

Questions for Bradley Schlozman from Sen. Kennedy

1. You acknowledge you ordered the transfer of three career attorneys out of the Appellate Section of the Civil Rights Division. I understand is that two of those attorneys have returned to the Section and the third is in the process of doing so.

A. You ordered the immediate transfer of Karen Stevens, an African American woman, from the Section when she was seven months pregnant. She filed a complaint based on race and sex discrimination, and she was reinstated to her position in the Section. Ms. Stevens has always received favorable performance evaluations. Why did you order the transfer of Ms. Stevens? Do you agree with her reinstatement? Do you contend that you did not engage in discrimination on the basis of race, sex or pregnancy?

I felt this move was in the best interests of the Division, and I made the decision only after consulting with both the Appellate Section chief and other personnel. The transfer was in no way based on Ms. Stevens' race, sex, pregnancy, or other improper basis. While my views are irrelevant inasmuch as I have been gone from the Civil Rights Division for nearly seventeen months, I have no objection to Ms. Stevens' return to the Appellate Section.

B. Ms. Stevens had served in the Appellate Section since 2001. Shortly before she was transferred, she had applied for a newly created management position in the Section. Did you review her resume in connection with that application? Did you order her transfer because you learned from that review that she had served as a Counsel to the Assistant Attorney General for Civil Rights before joining the Appellate Section?

I do recall that Ms. Stevens applied for a Senior Litigation Counsel position in the Appellate Section. She was not selected for that post. With respect to her transfer, it had nothing to do with her prior employment.

C. Have you been investigated by OPR or the IG for your treatment of Ms. Stevens? If so, is that investigation ongoing, or has it been resolved?

I am not in a position to know the investigatory activities of the Inspector General or the Office of Professional Responsibility.

D. You ordered the transfer of Tovah Calderon out of the Appellate Section while she was on detail from the Section to the Senate Judiciary Committee. After you left the Division, she was permitted to return to the Section. Why did you order her transfer? Do you think it is appropriate to transfer an employee involuntarily while she is serving as a detailee on the Senate Judiciary Committee at the request of a member of the Committee? Did the transfer have anything to do with the fact that she was on detail or the work she was doing on the detail?

As an initial matter, Ms. Calderon never actually worked anywhere in the Division other than the Appellate Section. She returned to the Appellate Section immediately after her detail was completed. At the time of my decision, however, there seemed to be a growing case load in the Appellate Section, and I wanted to bring in another attorney to help handle the load. Inasmuch as there were no vacancies and Ms. Calderon was scheduled to be on her detail for a full year (and potentially more, based on my prior experience with detailees, some of whom do not even return to the Division following their detail), I thought it advisable to make room on the Appellate Section's books for another attorney by transferring Ms. Calderon to another section. My decision was in no way based on the work she was doing on her detail.

E. You ordered that Teresa Kwong not be allowed to return to the Appellate Section from her maternity leave. Why did you want Ms. Kwong out of the Appellate Section?

I felt this move was in the best interests of the Division, and I made the decision only after consulting with both the Appellate Section chief and other personnel.

F. Does it concern you that all three of these attorneys were women, one of them was seven months pregnant and the other was on maternity leave when you took action to transfer them?

My transfer decisions had absolutely nothing to do with the individuals' race, gender, pregnancy status, or other improper consideration.

2. During your tenure in the Civil Rights Division, several experienced attorneys in the Appellate Section were informed that they would not be assigned civil rights cases, but would only be permitted to work on immigration cases, defending deportation orders. These attorneys, all of whom were longtime employees of the Civil Rights Division, understood this action to be punitive and as an effort to drive them out of the Division.

A. Did you instruct Section Chief Flynn or any other management official in the Appellate Section not to assign civil rights cases to any of the following attorneys?

Lisa Edwards
Marie McElderry
Tovah Calderon
Teresa Kwong
Karen Stevens
Linda Thome

Jennifer Levin

Please explain the circumstances.

Every component in the Justice Department, including the Civil Rights Division, has been assigned immigration appeals since Deputy Attorney General Comey initiated the policy in November 2004 to help the Civil Division deal with its backlog of deportation cases. I determined that it would be more efficient, at least for a period of time, to have certain attorneys focus exclusively on immigration appeals – thereby developing an expertise in the area – rather than dividing the work evenly among the entire Section or Division. The assignments were not punitive.

