

Testimony of  
**Mr. Bradley J. Scholzman**

June 5, 2007

Chairman Leahy, Ranking Member Specter, distinguished Members of the Committee:

Thank you for the opportunity to testify today. My service in the U.S. Attorney's Office for the Western District of Missouri was the highlight of my professional career. Although my thirteen months in office were relatively brief, I believe the outstanding Assistant U.S. Attorneys and staff in the District accomplished an extraordinary amount in that time. During my time there, for example, the District was ranked first in the country in the Justice Department's Project Safe Neighborhood Program, charging more felon defendants with unlawfully possessing a firearm than any other District in the entire country. The District also maintained its position as one of the top offices in the country in prosecuting child exploitation cases. Indeed, many components of the Project Safe Childhood initiative launched in this District have served as models for other Districts throughout the country. In a related vein, I introduced a Human Trafficking Task Force shortly after my arrival which, in less than a year, led to the indictments of numerous individuals in multiple prosecutions. Finally, the District's reinvigorated emphasis on public corruption precipitated a series of major investigations and prosecutions. All of these successes are due in large part to the incredible team of career prosecutors and staff in the Western District of Missouri, and I continue to be grateful for the honor of having served with them.

I also am incredibly proud of my approximately three years in the Civil Rights Division, where I was privileged to work with many brilliant and dedicated career attorneys who care passionately about ensuring equal justice. I served as a Deputy Assistant Attorney General from May 2003 until June 2005 and as Principal Deputy Assistant Attorney General from June 2005 until March 2006. From June 2005 until November 2005, I also served as the Acting Assistant Attorney General. During this slightly less than three-year period, I was honored to play an important role in advancing the work of the Division. I can say proudly that, due to the hard work of the career professionals, the Division was able to achieve unprecedented results during my tenure.

The accomplishments of the Voting Section, for example, were legion. In the slightly less than three years I spent supervising that Section, for example, the Division filed:

? ten Section 5 objections to protect African-American voters;

? thirteen minority language (Section 203) cases, nearly half of all such cases that had been filed in the history of the Voting Rights Act;

? a voter assistance case (Section 208);

? the first case ever filed to protect Filipino voters;

? the first case ever filed to protect Vietnamese voters;

- ? the first case filed under Section 11(b) of the Voting Rights Act since 1992;
- ? four cases under the Uniformed and Overseas Citizen Absentee Voting Act ("UOCAVA");
- ? three cases under the National Voter Registration Act ("NVRA"); and
- ? four cases under the Help America Vote Act ("HAVA").

In fact, during just my five months as Acting Assistant Attorney General, we filed six Voting Rights Act cases, an average of more than one per month. To put this number in perspective, consider that the Division's 31-year average is just 6 Voting Rights Act cases per year.

The work of the Division's Special Litigation Section, which I also supervised, was similarly impressive. From 2001-2005, the Special Litigation Section initiated 58 new investigations pursuant to the Civil Rights for Institutionalized Persons Act ("CRIPA"), a more than 28 percent increase over the previous five-year period. Although I left before the end of Fiscal Year 2006, in that year alone, the Civil Rights Division handled CRIPA matters involving over 175 facilities in 34 states, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and the Territories of Guam and the Virgin Islands. These investigations ensured that the all too vulnerable residents of state mental health facilities, geriatric centers, juvenile facilities, and correctional institutions are afforded the federal constitutional and statutory rights to which they are due. At the same, the Special Litigation Section helped ensure the integrity of law enforcement by more than tripling the number of settlements negotiated with law enforcement agencies across the country from 2001 2006.

Turning to the Employment Litigation Section, I either authorized, reviewed, or oversaw the initiation of investigations, the filing of complaints, and/or the course of the litigation in some of the Division's most important employment discrimination cases in a decade. Among the more prominent examples are:

? U.S. v. FDNY: The complaint alleges that the City of New York uses written examinations that discriminate against blacks and Hispanics in the hiring of entry-level firefighters in the Fire Department of the City of New York ("FDNY"). According to the United States' complaint, of the FDNY's 11,000 uniformed firefighters in all ranks, only about 3 percent are black and 4.5 percent are Hispanic. These figures contrast sharply with the percentages of blacks and Hispanics in the city's police department. The United States alleges that the use of these examinations violates Title VII because they result in a disparate impact against black and Hispanic applicants and do not accurately determine whether an applicant will be able to perform the job of firefighter.

? U.S.. v. City of Chesapeake, Va.: The complaint alleges that the City engaged in a pattern or practice of discrimination on the basis of race and national origin by screening applicants for entry-level police officer positions in a manner that has an unlawful disparate impact on African-American and Hispanic applicants. This case is currently being litigated.

? U.S. v. City of Virginia Beach: The complaint alleges that the City engaged in a pattern or practice of discrimination on the basis of race and national origin by screening applicants for

entry-level police officer positions in a manner that had an unlawful disparate impact on African-American and Hispanic applicants. This case was resolved through the entry of a consent decree on July 24, 2006.

? U.S. v. State of Delaware: The complaint alleges that the defendant's use of certain written examinations for the selection of entry-level state troopers had an unlawful disparate impact against blacks and was not job-related and consistent with business necessity, as required by Title VII. This suit was brought to trial and successfully prosecuted by the Division.

