



New Black Panther Investigation

Depositions



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UNITED STATES OF AMERICA
COMMISSION ON CIVIL RIGHTS

+ + + + +

DEPOSITION

+ + + + +

IN RE

The Scheduled deposition of Jerry Jackson

Scheduled oral deposition of JERRY JACKSON,
taken at the Hilton Garden Inn, 1100 Arch
Street, Philadelphia, Pennsylvania, on Monday,
November 30, 2009, commencing at approximately
9:42 a.m., pursuant to notice, when were
present:

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1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

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APPEARANCES:

DAVID P. BLACKWOOD, ESQ.
GENERAL COUNSEL
U.S. COMMISSION ON CIVIL RIGHTS,
OFFICE OF THE GENERAL COUNSEL
624 Ninth Street, N.W.
Suite 631
Washington, D.C. 20425
202-376-7622
dblackwood@usccr.gov

ALSO PRESENT:

Maurice Heath
a/k/a Minister King Samir Shabazz

1 P-R-O-C-E-E-D-I-N-G-S

2 (10:00 a.m.)

3 MR. BLACKWOOD: We are here.

4 My name is David Blackwood. I'm
5 the General Counsel for the U.S. Commission on
6 Civil Rights. And it is approximately 18
7 minutes of 10:00, on November 30th, and Mr.
8 Jerry Jackson is here.

9 Mr. Jackson, you have indicated
10 that you want Mr. Coard, your attorney,
11 present before you will testify; is that
12 correct?

13 MR. JACKSON: Yes. We are here
14 today on November 30th, and I will not go on
15 with this until my attorney is present.

16 MR. BLACKWOOD: Okay. And your
17 attorney is?

18 MR. JACKSON: Michael Coard.

19 MR. BLACKWOOD: And you have
20 attempted to reach Mr. Coard this morning?

21 MR. JACKSON: Yes, I have.

22 MR. BLACKWOOD: And you called

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1 both his cell phone and regular office number?

2 MR. JACKSON: Yes.

3 MR. BLACKWOOD: I will also
4 indicate that I have tried to reach Mr. Coard
5 by calling his cell number with no success.

6 I would also enter into the record
7 the e-mail messages that I traded with Mr.
8 Coard previously in an attempt to schedule his
9 clients to appear with him.

10 And at that, given your position,
11 Mr. Jackson, I understand you are going to
12 leave at this time?

13 MR. JACKSON: Yes.

14 MR. BLACKWOOD: All right. Thank
15 you.

16 Now, let me indicate, I am not
17 releasing you from the Subpoena. I will
18 attempt to work with Mr. Coard to set up
19 another date where everybody is available.

20 Do you understand that?

21 MR. JACKSON: Well, you will also
22 send me another Subpoena to inform me of the

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1 date.

2 MR. BLACKWOOD: Well, no. That's
3 exactly why I wanted to make that clear. I
4 won't send you a Subpoena because I'm not
5 going to release you from the Subpoena.
6 Although, I recognize you have the right to
7 have an attorney.

8 I will send a letter. I will talk
9 with Mr. Coard. It is Mr. Coard's duty to
10 talk to you.

11 MR. JACKSON: So this Subpoena is
12 an ongoing Subpoena?

13 MR. BLACKWOOD: It's ongoing. I
14 am not going to release you. What I'm willing
15 to say is, we are willing to schedule a new
16 date where you and Mr. Coard are both
17 available.

18 MR. JACKSON: How would I find
19 that out?

20 MR. BLACKWOOD: I will send you
21 something. But, frankly, if you have an
22 attorney, your attorney is supposed to be the

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1 one that notifies you what date works.

2 MR. JACKSON: Okay.

3 MR. BLACKWOOD: Okay. We will
4 leave it at that. It is now about 16 minutes
5 of 10:00.

6 And, as I say, I'm not excusing
7 you, but I understand we need Mr. Coard
8 present for you to testify. And I will, as
9 you will, attempt to contact him to find
10 another available date.

11 MR. JACKSON: Will I receive a
12 deposition of this -- will I receive a copy of
13 this statement?

14 MR. BLACKWOOD: I can send that to
15 you. I will tell you, the normal procedures
16 are, though, if Mr. Coard represents you, I
17 send it to him and he sends it to you.

18 If there's an attorney involved,
19 I, as an attorney, can only talk with the
20 attorney or with you in the attorney's
21 presence.

22 MR. JACKSON: Okay.

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1 MR. BLACKWOOD: All right?