B. Did you give an instruction to reassign a civil rights case from any of these attorneys to another attorney?

Although I do not remember the specific individuals or subject matter involved, I do vaguely recall asking that at least one case be reassigned to either the Senior Litigation Counsel or a new Honors Program hire with extraordinary writing skills who was new to the Section and had a relatively light docket.

C. Did you instruct Section Chief Flynn that Deputy Chief Mark Gross should only be allowed to work on immigration cases and should not be allowed to review civil rights matters? If so, why?

Yes. I thought, given the specialized nature of the immigration cases, it would be more efficient to have one supervisor in the Appellate Section handle the review of all immigration appeals rather than dividing the responsibility among all members of management.

3. Did you say that you were going to replace attorneys in the Appellate Section with “good Americans?” What did you mean by “good Americans?” Please identify the bad Americans who were serving in the Appellate Section and the characteristics that made them bad Americans. Do you think it is appropriate to classify public servants as bad Americans?

I do not recall any such conversation. That having been said, 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.”

4. Did you at any time instruct Section Chief Flynn to conceal from an attorney in the Appellate Section the fact that you were directing him to engage in a personnel action on the attorney, including transferring the attorney or directing cases or other assignments? If so, why?

I discussed the transfers with Section Chief Flynn before they were implemented. Contrary to recent press reports, these personnel moves were not directed over his objection. I also did not instruct Flynn to conceal my role in the moves, nor did he do so to my knowledge. What I did do was to tell Flynn, following our discussion, that as the Section chief and a member of management, he should express his support of the moves in the discussion with the affected employees. I considered this "united front" to be consistent with good management principles.

5. In 2005, the year you served as Acting Assistant Attorney General and Deputy Assistant Attorney General, a significant number of attorneys in the Appellate Section did not receive annual performance evaluations, which are required by federal personnel rules. You held up and never issued these evaluations. Why?

I do not recall intentionally holding up any performance evaluations. I recall only that my appellate counsel was making additions at my request to the narratives of some of the evaluations, which may have delayed their issuance. I might add that I do not recall ever hearing any complaints on this issue before now.

6. Did you explain your refusal to issue performance awards to Section Chief Flynn? What did you say?

There were a very limited number of performance awards that could be awarded to members of the Senior Executive Service in the Civil Rights Division. It was not my practice to explain, nor do I recall explaining, my decision to Section Chief Flynn, or any other section chief, of why he/she was not going to receive a performance award.

7. Please identify the attorneys who received performance awards and the number of years each had served in the Division. Please also identify the race and gender of each such attorney.

It is not clear what time frame or what level of attorney you are referring to in this question. For members of the Senior Executive Service, the Department of Justice puts a firm cap each year on the number of individuals to whom each Division can give performance awards. For career attorneys and staff, every year, each Section in the Civil Rights Division was allotted a pool of bonus money to be divided among the attorneys and staff in the Section. The Assistant Attorney General's Office also had some additional funds that it could use to supplement the money allocated to the Sections. I predicated bonus decisions at all times on the basis of merit and did not consider individuals' race or gender.

8. Please identify the attorneys in the Appellate Section who received performance awards for FY 2005. Please identify the race and gender of each award recipient.

I would refer you to the Department of Justice for this information.

9. How many African American Attorneys worked in the Criminal Section when you joined the Civil Rights Division?

Six

10. WJLA TV recently reported that only 2 of 50 attorneys in the Criminal Section were African Americans. How many African American attorneys worked in the Criminal Section when you left?

Two

11. As Deputy Assistant Attorney General, you controlled hiring for the Criminal Section. How many African American career attorneys did you hire for the Criminal Section during your tenure in the Civil Rights Division? How many African American attorneys left the Criminal Section during the same period?

Hiring for the Criminal Section was handled jointly by then-Deputy Assistant Attorney General Wan Kim, who oversaw the Section, and myself. Attorneys were hired after being judged individually based on a comprehensive review of their academic background, legal and analytical skills, unique life experiences, interest in the work of the Division, and a personal interview.

During my tenure, in the Criminal Section, two African American attorneys entered on duty and six departed. It is, of course, misleading to focus on any one Section in the Division. More relevant is the fact that, from FY02-FY05, the majority of attorneys hired to work in the Civil Rights Division were minorities or women (41% were women, 27% were minorities). In addition, the Division hired or promoted more minorities to positions of leadership during the first five years of this Administration than during the entire eight-year period of the prior Administration. Further, nearly 10% of the attorneys we hired were African-Americans, which is approximately 2.5 times the percentage of African-Americans lawyers in the general workforce according to a 2004 American Bar Association study.

