

**Questions from Senator Dianne Feinstein to Bradley Schlozman following the June 5, 2007 Hearing of the Senate Judiciary Committee**

1. During your testimony you agreed to submit, in writing, the names of all section chiefs whom you ordered removed, and all section chiefs whom you ordered transferred.

- Please provide the name of each section chief in the Civil Rights Division whom you ordered or suggested to be removed, and the position from which he or she was removed.

*Albert Moskowitz (Chief, Criminal Section)*

- Please provide the name of each deputy section chief in the Civil Rights Division whom you ordered or suggested to be transferred, and the position from which he or she was transferred.

*Elizabeth Johnson (Deputy Chief, Special Litigation Section)*

*Robert Berman (Deputy Chief, Voting Section)*

- For each person named in response to the items above, please provide the basis for your order or suggestion.

*In each case, the personnel moves were grounded in a desire to best match the skill sets of these individuals with the needs of the Division. In the case of Mr. Moskowitz, I also relied heavily on the recommendation of the Deputy Assistant Attorney General overseeing the Criminal Section. In the cases of Mr. Berman and Ms. Johnson, I also relied heavily on the recommendations of the career section chiefs.*

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2. During your testimony you agreed to submit, in writing, the names of career attorneys whom you ordered transferred out of the Appellate Section of the Civil Rights Division. You also agreed to provide the names of career attorneys who were allowed to return to the Appellate Section after you ordered them to be transferred out of the section.

- Please provide the name of each career attorney in the Appellate Section whom you ordered or suggested to be transferred out of the section.

*Two attorneys were transferred out of the Appellate Section during my supervision of that Section: Teresa Kwong and Karen Stevens. A third attorney, Tovah Calderon, was transferred off the Appellate Section's formal rolls during her detail to the Hill, but she returned directly to the Section at the conclusion of her detail.*

- For each person named in response to the item above, please provide the basis for your order or suggestion.

*With respect to Ms. Kwong and Ms. Stevens, my decision, which followed consultations with both my appellate counsel and the Appellate Section chief, was grounded in a desire to best match the skill sets of these individuals with the needs of the Division.*

*With respect to Ms. Calderon, I wanted to add another attorney to the Section to help handle the growing workload. I knew that Ms. Calderon's detail was likely to last nearly a year, and I did not want to keep the slot vacant for that period of time.*

- Please provide the name of each career attorney who was allowed to return to the Appellate Section after you ordered him or her transferred out of the section, and explain the process through which he or she returned to the section.

*It is my understanding that Ms. Stevens, Ms. Kwang, and Ms. Calderon all have, or soon will be, returning to the Appellate Section. Assistant Attorney General Kim oversaw those individuals' return to the Appellate Section. As the transfers all occurred following my departure from the Civil Rights Division, I am unfamiliar with the process involved.*

- 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?

*No.*

- When positions were open after attorneys were transferred out of the Appellate Section, did you fill those positions with attorneys who had conservative and/or Republican credentials?

*The two individuals who filled the vacant Appellate Section slots were both Honors Program hires with extraordinarily impressive credentials. Both graduated at the top of their law school classes and clerked for federal appellate judges. With respect to one of the attorneys, I do not recall even meeting him before authorizing his placement in the Appellate Section, and I have no idea what his political views are. With respect to the other attorney, I am aware that he is an expert in religious liberties law but I do not know his political affiliation. Neither attorney, however, was placed in the Appellate Section for reasons other than the individual's academic background, demonstrated legal and analytic skills, and superior work ethic.*

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3. In response to questions from Senator Whitehouse, you stated that you spoke to Craig Donsanto, the head of the Election Crimes Branch, and Michael Elston, the chief of staff to the Deputy Attorney General, before bringing the indictments against the former ACORN workers.

- Was the Public Integrity Section aware of the fraud allegations against the former ACORN workers before your office brought the allegations to the section's attention?

*I have no reason to believe that the Public Integrity Section was aware of the specific fraud allegation involving the ACORN workers in Kansas City before my office brought the matter to the Section's attention.*

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4. You testified that the head of the Election Crimes Branch told your office that the indictments in the ACORN case “did not implicate any of the DOJ informal policies” on pre-election investigations, because “there was no need to actually interview any voters in this case.” The Department’s written guidelines, however, state (at page 10) that “[w]ith very few exceptions, *no overt investigation, and* no interviews with individual voters, should occur until after the election allegedly affected is over.” The guidelines explain that this rule “eliminates, or at least minimizes, the possibility that the investigation itself will become a factor in the election.” The point is reiterated on page 61 of the guidelines, which warns that “any investigation undertaken during the final stages of a political contest may cause the investigation itself to become a campaign issue.”