2 MR. JACKSON: All right.

3 MR. BLACKWOOD: Thank you.

4 MR. JACKSON: Thank you.

5 (Thereupon, at 9:45 a.m. the
6 scheduled deposition concluded.)

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CERTIFICATE

This is to certify that the foregoing proceedings
in the matter of: The Deposition of
Jerry Jackson
held on: November 30, 2009
at the location of: Philadelphia, Pennsylvania
were duly recorded and accurately transcribed under my
direction; further, that said proceedings are a true
and accurate record of the testimony given by said
witness; and that I am neither counsel for, related
to, nor employed by any of the parties to this action
in which this deposition was taken; and further that
I am not a relative nor an employee of any of the
parties nor counsel employed by the parties, and I am
not financially or otherwise interested in the outcome
of the action.


Notary Public/Reporter in and for
Commonwealth of Pennsylvania

Page 1

1 UNITED STATES COMMISSION ON CIVIL RIGHTS
 2 -----
 3 IN RE:
 4 NEW BLACK PANTHER PARTY
 5 -----
 6 Philadelphia, Pennsylvania
 7 Monday, January 11, 2010
 8
 9 TRANSCRIPT of testimony of JERRY JACKSON,
 10 as taken by and before Cherilyn M. McCollum, a
 11 Registered Professional Reporter, at the HILTON
 12 GARDEN HOTEL, 1100 Arch Street, commencing at 9:02
 13 o'clock in the forenoon.
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Page 2

1 B E F O R E:
 2 (BY TELEPHONE)
 3 ALEC DEULL, SPECIAL ASSISTANT
 4 NICK COLTEN, SPECIAL ASSISTANT
 5 JOHN MARTIN, SPECIAL ASSISTANT
 6 ALISON SCHMAUCH, SPECIAL ASSISTANT
 7 DOMINIQUE LUDVIGSON, SPECIAL ASSISTANT
 8
 9 A P P E A R A N C E S:
 10 UNITED STATES COMMISSION ON CIVIL RIGHTS
 11 OFFICE OF THE GENERAL COUNSEL
 12 BY: DAVID P. BLACKWOOD, ESQ.
 13 MAHA JWEIED, ESQ.
 14 624 Ninth Street, N.W.
 15 Suite 631
 16 Washington, D.C. 20424
 17 (202) 376-7622
 18 dblackwood@usccr.gov
 19 Attorneys for The Commission
 20
 21 A L S O P R E S E N T:
 22 KIMBERLY TOLHURST, ESQ. (BY TELEPHONE)
 23
 24

Page 3

1 I N D E X
 2 WITNESS PAGE
 3 JERRY JACKSON
 4 By Mr. Blackwood 4
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Page 4

1 EXAMINATION
 2 BY MR. BLACKWOOD:
 3 Q. If we could, it's a little after
 4 9:00. Mr. Jackson, you're here because you
 5 received a subpoena. Is that correct?
 6 A. Yes.
 7 Q. And you have talked to your
 8 attorney, Michael Coard. Is that also correct?
 9 A. Yes.
 10 Q. Mr. Coard indicated that he wishes
 11 to attend your deposition. Is that right?
 12 A. Yes.
 13 Q. Okay. And he indicated, though, he
 14 has a court hearing this morning, but will be able
 15 to be here around 12-ish?
 16 A. Yeah.
 17 Q. Based on your representations, do
 18 you agree that we will reconvene here about 12:30?
 19 A. Yes.
 20 Q. With that agreement, I release you
 21 for now, not from the subpoena, but I release you
 22 to return at 12:30.
 23 A. Thank you.
 24 (Recess at 9:03 a.m.)

Page 5

1 (Resumed at 1:03 p.m.)
 2 MR. BLACKWOOD: It is now
 3 approximately 1:00, and I would ask you to swear in
 4 the witness, please.
 5 JERRY JACKSON, after having been
 6 first duly sworn, was examined and testified as
 7 follows:
 8 CONTINUED EXAMINATION
 9 BY MR. BLACKWOOD:
 10 Q. Mr. Jackson, it's 1:00, and we have
 11 been waiting for your attorney, Michael Coard. Is
 12 that correct?
 13 A. Yes.
 14 Q. And you talked to Michael Coard
 15 yesterday?
 16 A. No.
 17 Q. When did you talk to him?
 18 A. Talked to him -- well, it was about
 19 a week ago.
 20 Q. Okay. In any case, you've been
 21 trying to reach him today as well?
 22 A. Yes.
 23 Q. As you know, we're here to -- as
 24 you've been informed in writing, we're here to