12. You stated during your testimony before this Committee that you boasted about your hiring of conservatives for career attorney positions in the Civil Rights Division. To whom did you make these boasts?

I do not recall specific individuals to whom I made such a comment.

13. Since it is impermissible to hire on the basis of partisanship or ideology, how did you know that you were hiring conservatives?

The Civil Service Reform Act and corresponding regulations prohibit hiring on the basis of race, color, religion, national origin, marital status, age, handicap condition, or political affiliation. I did not hire on the basis of any of these prohibited factors. In fact, I often stated affirmatively during interviews that I did not care what an individual's political views were.

My focus was on hiring talented lawyers into the Division who had excellent academic backgrounds, respect for the rule of law, and who would not bring a personal agenda to the enforcement activities of the Division. While I employed no litmus test regarding an applicant's position on any particular issue, I did look for individuals who were committed to enforcing the law as Congress wrote it and the courts interpreted it, not how those individuals personally wished the law were written or interpreted.

I had (and have) no idea what the political or ideological leanings of the overwhelming majority of attorneys hired into the Civil Rights Division during my tenure are. I did surmise the views of some, based on conversations. But individuals were not hired because of their political views. And my hiring record demonstrates clearly that

I hired and promoted individuals with backgrounds across the spectrum.

14. Please list all of your travel during your tenure in the Civil Rights Division, including each location visited and the dates of those visits. Also, please identify any employee of the Department of Justice who accompanied you on any travel.

With respect to international travel, I traveled to Bangkok, Thailand, on November 14, 2003, through November 23, 2003, for a human trafficking conference. I traveled to Tallinn, Estonia, on March 31, 2004, through April 3, 2004, to participate in the International Information Programs and the U.S. Speaker and Specialist Program; I took personal travel on March 27-30. I traveled to Singapore, Malaysia, and Cambodia on December 30, 2004 through January 12, 2005, for the President's Trafficking Initiative. I traveled to New Delhi, India on March 13-22, 2005, for a trafficking assessment for the State Department. I traveled to Bern, Switzerland, and Tokyo, Japan on June 12-26, 2004, for human trafficking meetings and a conference with Swiss and Japanese officials; I took personal travel on June 17 and 18 in Bern and on June 21 in Tokyo. I traveled to Beijing, China, on August 7-12, 2005 to meet with Chinese officials on human rights; I took personal travel on August 11. I traveled to Taipei, Hong Kong, and Manila on November 23, 2005 through December 7, 2005, to meet with officials on human trafficking; I took personal travel on November 26 and 27 in Taipei. I traveled to Dar es Salaam, Tanzania, on January 3-17, 2006 to meet with officials on human trafficking. I was accompanied by T. March Bell, the Civil Rights Division's Senior Special Counsel for Human Trafficking on the trips to Thailand, Estonia, Singapore, Malaysia, Cambodia, India, and Tanzania. I was accompanied by U.S. Parole Commission Commissioner Cranston Mitchell on the trip to China.

Domestically, I traveled to Detroit, Michigan on June 12-13, 2003; to Reno, Nevada on July 9-10, 2003; to San Francisco on July 23-25, 2003; to Baton Rouge, Louisiana on August 12, 2003; to Brooklyn, New York on August 20, 2003; to Columbia, South Carolina on September 2-4, 2003; to St. Louis, Missouri on September 10-11, 2003; to Trenton, New Jersey on January 13, 2004; to New Orleans, Louisiana on March 4-5, 2004; to Philadelphia, Pennsylvania on March 16-17, 2004; to Los Angeles, California, on March 18-19, 2004; to Phoenix, Arizona on March 22-23, 2004; to Philadelphia, Pennsylvania on April 19-20, 2004; to Phoenix, Arizona on April 21-22, 2004; to Denver, Colorado on May 3-4, 2004; to Kansas City, Kansas on May 16-17, 2004; to New Orleans, Louisiana on May 19-21, 2004; to Tampa, Florida on June 8-9, 2004; to Jackson,