- Is it the official view of the Department of Justice that the only type of election crime investigation that should be deferred until after an election is one that entails interviewing of voters?

*As a threshold matter, policies in this area are established by the Public Integrity Section and the Criminal Division. I am not in a position to state the Department of Justice’s official views in this area. In the cases indicted in my district, I acted following my office’s consultation with the Public Integrity Section’s Election Crimes Branch.*

- Is it the official view of the Department of Justice that interviews with individual voters are the only type of investigative activity that could “become a factor in the election” or “become a campaign issue”?

*Policies in this area are established by the Public Integrity Section and, presumably, the Criminal Division leadership. I am not in a position to state the Department of Justice’s official views in this area. In the cases indicted in my district, I acted following my office’s consultation with the Public Integrity Section’s Election Crimes Branch.*

- You stated during your testimony that the Department is “issuing a new book” of guidelines on the prosecution of election crimes. Will the new book eliminate the current rule barring overt investigation, leaving only the rule that bars interviews with individual voters?

*As far as I know, policies in this area are established by the Criminal Division’s Public Integrity Section.*

- In a June 11 letter to Chairman Leahy, you wrote that the policy against interviewing voters in the pre-election period is “intended to avoid actions that could conceivably have a chilling effect on voting.” Does DOJ currently have

any policy against pre-election investigations that have other effects on voting – such as rallying a certain group of voters to go to the polls? Will the new book focus only on the “chilling effect” and not on all pre-election investigations that could “become a factor in the election” or “become a campaign issue”?

***Policies in this area are established by the Public Integrity Section and, presumably, the Criminal Division leadership. I do not have additional information responsive to your questions.***

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5. In your written testimony, you suggest that the “problem” that gave rise to the Department’s 2005 lawsuit against Missouri was recognized by Missouri’s Secretary of State, a Democrat. You quoted her statement about the fact that in one county in Missouri, over 150 percent of the voting age population was registered to vote in 2004.

Yet data from the Election Assistance Commission show that in the same election, there was a county in Texas where over 230 percent of the voting age population was registered to vote. And in Utah, 12 of 29 counties had more than 100 percent of the citizen voting age population registered to vote.

- Did the Department conduct any inquiry into voter registration in Texas or Utah after the 2004 election?
- Are the state election officials in Utah and Texas Republicans?
- How many Republican state election officials have been sued by DOJ’s Civil Rights Division from 2001 to 2006?
- How many Democratic state election officials have been sued by the Civil Rights Division in the same period?

*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 egregious: 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 egregious and widespread. Approximately one fourth of all counties had more registered voters than persons of voting age, and two counties’ voter lists contained more names than the entire population of the county.*

*The Civil Rights Division has examined similar apparent discrepancies in many other states. According to a report of the Election Assistance Commission and Census data, there are ten states in which 10% or more of the jurisdictions conducting voter registration had more registered voters than citizens of voting age. The complete list of such states is: Iowa, Massachusetts, Mississippi, Nebraska, North Carolina, Rhode Island, South Dakota, Texas, Utah, and Vermont. I do not know the political affiliation of the responsible officials in each of these states, and the*

*Department does not maintain or consider the political affiliation of such officials.*

*The states which have been named as defendants in lawsuits by the Voting Section since 2001 are as follows:*

**Cases Raising Claims Under the NVRA**

U.S. v. State of New Jersey (D.N.J. 2006)  
U.S. v. State of Maine (D. Me. 2006)  
U.S. v. State of Indiana (S.D. Ind. 2006)  
U.S. v. State of Missouri (W.D. Mo. 2005)  
U.S. v. State of New York (N.D.N.Y. 2004)  
U.S. v. State of Tennessee (M.D. Tenn. 2002)

**Cases Raising Claims Under the Uniformed and Overseas  
Citizens Absentee Voting Act (“UOCAVA”)**

U.S. v. State of Connecticut (D. Conn. 2006)  
U.S. v. State of North Carolina (M.D.N.C. 2006)  
U.S. v. State of Alabama (M.D. Ala. 2006)  
U.S. v. State of Georgia (N.D. Ga. 2004)  
U.S. v. Commonwealth of Pennsylvania (M.D. Pa. 2004)  
U.S. v. State of Oklahoma (W.D. Okla. 2002)  
U.S. v. State of Texas (W.D. Tex. 2002)

**Cases Raising Claims Under the Help America Vote Act**

U.S. v. State of New Jersey (D.N.J. 2006)  
U.S. v. State of Maine (D. Me. 2006)  
U.S. v. State of Alabama (M.D. Ala. 2006)  
U.S. v. New York State Board of Elections (N.D.N.Y. 2006)

**Cases Raising Claims Under 42 U.S.C. §1974**

U.S. v. State of Georgia (N.D. Ga. 2006)