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1 investigate various circumstances that occurred on
 2 Election Day 2008. Do you understand that?
 3 A. Yes.
 4 Q. You've indicated with your
 5 conversation with me outside that you intend to
 6 plead the Fifth Amendment as to that topic?
 7 A. That topic was dismissed. I don't
 8 have any clue really who you are, and my attorney
 9 is not here, and that's the reason that I would
 10 take the Fifth.
 11 Q. But it is your intention to take the
 12 Fifth, correct?
 13 A. Yes.
 14 Q. Let me just run through -- there are
 15 some various categories of items that I was going
 16 to ask you about, and I just want to make sure that
 17 your assertion of your Fifth Amendment applies to
 18 each one of those categories.
 19 First, you're making that assertion
 20 based on advice of counsel. Is that correct?
 21 A. Yes.
 22 Q. If I ask you about your Election Day
 23 activities of 2008, you would take the Fifth. Is
 24 that correct?

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1 A. I already took it.
 2 Q. If I ask you questions about
 3 planning for the election by yourself and the New
 4 Black Panther Party, would you take the Fifth?
 5 A. I already took the Fifth.
 6 Q. And if I asked you about any
 7 investigation by the New Black Panther Party about
 8 your conduct on Election Day 2008, you would also
 9 take the Fifth. Is that correct?
 10 A. (Witness indicating.)
 11 Q. You have to verbalize it.
 12 A. I took the Fifth.
 13 Q. Okay. All right.
 14 And that was because you believe
 15 your testimony might tend to incriminate you. Is
 16 that correct?
 17 A. That's what the Fifth Amendment is,
 18 I think.
 19 Q. Okay.
 20 A. Because I don't have representation.
 21 Q. But you have contacted Mr. Coard and
 22 he's not here?
 23 A. Right. That's the reason that I'm
 24 taking the Fifth.

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1 Q. Well, it's also Mr. Coard indicated
 2 to you that you were going to take the Fifth, even
 3 if he was here, correct?
 4 A. No.
 5 Q. He did not?
 6 A. No.
 7 Q. So if Mr. Coard was here, you would
 8 not take the Fifth?
 9 A. I would be communicating with
 10 Mr. Coard, and we would be dealing with this
 11 situation in the way that it should be dealt with,
 12 but right now I don't want to say anything. I'm
 13 taking the Fifth.
 14 Q. Okay. Mr. Jackson, as we discussed
 15 outside, I'm going to release you from today. I'm
 16 not releasing you from the subpoena, all right. If
 17 Mr. Coard, for example, arrives in the next ten
 18 minutes, we'll come back and take your deposition,
 19 but Mr. Coard is not here and I'm working on the
 20 assumption that he's not going to be here.
 21 A. Uh-huh.
 22 Q. That said, we are going to take
 23 appropriate action as we see fit to get the
 24 testimony that we are seeking, but until that time,

1 you are free. Okay?
 2 A. All right. Thank you.
 3 MR. BLACKWOOD: Thank you.
 4 (1:07 p.m.)
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1 C E R T I F I C A T E
 2 I, Cheryl M. McCollum, a Certified
 3 Court Reporter and Notary Public, do hereby certify
 4 that, prior to the commencement of the examination,
 5 the witness and/or witnesses were sworn by me to
 6 testify to the truth and nothing but the truth.
 7 I do further certify that the
 8 foregoing is a true and accurate computer-aided
 9 transcript of the testimony as taken
 10 stenographically by and before me at the time,
 11 place and on the date hereinbefore set forth.
 12 I do further certify that I am
 13 neither of counsel nor attorney for any party in
 14 this action and that I am not interested in the
 15 event nor outcome of this litigation.
 16
 17
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 21
 22 Certified Court Reporter
 23 XI02094
 24 Notary Public
 My commission expires 3-22-11
 Dated: _____

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run (1) 6:14	through (1) 6:14	writing (1) 5:24	
S	time (1) 8:24		
	today (2) 5:21;8:15		

UNITED STATES OF AMERICA
COMMISSION ON CIVIL RIGHTS

+ + + + +

DEPOSITION

+ + + + +

IN RE

The Scheduled deposition of
Maurice Heath a/k/a
Minister King Samir Shabazz

Scheduled oral deposition of MAURICE HEATH,
a/k/a MINISTER KING SAMIR SHABAZZ, taken at
the Hilton Garden Inn, 1100 Arch Street,
Philadelphia, Pennsylvania, on Monday,
November 30, 2009, commencing at approximately
9:45 a.m., pursuant to notice, when were
present:

7/23/10

APPEARANCES:

DAVID P. BLACKWOOD, ESQ.
GENERAL COUNSEL
U.S. COMMISSION ON CIVIL RIGHTS,
OFFICE OF THE GENERAL COUNSEL
624 Ninth Street, N.W.
Suite 631
Washington, D.C. 20425
202-376-7622
dblackwood@usccr.gov

ALSO PRESENT:

Jerry Jackson

1 P-R-O-C-E-E-D-I-N-G-S

2 (9:45 a.m.)

3 MR. BLACKWOOD: It is now
4 approximately a quarter of 10:00.

5 And I am David Blackwood, the
6 General Counsel to the U.S. Commission on
7 Civil Rights.

8 Also, before me is Mr. Heath.

9 Or do you prefer --

10 MR. SHABAZZ: Minister King Samir
11 Shabazz.

12 MR. BLACKWOOD: Minister King
13 Samir Shabazz.

14 His deposition was noted for 1:00
15 this afternoon. It is November 30th, 2009.
16 But he has indicated, after appearing with Mr.
17 Jackson, that he also wishes that Mr. Coard,
18 C-O-A-R-D, his attorney, be present for his
19 deposition.

20 As I understand it, Mr. Shabazz,
21 you have attempted to reach Mr. Coard?

22 MR. SHABAZZ: Yes.

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WASHINGTON, D.C. 20005-3701

1 MR. BLACKWOOD: And it's been
2 unsuccessful, correct?

3 MR. SHABAZZ: Yes.

4 MR. BLACKWOOD: As with Mr.
5 Jackson, I will indicate, you have a right to
6 have an attorney present. I'm not going to
7 ask you any questions without your attorney
8 present.

9 But I will also enter into the
10 record that I attempted to contact your
11 attorney, sent him several e-mails, to set a
12 mutually available date and I have not heard
13 from him.

14 And that I also have attempted to
15 contact him today, unsuccessfully.

16 That said, I am not releasing you
17 from the Subpoena, but I will agree that we
18 will attempt to, working with Mr. Coard,
19 reschedule your deposition for a mutually
20 convenient date.

21 And as with Mr. Jackson, if you
22 want a copy of the notes that are being typed

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WASHINGTON, D.C. 20005-3701

1 up now by the court reporter, I will provide
2 that to Mr. Coard and Mr. Coard then can
3 provide you with a copy.

4 Do you agree?

5 MR. SHABAZZ: Yes.

6 MR. BLACKWOOD: Now, based on the
7 fact that we are having this conversation at
8 this moment, I am agreeing that you do not
9 have to appear at 1:00. Okay?

10 MR. SHABAZZ: All right.

11 MR. BLACKWOOD: And I would
12 suggest, gentlemen, what I am going to do is,
13 go down to Mr. Coard's office and see if he's
14 available.

15 I assume he has your phone numbers
16 if he wants to reach you?

17 MR. JACKSON: Yes.

18 MR. BLACKWOOD: Okay. Then with
19 that said, we can close the record and I will
20 go down and see if I can find Mr. Coard and
21 hopefully set a date.

22 I appreciate you both showing up.

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WASHINGTON, D.C. 20005-3701

1 MR. JACKSON: All right. Thank
2 you.

3 MR. BLACKWOOD: Thank you.

4 (Thereupon, at 9:48 a.m. the
5 scheduled deposition concluded.)

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CERTIFICATE

This is to certify that the foregoing proceedings
in the matter of: The Deposition of
Maurice Heath
held on: November 30, 2009
at the location of: Philadelphia, Pennsylvania
were duly recorded and accurately transcribed under my
direction; further, that said proceedings are a true
and accurate record of the testimony given by said
witness; and that I am neither counsel for, related
to, nor employed by any of the parties to this action
in which this deposition was taken; and further that
I am not a relative nor an employee of any of the
parties nor counsel employed by the parties, and I am
not financially or otherwise interested in the outcome
of the action.