Mississippi on July 1-2, 2004; to Tampa, Florida on July 15-17, 2004; to Boston, Massachusetts on August 5-6, 2004; to Houston, Texas on August 12-13, 2004; to Albuquerque, New Mexico on August 15-19, 2004; to New York, New York on August 22-23, 2004; to Fort Lauderdale, Florida on August 30 through September 1, 2004; to Lancaster, Pennsylvania on September 18-19, 2004; to Hartford, Connecticut on September 22, 2004; to Albuquerque, New Mexico on September 26-30, 2004; to Los Angeles, California on October 3-4, 2004; to San Diego, California on December 4-7, 2004; to Cincinnati, Ohio on December 13-14, 2004; to Cincinnati, Ohio on February 24-25, 2005; to Cincinnati, Ohio on March 10, 2005; to New Orleans, Louisiana on April 7-9, 2005; to Albuquerque, New Mexico on April 12-15, 2005; to New York, New York on April 18, 2005; to Boston, Massachusetts on May 5-6, 2005; to San Francisco on July 1-2, 2005; to New Orleans, Louisiana on July 11-13, 2005; to Williamsburg, Virginia on September 18-19, 2005; to Phoenix, Arizona on September 25-27, 2005; to Detroit, Michigan on November 3, 2005; to Wichita, Kansas on January 22-24, 2006; to San Francisco, California on February 12-14, 2006; and to Kansas City, Missouri on March 20-23, 2006. I traveled with an array of different Civil Rights Division and other Department of Justice officials during these trips.

15. You testified that you did not know Michael Thielen, the head of the Republican National Lawyers Association. Did you ever receive resumes that came to you from Mr. Thielen, either directly or through Hans Van Spakovsky or others?

I do not know the original source of all resumes recommended to me by Mr. von Spakovsky. I would add that all attorneys were ultimately judged individually based on a comprehensive review of their academic background, legal and analytical skills, unique life experiences, interest in the work of the Division, and a personal interview.

16. The Committee has been told that you devised a recruitment and referral program through which you asked people outside the Division to identify and refer conservative and/or republican lawyers to you to interview for career positions in the Division. Did you ever ask anyone to identify conservative or Republican lawyers for the Division? Please identify those individuals.

During my nearly three years in the Civil Rights Division, I occasionally mentioned to friends and acquaintances that the Civil

Rights Division had attorney vacancies, and I suggested that these individuals encourage attorneys who they knew and thought highly of to apply to the Division. Of course, all applicants to sections that I supervised were interviewed by both a career section chief and me. Moreover, all applicants 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 Division, and a personal interview.

17. Was any lawyer referred to you because he or she was a conservative or a Republican?

I do not know exactly what motivated the individuals who referred attorneys for potential employment in the Civil Rights Division. I would hope that attorneys were recommended at least primarily because they were thought to be bright lawyers with outstanding legal skills who were interested in the work of the Division. I might add that, regardless of why any attorney was encouraged to apply, he/she was judged by the career section chief and Deputy Assistant Attorney General on an individual basis based on a comprehensive review of the attorney's academic background, legal and analytical skills, unique life experiences, interest in the work of the Division, and a personal interview.

18. Ty Clevenger has stated that his name and resume were forwarded to you by Michael Thielen in 2005. You initiated contact with Mr. Clevenger by calling him. You directed him to sanitize his resume by removing references to the Republican National Lawyer's Association and the Federalist Society. According to Mr. Clevenger, you directed him to a website where there was a posted vacancy announcement and told him to submit his sanitized resume. Do you dispute any of these facts?

I do not remember how Mr. Clevenger's resume came to my attention nor do I remember any specific conversations with him. (As I stated at the hearing, I do not know Michael Thielen and have no recollection of getting resumes from him.) I can only describe my general practice in this area.

On occasion, I would receive from some third party what was obviously a political resume of an individual potentially interested in employment in the Civil Rights Division. (It is my experience that many attorneys in Washington have both a political and a non-political resume, tailored for the type of job they are seeking.) If I was impressed with the individual's credentials, either I or a counsel

might call him/her and inquire as to his/her interest. If the individual was seeking a political position in the Division, I might refer the resume on to the White House liaison. If the individual was seeking a career position, I would encourage him/her to remove overtly political references from the resume and formally submit the resume to the Division's internet application website. I made this suggestion because political affiliations had no relevance in the selection of career attorneys.

Of course, all applicants were ultimately judged individually based on a comprehensive review of their academic background, legal and analytical skills, unique life experiences, interest in the work of the Division, and a personal interview with both the career section chief and the Deputy Assistant Attorney General.

