other than Michael Elston and Craig Donsanto regarding the investigation that led to the indictments of these four individuals on November 1, 2006. If so, whom, on what date or dates, in what form, and what was communicated?

As is quite common, the Assistant U.S. Attorney assigned to the case consulted with appropriate investigators and other Justice Department prosecutors, including representatives of the Public Integrity Section who have experience prosecuting such cases so as to gain from their insight and expertise.

15. Did you or anybody from your office speak to or otherwise communicate with any third party regarding the investigation that led to the indictments of these four individuals on November 1, 2006. If so, whom, on what date or dates, in what form, and what was communicated?

I am not aware of any communications with third parties other than the complainants, i.e., ACORN and the Kansas City Board of Election Commissioners.

16. I understand that career hires made by interim or acting U.S. Attorneys must be approved by the Executive Office for U.S. Attorneys and that any supervisory hires in those offices involve interviews by Department officials in Washington. This is contrary to the practice for Senate-confirmed U.S. Attorneys, who do not need approval from Washington.
- A. When you were interim U.S. Attorney for the Western District of Missouri, were you denied approval for any of your proposed career hires?
- B. Was Monica Goodling involved in interviewing or reviewing career hires of Assistant U.S. Attorneys or for other positions while you were interim U.S. Attorney? How was she involved?

No.

During my tenure as interim U.S. Attorney, I had no personal knowledge of Ms. Goodling being involved in actually interviewing applicants for career Assistant U.S. Attorney (AUSA) positions. I was aware that Ms. Goodling generally had to approve interim U.S. Attorneys' authority to fill vacant AUSA positions and other sensitive slots.

17. 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?

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.

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 Assistant U.S. Attorney. 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.

18. Were you ever in receipt of information forwarded by Leonard Leo, Executive Vice President of the Federalist Society, regarding the name, resume, or recommendation of any potential candidate for hiring for a career position at the Department? If so, how did you act on that information? Did you or anyone else at the Department consider the source of the information in when considering or recommending that candidate(s) for appointment to career positions at the Department?

Yes. I recall Mr. Leo recommending an individual for a career attorney position in the Civil Rights Division. That individual was not hired.

All candidates for career attorney employment were ultimately judged individually based on a comprehensive review of their academic background, legal skills, unique life experiences, interest in the work of the Division, and a personal interview.

19. Were you ever in receipt of information forwarded by Michael Thielen, Executive Director of the Republican National Lawyers' Association, or anybody from the

Republican National Lawyers' Association, regarding the name, resume, or recommendation of any potential candidate for hiring for a career position at the Department? If so, how did you act on that information? Did you or anyone else at the Department consider the source of the information in when considering or recommending that candidate(s) for appointment to career positions at the Department?

I do not recall receiving any resumes or recommendations from officials with the Republican National Lawyers' Association. As noted in the previous answer, all candidates for career attorney employment were ultimately judged individually based on a comprehensive review of their academic background, legal skills, unique life experiences, interest in the work of the Division, and a personal interview.

20. Were you ever in receipt of information forwarded by Scott Bloch, the Special Counsel at the U.S. Office of Special Counsel, regarding the name, resume, or recommendation of any potential candidate for hiring for a career position at the Department? If so, how did you act on that information? Did you or anyone else at the Department consider the source of the information in when considering or recommending that candidate(s) for appointment to career positions at the Department?

I recall receiving a recommendation of a candidate for a career attorney position from Mr. Bloch. My recollection is that the individual was not hired.

As noted in the previous answer, all candidates for career attorney employment were ultimately judged individually based on a comprehensive review of their academic background, legal skills, unique life experiences, interest in the work of the Division, and a personal interview.

21. Were you ever in receipt of information forwarded by Jan Williams, whether while she was at the White House Office of Presidential Personnel or during her tenure at the Department as White House Liaison, regarding the name, resume, or recommendation of any potential candidate for hiring for a career position at the Department? If so, how did you act on that information? Did you or anyone else at the Department consider the source of the information in when considering or recommending that candidate(s) for appointment to career positions at the Department?

I do not recall receiving any resumes, referrals, or recommendations from Ms. Williams for career attorney positions.

22. Were you ever in receipt of information forwarded by Monica Goodling, Kyle Sampson, or Wan Kim regarding the name, resume, or recommendation of any

potential candidate for hiring for a career position at the Department? If so, how did you act on that information? Did you or anyone else at the Department consider the source of the information in when considering or recommending that candidate(s) for appointment to career positions at the Department?

I do not recall receiving any resumes, referrals, or recommendations for career attorney positions from Ms. Goodling or Mr. Sampson. I do recall discussing various applicants with Mr. Kim, who served as my colleague and later my boss in the Division. I have great respect for Mr. Kim and generally deferred to his recommendation on such matters.

As noted earlier, however, all candidates for career attorney employment were ultimately judged individually based on a comprehensive review of their academic background, legal skills, unique life experiences, interest in the work of the Division, and a personal interview.

23. You testified that you received resumes from Alex Acosta and Hans von Spakovsky of potential candidates for hiring for career positions at the Department? How did you act on the information you received? Did you or anyone else at the Department consider the source of the information in when considering or recommending that candidate(s) for appointment to career positions at the Department?

Mr. Acosta served as my boss and Mr. von Spakovsky served as the Division's voting counsel. I have great respect for both individuals. Some of the candidates referred by these individuals were hired and, if I recall correctly, others were not.

As noted earlier, however, all candidates for career attorney employment were ultimately judged individually based on a comprehensive review of their academic background, legal skills, unique life experiences, interest in the work of the Division, and a personal interview.

24. How did Monica Goodling assist you in obtaining your position as interim U.S. Attorney in the Western District of Missouri, as you testified? When and how did you communicate with her about your interest in that position and about your appointment?

I first became aware that Mr. Graves was resigning his position as U.S. Attorney when I read a story in the Kansas City Star on March 10, 2006, reporting on his departure. Either that day, or the following Monday, I communicated my interest in the interim U.S. Attorney position to Monica Goodling, Kyle Sampson, and David Margolis. The selection committee for the interim post consisted of Michael Battle, Monica Goodling, and David

Margolis. I do not know how the decisionmaking process worked, other than that I was selected for the position.

25. On January 4, 2007, you filed a mortgage fraud indictment against Katheryn Shields, a Democrat, the day before she filed to run for mayor of Kansas City.
- A. How did the fact that Ms. Shields was going to run for public office factor into your decision to file this indictment?

It played no role whatsoever.

- B. With whom did you consult about the timing of filing this indictment?

Along with the long-time Assistant U.S. Attorney prosecuting the case, I consulted with the First Assistant U.S. Attorney, Senior Litigation Counsel, and chief of the General Crimes Unit. All are veteran career prosecutors in the District.