Notary Public/Reporter in and for
Commonwealth of Pennsylvania

Page 1

1 UNITED STATES COMMISSION ON CIVIL RIGHTS
 2 -----
 3 IN RE:
 4 NEW BLACK PANTHER PARTY
 5 -----
 6 Philadelphia, Pennsylvania
 7 Monday, January 11, 2010
 8
 9 TRANSCRIPT of testimony of KING SAMIR
 10 SHABAZZ, as taken by and before Cherilyn M.
 11 McCollum, a Registered Professional Reporter, at
 12 the HILTON GARDEN HOTEL, 1100 Arch Street,
 13 commencing at 1:08 o'clock in the afternoon.
 14
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 19
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 22
 23
 24

Page 2

1 B E F O R E:
 2 (BY TELEPHONE)
 3 ALEC DEULL, SPECIAL ASSISTANT
 4 NICK COLTEN, SPECIAL ASSISTANT
 5 JOHN MARTIN, SPECIAL ASSISTANT
 6 ALISON SCHMAUCH, SPECIAL ASSISTANT
 7 DOMINIQUE LUDVIGSON, SPECIAL ASSISTANT
 8
 9 A P P E A R A N C E S:
 10 UNITED STATES COMMISSION ON CIVIL RIGHTS
 11 OFFICE OF THE GENERAL COUNSEL
 12 BY: DAVID P. BLACKWOOD, ESQ.
 13 MAHA JWEIED, ESQ.
 14 624 Ninth Street, N.W.
 15 Suite 631
 16 Washington, D.C. 20424
 17 (202) 376-7622
 18 dblackwood@usccr.gov
 19 Attorneys for The Commission
 20
 21 A L S O P R E S E N T:
 22 KIMBERLY TOLHURST, ESQ. (BY TELEPHONE)
 23
 24

Page 3

1 I N D E X
 2 WITNESS PAGE
 3 KING SAMIR SHABAZZ
 4 By Mr. Blackwood 4
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Page 4

1 MR. BLACKWOOD: Good afternoon.
 2 Before we start, if you could give your full name
 3 to the court reporter.
 4 THE WITNESS: King Samir Shabazz.
 5 MR. BLACKWOOD: And would you please
 6 swear him in.
 7 KING SAMIR SHABAZZ, after having
 8 been first duly sworn, was examined and testified
 9 as follows:
 10 EXAMINATION
 11 BY MR. BLACKWOOD:
 12 Q. Mr. Shabazz, I appreciate your
 13 coming. You're here because you were subpoenaed.
 14 Is that correct?
 15 A. Yes.
 16 Q. And we've been waiting several hours
 17 now for Mr. Coard. Is that correct?
 18 A. Yes.
 19 Q. And you've attempted to reach
 20 Mr. Coard, but you've been unsuccessful. Is that
 21 correct?
 22 A. Yes.
 23 Q. In my conversations with you
 24 outside, you indicated that you intended to plead

1 the Fifth Amendment in regards to the subject
 2 matters to which you were subpoenaed. Is that
 3 correct?
 4 A. Plead the Fifth.
 5 Q. And that is because you believe your
 6 testimony might risk incriminating you?
 7 A. No, it's not.
 8 Q. Let me just hit some categories
 9 about if I was going to ask this specific category
 10 whether you would and do raise the Fifth Amendment.
 11 First, if I ask you any questions
 12 about your Election Day activities 2008?
 13 A. Plead the Fifth.
 14 Q. If I ask you any questions with
 15 regard to planning for the Election Day activities
 16 regarding 2008?
 17 A. Plead the Fifth.
 18 Q. If I ask you any questions about any
 19 investigation conducted by the New Black Panther
 20 Party with regard to your conduct?
 21 A. Plead the Fifth.
 22 MR. BLACKWOOD: Thank you very much.
 23 Now, as discussed, I'm not releasing
 24 you from the subpoena. I'm releasing you for

1 today. If Mr. Coard, for example, makes himself
 2 available, I will be here in Philadelphia today
 3 until about noon tomorrow. So if we can reschedule
 4 this, I would appreciate it. Otherwise, we'll take
 5 whatever action we think is appropriate to have the
 6 Court order the substance of the testimony that I'm
 7 seeking to be presented, but, otherwise, you are
 8 free today.
 9 (1:10 p.m.)
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1 C E R T I F I C A T E
 2 I, Cheryl M. McCollum, a Certified
 3 Court Reporter and Notary Public, do hereby certify
 4 that, prior to the commencement of the examination,
 5 the witness and/or witnesses were sworn by me to
 6 testify to the truth and nothing but the truth.
 7 I do further certify that the
 8 foregoing is a true and accurate computer-aided
 9 transcript of the testimony as taken
 10 stenographically by and before me at the time,
 11 place and on the date hereinbefore set forth.
 12 I do further certify that I am
 13 neither of counsel nor attorney for any party in
 14 this action and that I am not interested in the
 15 event nor outcome of this litigation.
 16
 17
 18
 19
 20
 21
 22 Certified Court Reporter
 23 XI02094
 24 Notary Public
 My commission expires 3-22-11
 Dated: _____