Incidentally, the resume Mr. Clevenger formally submitted to the Civil Rights Division did reflect his membership in the Federalist Society.

19. Were other attorneys referred to you in a similar way? Which of them did you contact before they applied through official channels? Which of them did you direct to sanitize their resumes?

As I noted at the hearing, I believe the kind of situation described in question 18 occurred on a handful of occasions during my nearly three-year tenure in the Civil Rights Division. I do not recall the names of any specific applicants to whom I gave such guidance.

20. Please produce every e-mail related in any way to the hiring of these attorneys.

I no longer have access to e-mails from my tenure in the Civil Rights Division.

21. In the second week of April 2005, you and Hans Van Spakovsky interviewed a candidate for a career attorney position who was referred to you because of his membership in the Republican National Lawyer's Association and the Federalist Society. During that interview, which took place in your office, did you complain that too many attorneys in the Voting Section were liberals or Democrats? Did you boast that since taking power away from Voting Section Chief Joe Rich in 2003, you had already hired eight conservative Republicans as career trial attorneys to make the Voting Section more balanced?

I do not recall the details of an interview from more than twenty-eight months ago. However, I do not see how I possibly could have made such a comment in April 2005 because, at that time in my tenure, I had only interviewed and hired approximately two candidates for positions in the Voting Section.

22. You testified that as U.S. Attorney, before seeking indictments against four defendants for voter fraud, you called Michael Elston. When you called Mr. Elston, had you or your office already had contact with the Public Integrity Section regarding the indictments? If so, please describe that contact.

I did not contact Mr. Elston; he phoned me, presumably after receiving the standard report that is prepared and distributed to the Department's leadership prior to the indictment of any election-related crime. The Public Integrity Section had been consulted about the case prior to my office's contact with Mr. Elston.

23. Did you call Mr. Elston because you were dissatisfied with your contacts with the Public Integrity Section?

I did not call Mr. Elston nor was I dissatisfied with the advice provided by the Public Integrity Section.

24. Did Mr. Elston play a role in obtaining approval for you to seek the indictments? Please describe all of your contacts with Mr. Elston regarding the indictments.

I do not know exactly what role Mr. Elston played. My office (i.e., the U.S. Attorney's Office) received a call from Mr. Elston a day or two before the indictments advising us that we should await word from him before presenting to the grand jury. On the morning the indictments were returned, Mr. Elston phoned to say that the Deputy Attorney General's Office had no objection to us going forward.

25. With whom did Mr. Elston discuss the indictments?

I do not know.

26. Please provide all documents reflecting any communication with Mr. Elston regarding the indictments.

I am not in a position to provide intradepartmental correspondence.

27. Please provide all documents reflecting your communication or your office's communication with the Public Integrity Section or any other component of the Department of Justice related to the indictments.

I am not in a position to provide intradepartmental correspondence.

28. Please explain in detail the circumstances that led you to indict the wrong person.

Following the indictment of Stephanie Davis, 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.

29. Please describe the full extent of your reading of employees' e-mails at any time during your tenure in the Civil Rights Division. Provide the names of employees whose e-mail you read.

In August 2005, shortly after the Civil Rights Division had filed a lawsuit against the City of Boston pursuant to Sections 2 and 203 of the Voting Rights Act, we learned of an unethical communication from former Voting Section attorney David Becker. In particular, one of the city's lawyers advised a Voting Section attorney assigned to the case that Becker had e-mailed the city on April 20, 2005, while he was still employed by the Division, and criticized the merits of the case. (Becker left the Civil Rights Division on April 30, 2005.) In that e-mail, Becker also noted that he soon would be leaving the Justice Department and offered to serve as a consultant on the case for the city.

One of the Voting Section attorneys assigned to the case requested that the city turn over the April 2005 e-mail it had received from Becker, and the city's lawyer agreed to do so. Once we received this e-mail from the city, I made a referral to the Office of Professional Responsibility (OPR). I discussed with OPR the possibility that there might be additional unethical correspondence between Mr. Becker and the city. OPR suggested that the Division's front office review Mr. Becker's e-mails because we would be in a better position to identify relevant communications.

During the course of the review of Mr. Becker's e-mails, I came across an e-mail from a then-current employee, Toby Moore, to Mr. Becker, who had, at that point, already left the Division, that appeared to divulge privileged client information. I alerted OPR of the finding and made a referral on Mr. Moore. I discussed with OPR the possibility that there might be additional inappropriate e-mails from Mr. Moore. OPR then suggested, as it had done with Mr. Becker, that the Civil Rights Division front office review Mr. Moore's e-mails because we would be in a better position to identify relevant communications.

