

From the Los Angeles Times

Minnesota case fits pattern in U.S. attorneys flap

A prosecutor apparently targeted for firing had supported Native American voters' rights.

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WASHINGTON For more than 15 years, clean-cut, square-jawed Tom Heffelfinger was the embodiment of a tough Republican prosecutor. Named U.S. attorney for Minnesota in 1991, he won a series of high-profile white-collar crime and gun and explosives cases. By the time Heffelfinger resigned last year, his office had collected a string of awards and commendations from the Justice Department.

So it came as a surprise and something of a mystery when he turned up on a list of U.S. attorneys who had been targeted for firing.

Part of the reason, government documents and other evidence suggest, is that he tried to protect voting rights for Native Americans.

At a time when GOP activists wanted U.S. attorneys to concentrate on pursuing voter fraud cases, Heffelfinger's office was expressing deep concern about the effect of a state directive that could have the effect of discouraging Indians in Minnesota from casting ballots.

Citing requirements in a new state election law, Republican Secretary of State Mary Kiffmeyer directed that tribal ID cards could not be used for voter identification by Native Americans living off reservations. Heffelfinger and his staff feared that the ruling could result in discrimination against Indian voters. Many do not have driver's licenses or forms of identification other than the tribes' photo IDs.

Kiffmeyer said she was only following the law.

The issue was politically sensitive because the Indian vote can be pivotal in close elections in Minnesota. The Minneapolis-St. Paul area has one of the largest urban Native American populations in the United States. Its members turn out in relatively large numbers and are predominantly Democratic.

Heffelfinger resigned last year for personal reasons and says he had no idea he was being targeted for possible firing. But his stance fits a pattern that has emerged in the cases of several U.S. attorneys fired last year in states where Republicans wanted

more vigorous efforts to legally challenge questionable voters.

Politics have always played a role at Justice and other Cabinet-level departments. But, critics say, Bush administration strategists went beyond most of their predecessors Democratic or Republican in seeking ways to convert control of the federal government into advantages on election day.

And the Heffelfinger episode has contributed to a backlash among some Minnesota Republicans. Sen. Norm Coleman, a Bush loyalist in the past who is facing reelection next year, has called on Atty. Gen. Alberto R. Gonzales to resign largely as a result of the U.S. attorney firings and the revelations about Heffelfinger.

A hint at why Heffelfinger's name was on termination lists that Justice Department officials and Bush political strategists put together emerged when Monica M. Goodling, the department's former White House liaison, testified last week before the House Judiciary Committee about the firings.

Goodling said she had heard Heffelfinger criticized for "spending an excessive amount of time" on Native American issues.

Her comment caused bewilderment and anger among the former U.S. attorney's supporters in Minnesota. And Heffelfinger said it was "shameful" if the time he spent on the problems of Native Americans had landed him in trouble with his superiors in Washington.

But newly obtained documents and interviews with government officials suggest that what displeased some of his superiors and GOP politicians was narrower and more politically charged his actions on Indian voting.

About three months after Heffelfinger's office raised the issue of tribal ID cards and nonreservation Indians in an October 2004 memo, his name appeared on a list of U.S. attorneys singled out for possible firing.

"I have come to the conclusion that his expressed concern for Indian voting rights is at least part of the reason that Tom Heffelfinger was placed on the list to be fired," said Joseph D. Rich, former head of the voting section of the Justice Department's civil rights division. Rich, who retired in 2005 after 37 years as a career department lawyer 24 of them in Republican administrations was closely involved in the Minnesota ID issue. He played no role in drafting the termination lists, which were prepared by political appointees.

Justice Department officials refused Tuesday to confirm whether particular U.S. attorneys may or may not have been on one of the termination lists prepared by D. Kyle Sampson, the former chief of staff to Gonzales. But Dean Boyd, a department spokesman, did say that "the Justice Department and the attorney general have been and remain committed to working on issues of importance to Native Americans."

Boyd cited cases in which Justice Department lawyers have gone to court to uphold Indian voting rights.

Suspicion of Indian voter fraud was strong among Republicans in the upper Midwest in advance of the 2004 election. The GOP blamed what it said was fraud on Indian reservations for the narrow victory of South Dakota Democratic Sen. Tim Johnson over Republican candidate John Thune in 2002.

It was in this environment, Rich says, that he got an Oct. 19, 2004, e-mail from an assistant U.S. attorney in Minnesota named Rob Lewis, informing him about possible voter discrimination against Indians.

Described as a matter of "deep concern" to Heffelfinger, the issue arose from Kiffmeyer's directive in the fall of 2004 that tribal ID cards could not be used for voter identification off reservations

About 32,000 Indians live off-reservation in Minnesota, mostly in the Twin Cities.

In the e-mail which Rich described to The Times Lewis wrote that Kiffmeyer's memo had sparked "concerns regarding possible disparate impact among the state's substantial Indian population."

"Disparate impact" is a term used in civil rights litigation to describe a circumstantial case of discrimination.

After reviewing the matter, Rich recommended opening an investigation.

In response, he said, Bradley Schlozman, a political appointee in the department, told Rich "not to do anything without his approval" because of the "special sensitivity of this matter."

Rich responded by suggesting that more information be gathered from voting officials in the Twin Cities area, which includes Minnesota's two most populous counties.

A message came back from another Republican official in the department, Hans von Spakovsky, saying Rich should not contact the county officials but should instead deal only with the secretary of state's office.

Von Spakovsky indicated, Rich said, that working with Kiffmeyer's office reduced the likelihood of a leak to the news media.

The orders from Schlozman and Von Spakovsky, who wielded unusual power in the civil rights division, effectively ended any department inquiry, Rich said.

"It was apparent to me that because of these extremely tight and unusual restrictions on the investigation that this matter had political implications," Rich said in an interview.

Rich is now working for the Lawyers' Committee for Civil Rights Under Law, which was formed at the request of President Kennedy in 1963 to combat discrimination.

Schlozman, who served briefly as U.S. attorney in Missouri and brought a voting fraud case shortly before election day last year, was not available for comment, Justice Department officials said. Von Spakovsky, now at the Federal Election Commission, said through a spokesman that he could not comment.

Kiffmeyer also did not respond to requests for comment.

With the Justice Department inquiry going nowhere, lawyers for the Indians asked the federal courts to intervene. A few days before the November 2004 election, federal District Judge James Rosenbaum ordered that tribal identification cards be accepted at the polls.

After Heffelfinger resigned, the Justice Department replaced him with someone more attuned to the administration's views.

On his way out, Heffelfinger recommended that Joan Humes, the No. 2 person in the office, be named interim U.S. attorney. But Humes was rejected by the Justice Department in part, Goodling testified, because she was known to be a "liberal."

The job went to a conservative Justice Department employee, Rachel Paulose. She had Ivy League credentials, brief experience as a prosecutor, and as a private lawyer had helped bring election lawsuits on behalf of the Minnesota GOP. She declined to comment for this article.

One of Paulose's first acts in office was to remove Lewis, who had written the 2004 e-mails to Washington expressing concern about Native American voting rights in Minnesota, from overseeing voting rights cases.

For his part, Heffelfinger said, he took Goodling at her word and believed that he was on the termination lists for his zeal in confronting problems facing Indian country. But Heffelfinger said he did not know whether voting rights in particular affected his standing with Washington.

"I was just flagging an issue and giving an opinion," he said. "I think that's the kind of analysis a U.S. attorney is supposed to do."

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