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1	conduct (1) 5:20	Good (1) 4:1	No (1) 5:7	releasing (2) 5:23,24
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we've (1) 4:16				
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whether (1) 5:10				
which (1) 5:2				
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Y				
Yes (3) 4:15,18,22				

U.S. COMMISSION ON CIVIL RIGHTS

+ + + + +

DEPOSITION

IN RE: :
: :
NEW BLACK PANTHER PARTY :
INVESTIGATION :
: :
:

Friday,
January 8, 2010

Washington, D.C.

DEPOSITION OF:

KRISTEN CLARKE

called for examination by Counsel for the
Commission, pursuant to Notice of Deposition,

in the offices of the United States Commission
on Civil Rights, located at 624 9th St., N.W.,
when were present on behalf of the respective
parties:

APPEARANCES:

On Behalf of the United States
Commission on Civil Rights:

of: DAVID BLACKWOOD, ESQ.
U.S. Commission on Civil Rights
Office of General Counsel
624 9th Street, N.W.
Suite 631
Washington, D.C. 20425

P: (202) 376-7622
F: (202) 376-1163
E: dblackwood@usccr.gov

On Behalf of the Deponent,
Kristen Clarke:

of: JOHN P. RELMAN, ESQ.
Relman & Dane, PLLC
1225 19th Street, N.W.
Suite 600
Washington, D.C. 20036-2456
P: (202) 728-1888
F: (202) 728-0848

E: jrelman@relmanlaw.com

of: JEFFREY D. ROBINSON, ESQ.
NAACP Legal Defense Fund
1444 Eye Street, N.W., 10th Floor
Washington, D.C. 20005
P: (202) 216-5567

F: (202) 682-1312

E: jrobinson@naacpldf.org

ALSO PRESENT:

COMMISSIONER TODD F. GAZIANO

COMMISSIONER MICHAEL YAKI (via telephone)

NICK COLTEN

ALEC DEULL (via telephone)

PAM DUNSTON

MAHA JWEIED

DOMINIQUE LUDVIGSON

JOHN MARTIN

ALISON SCHMAUCH (via telephone)

KIMBERLY TOLHURST

T-A-B-L-E O-F C-O-N-T-E-N-T-S

Witness	Direct
Kristen Clarke	9

E-X-H-I-B-I-T-S

Clarke Exhibit No.		Marked
1	7/30/09 Washington Times Article - Re: DOJ Reversal	8
2	Notice of Litigation - U.S. v. New Black Panther Party	15
A	E-mail from Judith Reed to Kristen Clarke re: FW: Phila Story	17
B	E-mail from Judith Reed to Kristen Clarke re: unwanted fame?	17
C	E-mail from Luz Lopez-Ortiz to Kristen Clarke Subject: from the clips today...	17
D	E-mail from Luz Lopez-Ortiz to Kristen Clarke	17
E	Letter from Kristen Clarke to Richard Minitier	13

1 P-R-O-C-E-E-D-I-N-G-S

2 10:02 a.m.

3 MR. BLACKWOOD: On the record.

4 Okay. Good morning. This is
5 David Blackwood, General Counsel of the U.S.
6 Commission on Civil Rights. We are here for
7 the deposition of Kristen Clarke.

8 I'm going to read into the record
9 those who are present starting with myself,
10 Dominique Ludvigson, Commissioner Gaziano,
11 John Martin, Sr. Attorney Advisor Maha Zweied
12 and Kim Tolhurst. Attorneys for Ms. Clarke,
13 would you identify yourselves?

14 MR. RELMAN: My name is John
15 Relman and I'm with the law firm of Relman &
16 Dane. And with me is Jeff Robinson who is
17 with the NAACP Legal Defense Fund.

18 MR. BLACKWOOD: Okay. Pam Dunston
19 is also here to help with the technical
20 aspects, Nick Colten, Special Assistant, and
21 we have one Special Assistant, Alec Deull, who
22 is on the telephone.