30. Did you read Toby Moore's e-mails before or after you filed an OPR complaint against him? Did you read the e-mails of other employees? How many employees? How many e-mails?

See Response to Question 29.

31. Did you ever discuss your hiring practices with Kyle Sampson, Monica Goodling or Michael Elston? Did you ever discuss hiring conservatives or Republicans with them?

I do not recall any such discussions.

32. While you were in the Civil Rights Division, were any Division requests to interview Honors Program or Summer Law Intern Program candidates rejected by the Deputy Attorney General's office?

I am not aware of any such rejections.

33. While you were U.S. Attorney, did you clear proposed hires through the Executive Office of U.S. Attorneys? If so, were any rejected?

I was required, as an interim U.S. Attorney, to secure approval from the Executive Office for U.S. Attorneys (EOUSA) to fill vacancies for certain positions, including Assistant U.S. Attorneys. My requests to fill the vacancies were approved.

34. How many cases pursuant to section 2 of the Voting Rights Act alleging discrimination on the basis of race against African Americans were filed while you were DAAG or Acting Assistant Attorney General for Civil Rights?

No new cases were filed in court, although a number of Section 2 cases were being actively investigated and litigated during my tenure. They include:

- *United States v. Charleston County, S.C.: Although the case was filed in district court prior to my arrival, during my tenure the Voting Section actively litigated the case, which challenged the at-large method of electing members of the Charleston County (S.C.) Commission. The case alleged that the at-large method diluted the voting strength of African American voters. It was during my tenure that the Division litigated the case before the U.S. Court of Appeals for the Fourth Circuit and the U.S. Supreme Court.*
- *United States v. City of Euclid, Ohio: This case was actively investigated during my tenure in the Division and I, in fact, personally authorized the filing of the lawsuit against the city. A letter was sent to the city during my tenure advising them of this authorization and inviting settlement negotiations. The investigation revolved around the Division's concerns that the city's mixed at-large/ward system of electing the city council diluted the voting strength of African-American citizens. During our investigation, we discovered that although African-Americans comprised nearly 30% of Euclid's electorate, and despite there being eight recent African-American candidates for city council, not a single one had ever been elected to that body. As is common in Section 2 cases, settlement negotiations between the Department and the city dragged on for many months, and the Division, after I had left, eventually was forced to file suit against the city.*
- *United States v. Noxubee County, Miss.: Although the Section 2 claim in this case alleged that the practices of Noxubee County officials discriminated against white voters, African-American voters were also victims in the case. Indeed, the suit also alleged that Noxubee County officials coerced, threatened, and intimidated both white and African-American voters in violation of Section 11(b) of the Voting Rights Act.*
- *I would also note that during my tenure, the Division authorized two vote dilution actions on behalf of African-Americans under Section 2 of the Voting Rights Act, but ultimately those suits were not filed because African-American candidates were elected to offices in those jurisdictions.*

I think it is important to add that, during my tenure, the Voting Section also filed numerous other race-based cases pursuant to Section 2 of the Voting Rights Act. They include:

- *United States v. Osceola County, Fla.: This case challenged the at-large system for electing the county's Board of Commissioners under Section 2 of the Voting Rights Act, alleging that the system unlawfully diluted the votes of Hispanic voters and that it had been adopted and maintained with a discriminatory purpose. Although Hispanics comprise more than one-third of the county's electorate, the county had never elected a Hispanic candidate to the Board under the at-large system or to any county-wide office.*
- *United States v. City of Boston: This case alleged that the City's election practices and procedures discriminate against citizens of Spanish, Chinese, and Vietnamese heritage, so as to deny and abridge their right to vote in violation of Section 2 of the Voting Rights Act. The Section 2 cause of action alleged, *inter alia*, that the city treated English-proficient Hispanic and Asian-American voters disrespectfully; and improperly influenced, coerced, or ignored the individuals' ballot choices. The lawsuit also included Section 203 claims on behalf of the aforementioned Hispanic voters.*
- *United States v. Long County, Ga.: This suit under Section 2 of the Voting Rights Act alleged that Long County officials required Hispanic residents whose right to vote had been challenged on the grounds that they were not U.S. citizens to attend a hearing and prove their citizenship, even though there was no evidence calling into question their citizenship and even though similarly situated non-Hispanics were not required to do so. According to the complaint, the defendants' conduct had the effect of denying Hispanic voters an equal opportunity to participate in the political process and to elect candidates of their choice.*
- *United States v. Village of Port Chester, N.Y.: This lawsuit was authorized during my tenure even though it was not filed until I after I had left the Division. The case alleged that Port Chester's at-large system of electing its governing board of trustees dilutes the voting strength of the Village's Hispanic citizens, in violation of Section 2 of the Voting Rights Act.*