? U.S. v. City of Erie, Pa.: The complaint alleges that the City engaged in a pattern or practice of gender-based employment discrimination against women in the hiring of entry-level police officers by using a physical agility test that resulted in a disparate impact against women and did not otherwise meet the requirements of Title VII. The Section successfully prosecuted this case.

? U.S. v. City of Gallup, N.M.: The complaint alleges that the City engaged in a pattern or practice of employment discrimination in hiring against American Indians based on race. This case was resolved through the entry of a consent decree on October 27, 2004.

? U.S. v. Los Angeles County Metropolitan Transportation Authority: The complaint alleges that the MTA engaged in a pattern or practice of discrimination by failing or refusing to reasonably accommodate employees and applicants for employment who, in accordance with their religious observances, practices, and/or beliefs, need accommodation because they are unable to comply with a requirement applied by MTA management that employees in the MTA's Operations Division be available to work weekends, on any shift, at any location. The complaint further alleged that the MTA discriminated against a member of the Jewish faith and former bus operator trainee for the MTA by failing or refusing reasonably to accommodate his religious observance, practice, and/or belief of observing the Sabbath from sundown on Friday until sundown on Saturday and by subsequently discharging him from employment. This case was resolved through the entry of a consent decree on October 4, 2005.

Meanwhile, the Division's efforts to combat trafficking in persons, which I helped oversee, has been one of the Department's great success stories. Addressing an evil that is nothing less than modern-day slavery, the Civil Rights Division launched a major initiative to educate law enforcement, victim advocates, and the overall community about human trafficking and how best to eradicate it. Task forces were formed around the country, and the results have been spectacular. In Fiscal Years 2001-2006, the Civil Rights Division and U.S. Attorneys' Offices prosecuted 360 defendants, compared to the just 89 defendants charged during the prior six years, a more than 300 percent increase. In addition, 238 convictions/guilty pleas were secured during this period, a 250 percent increase over the 67 obtained in the previous six-year period. In that same time period, the Civil Rights Division and U.S. Attorneys' Offices opened no less than 639 new investigations, a nearly 400 percent increase over the 128 that had been opened in the previous six years. The assistance to victims has also been noteworthy. Indeed, prosecutors in the Civil Rights Division have facilitated "continued presence" for nearly 800 trafficking victims. And 1,166 trafficking victims from 75 countries have been assisted by the Civil Rights Division and other law enforcement personnel for refugee-type benefits under the 2000 Trafficking Victims Protection Act. Few accomplishments have brought greater pride to my heart.

Additionally, I am equally proud of the career staff who were hired while I was in the Civil Rights Division. Working with career section chiefs, we hired outstanding attorneys with a wide array of backgrounds, always placing emphasis on academic records, clerkships, work experience, analytical skills, and knowledge of, and interest in, the Division's jurisdiction.

I am aware that there has been particular interest in the voter registration fraud cases against four employees of the Association of Community Organizations for Reform Now ("ACORN") brought during my tenure as interim U.S. Attorney in the Western District of Missouri. Since these cases remain pending, my comments must be limited, but I would like to clarify some matters that may be helpful to the Committee.

These cases, which were brought under the anti-fraud provisions of the National Voter Registration Act, were assigned to an experienced career Assistant United States Attorney, who consulted with the career leadership in the Department's Election Crimes Branch in accordance with the U.S. Attorney's Manual in conducting the investigation. The Department has adopted an informal policy of not interviewing voters during the pre-election period, which is intended to avoid actions that could conceivably have a chilling effect on voting. The policy clearly does not mean, however, that the Department forbids the filing of any charges around the time of an election. While the ACORN matter arose in October, Department policy did not require a delay of this investigation and the subsequent indictments because they pertained to voter registration fraud (which examined conduct during voter registration), not fraud during an ongoing or contested election. Consequently, the Department's informal policy was not implicated in this matter. In sum, there was nothing unusual, irregular, or improper about the substance or timing of these indictments. Three defendants have pled guilty and a fourth is scheduled to plea this week.

Another area of interest is a lawsuit against the State of Missouri and Missouri Secretary of State alleging violations of the National Voter Registration Act ("NVRA") voter registration list maintenance requirements. The complaint stated that Missouri both failed to remove ineligible voters and improperly removed or suspended eligible voters. Specifically, the complaint stated that the State failed to ensure that it has a uniform general program which makes a reasonable effort to ensure that (i) eligible voters are not improperly removed from the rolls, and (ii) ineligible voters are properly removed from the rolls consistent with the requirements and protections of the NVRA. According to the complaint, the State's lack of reasonable efforts had resulted in voters being removed without proper notice in some counties and no efforts were being made to remove ineligible voters in other counties. The suit did not allege fraud nor was fraud relevant in any way to the case.

A few days after the commencement of the suit, Missouri's Secretary of State issued a press release admitting the scope of the problem, as follows:

In last year's election 29 Missouri counties and election jurisdictions had more persons registered to vote than people of voting age living in the jurisdiction. In one Missouri county, over 150% of the voting age population was registered to vote in the 2004 federal election. Clearly, a problem exists. It defies common sense that we would have more registered voters than people of voting age in any Missouri county.

In this case, however, the district court ruled against the United States basing the decision on the reasoning that the State properly allocated NVRA enforcement responsibilities to the individual counties. An appeal has been authorized in this case.

Thank you for providing me the opportunity to provide this statement. I look forward to answering any questions that Members of the Committee may have.