1 Good morning, Ms. Clarke.

2 MS. CLARKE: Good morning.

3 MR. BLACKWOOD: Appreciate your
4 coming.

5 MS. CLARKE: Yes.

6 MR. BLACKWOOD: Appreciate you
7 bringing those documents. We may be able to
8 expedite things even faster than we thought.
9 Let me just run through some initial things.

10 First, could you just state your
11 name and where you work for the record?

12 MS. CLARKE: Kristen Clarke, NAACP
13 Legal Defense and Educational Fund.

14 MR. BLACKWOOD: And your position
15 there?

16 MS. CLARKE: I'm Co-Director of
17 the Political Participation Group.

18 MR. DEULL: I'm sorry. I'm having
19 trouble hearing. I'm sorry to interrupt.

20 MR. BLACKWOOD: Can you hear me,
21 Alec?

22 MR. DEULL: I can hear you, yes.

1 You're the only person I can hear. Again, I'm
2 sorry to interrupt.

3 MR. BLACKWOOD: Ms. Clarke, could
4 you just speak in that just so we can see if
5 he's hearing it clearly?

6 MS. CLARKE: Kristen Clarke, NAACP
7 Legal Defense and Educational Fund.

8 MR. BLACKWOOD: Alec, could you
9 hear that?

10 MR. DEULL: Barely.

11 (Off the record comments.)

12 MR. BLACKWOOD: Are you on a
13 speaker phone, Alec?

14 MR. DEULL: No, and I've got the
15 volume turned all the way up on my end.

16 (Off the record comments.)

17 MR. BLACKWOOD: Alec, Pam seems to
18 think that the problem is at your problem
19 because it seems to be picking up.

20 MR. DEULL: Okay. I can hear you
21 and I can hear Pam. But I can barely hear Ms.
22 Clarke and I couldn't really hear her

1 attorneys at all.

2 MR. BLACKWOOD: Okay. What we're
3 going to try to do is switch one of the
4 microphones and see if that works.

5 MR. DEULL: I appreciate it.
6 Thank you.

7 COMMISSIONER GAZIANO: Is it
8 possible to turn up the volume of her mike or
9 something?

10 (Off the record comments.)

11 MR. BLACKWOOD: I think we can go
12 off the record.

13 (Whereupon, the above-entitled
14 matter went off the record at 10:05 a.m and
15 resumed at 10:06 a.m.)

16 MR. BLACKWOOD: On the record.
17 Now I've put before you several exhibits and
18 let's just start with Exhibit 1 which is a
19 copy of a Washington Times article.

20 (Whereupon, the above-referred to
21 document was marked as Clarke
22 Exhibit No. 1 for identification.)

1 And it's dated July 30, 2009 and I
2 direct you to page three of that document
3 which is the part that pertains to you about
4 halfway down the page. If you would read to
5 yourself the -- Well, I'll read into the
6 record the following paragraph and then I have
7 some questions I'd like to ask you.

8 "Kristen Clarke, Director of
9 Political Participation at the NAACP Legal
10 Defense Fund in Washington, however, confirmed
11 to The Times that she talked about the case
12 with lawyers at the Justice Department and
13 shared copies of the complaint with several
14 persons. She said, however, her organization
15 was not involved in the decision to dismiss
16 the civil complaint."

17 DIRECT EXAMINATION

18 BY MR. BLACKWOOD

19 Q Ms. Clarke, can you tell me about
20 that representation? First off, is it
21 accurate?

22 A No, it is not.

1 Q Is any part of it accurate?

2 A I'm Co-Director of the Political
3 Participation Group at the NAACP Legal Defense
4 and Educational Fund. I confirmed that I
5 received a copy of the -- I did not indicate
6 that I talked about the case with lawyers at
7 the Justice Department.

8 Q Okay. Did you -- First off, let
9 me make a distinction between what you
10 represented to the reporter or did not
11 represent to the reporter and then later I
12 want to ask about did these events actually
13 occur one way or the other.

14 As far as reporting to the -- or
15 your discussion with The Washington Times
16 reporter, you're saying now you did not say
17 that you had any contact with DOJ attorneys.

18 MR. RELMAN: Hang on a second.
19 Let's be clear. I mean, I'm going to object
20 to -- The subject of this deposition is
21 communications that she had with the
22 Department of Justice. I want to be clear.