35. How many such cases alleging discrimination against whites were filed during the same period?

One. That case, filed in February 2005 against officials in Noxubee County, Mississippi, alleged that the practices of local election and party officials discriminated against white voters in violation of Section 2 of the Voting Rights Act. White voters, however, were not the only victims in the case. The suit also alleged that Noxubee County officials coerced, threatened, and intimidated both white and African-American voters in violation of Section 11(b) of the Voting Rights Act.

36. In response to a question about politically-biased hiring, you testified, “I knew that there was a vetting process up in the Attorney General’s office.” How did you learn about this “vetting process”? Did you voice any concerns or file any complaints once you “knew” that biased hiring was going on? If you did, please provide some documentation. If not, why not?

I was advised of the vetting process by the Executive Office for U.S. Attorneys. While I had suspicions about the process based on rumors, I did not voice any concerns because I had no definitive awareness that improper hiring was occurring.

37. A recent article in the *National Journal* reports that members of the Bush-Cheney campaign were concerned about Mr. Graves’ handling of voter fraud issues in the run-up to the 2004 election. Mark “Thor” Hearne, then national election counsel for the campaign and subsequently founder of the now-defunct voter-fraud “watchdog group” American Center for Voting Rights, was concerned that Mr. Graves “was not taking seriously allegations that ACORN workers were registering people who did not qualify to vote.” He then “took his complaints to senior officials in Justice’s Civil Rights Division and to the White House.” You were at that time a senior official in the Civil Rights Division and oversaw the voting section. Were you one of the officials Mr. Hearne contacted? Were you aware of his contacts with any other officials in the Division? What action did you and your colleagues take in response?

Mr. Hearne did not contact me personally regarding any complaints. I recall that he sent a complaint regarding allegations of voting fraud in Missouri to the Civil Rights Division, and that document was shown to me by the Division’s voting counsel. I think that the letter was then forwarded by the voting counsel to the Criminal Division’s Public Integrity Section, which is responsible for coordinating investigations of election crimes.

38. The *National Journal* also reported that “Hearne boasted” of “having discussions with administration officials who wanted Graves replaced.” Were you one of those officials who, in the run-up to the 2004 election, wanted Mr. Graves replaced? Were you aware of any other officials who took that position? Who?

Mr. Hearne did not contact me regarding Mr. Graves. Prior to the recent press reports, I was not aware of anyone seeking Mr. Graves’ ouster as U.S. Attorney.

39. In the run-up to the 2004 election, then-U.S. Attorney for the District of Minnesota, Thomas Heffelfinger, reported allegations that the secretary of state had issued voter ID regulations that discriminated against Native Americans. Joseph Rich, then chief of the Voting Section, suggested that you quashed any investigation of these allegations. You testified, however, that you and your voting counsel Hans von Spakovsky ordered Mr. Rich “to go ahead and contact the chief election official, which is the secretary of the state. If there was information there that proved valuable, then any investigation could be followed up.” If the secretary of state did not provide valuable information, the investigation would be halted. Please explain why you gave orders that would allow the target of the investigation to bring it to a halt just by refusing to cooperate.

The natural starting point for investigating allegations related to the Secretary of State’s interpretation of a state statute would be to contact the Secretary of State and determine if the regulations at issue were being interpreted in a way that discriminated against a particular class of individuals. In my experience, there are often misunderstandings in this area that can easily be cleared up with a phone call. Although I do not know the results of any communications the Voting Section had with Minnesota officials in the Fall of 2004, there is no basis for suggesting that the investigation would have to be halted if the Minnesota Secretary of State did not provide us with the type of information necessary to fairly evaluate the allegation and analyze the applicable law. To the contrary, if the Secretary of State’s information proved unhelpful or if she simply refused to fully cooperate, additional investigation could (and should) have been conducted. In short, I did not halt any investigation.