1 Are you asking her about what she talked to
2 The Washington Times reporter about or are you
3 asking her about the accuracy of these
4 statements that are in --

5 MR. BLACKWOOD: I'm taking it in
6 two parts.

7 BY MR. BLACKWOOD:

8 Q First, I'm just asking as I
9 understand it and we'll get your exhibit in
10 just a minute about the letter you wrote to
11 The Washington Times. You're saying that --
12 The first statement -- I'll be specific about
13 what I'm referring to -- that you talked about
14 the case with lawyers at the Justice
15 Department. You did not say that to The
16 Washington Times reporter.

17 A That's correct.

18 Q Okay.

19 MR. RELMAN: Well wait. Objection
20 here. What I'm saying is that this is not an
21 inquiry to what she talked to The Washington
22 Times reporter about. If you want to ask her

1 about whether she talked to the Department of
2 Justice, that's appropriate. But that's what
3 we're here to talk about.

4 So I want to be clear. Are you
5 asking her about the facts of whether she
6 spoke with the Department of Justice about
7 this matter or are you asking her about her
8 conversation with The Washington Times
9 reporter?

10 MR. BLACKWOOD: As I said before,
11 I was making a distinction between the two.
12 But frankly I don't care what she said to The
13 Washington Times reporter.

14 MR. RELMAN: Okay. So then let's
15 be clear then. The question then that is now
16 pending that you have to her is what -- is it
17 accurate that she talked with the Department
18 of Justice.

19 MR. BLACKWOOD: No. Let's start
20 first.

21 BY MR. BLACKWOOD:

22 Q Did you have a conversation with

1 The Washington Times reporter?

2 A Yes.

3 Q Fine. Now let's -- Why don't we
4 skip to the last exhibit in your pile which is
5 the letter you wrote to The Washington Times
6 which is Exhibit E. It should be in front of
7 you.

8 (Whereupon, the above-referred to
9 document was marked as Clarke
10 Exhibit E for identification.)

11 MR. RELMAN: I don't know that we
12 have that here. We've got --

13 MR. BLACKWOOD: It's this letter.

14 MR. RELMAN: We've got Exhibit 1.

15 MR. BLACKWOOD: You should have
16 Exhibits 1 and 2. I'm sorry.

17 Mr. Court Reporter.

18 (Off the record comments.)

19 MR. BLACKWOOD: Okay. I just want
20 to get this out of the way because you're
21 correct, Mr. Relman. My concern is what
22 actually happened and not The Washington

1 Times.

2 BY MR. BLACKWOOD:

3 Q Exhibit E is a letter that you
4 wrote to The Washington Times. Is that
5 correct?

6 A That's correct.

7 Q And that reflects your position
8 with regard to your interview with The
9 Washington Times reporter. Is that correct?

10 A Yes, it does.

11 MR. BLACKWOOD: Okay. Thank you.
12 Now let's talk about what context you did or
13 did not have with the Justice Department. In
14 regards to the following questions, I'm going
15 to referring the case, the litigation, etc.,
16 and I'm in every instance referring to what
17 you have in front of you as Exhibit 1. I'm
18 sorry. It should be Exhibit 2 which is a
19 lawsuit styled, The United States of America
20 v. The New Black Panther Party For Self
21 Defense, which was filed in the Eastern
22 District of Pennsylvania. Unless I indicate

1 otherwise that is the lawsuit I am referring
2 to if I use the term "lawsuit case," etc.

3 Okay?

4 (Whereupon, the above-referred to
5 document was marked as Clarke
6 Exhibit No. 2 for identification.)

7 THE WITNESS: Okay.

8 BY MR. BLACKWOOD:

9 Q All right. Did you have any
10 conversation with anyone at the Justice
11 Department with regard to the litigation?

12 A I learned about the fact of
13 filing, the fact that this case was filed,
14 from a Justice Department attorney.

15 Q And who was that?

16 A Yvette Rivera.

17 Q And who is she?

18 A She is an attorney in the Civil
19 Rights Division of the Department in the
20 Voting Section.

21 Q And did you learn about that
22 approximately -- Well, tell me when you

1 learned about it approximately.

2 A I believe it was January 8th of
3 2009.

4 Q And how did you learn that?

5 A Through a phone call.

6 Q Who called who?

7 A She called me.

8 Q And what was the purpose of the
9 call?

10 MR. RELMAN: Objection. I mean --

11 MR. BLACKWOOD: Well, she didn't
12 know the purpose.

13 BY MR. BLACKWOOD:

14 Q What did she say to you and what
15 did you say to her?

16 A This case has been filed. That
17 was the extent of the phone call.

18 Q Okay. Did you subsequently have
19 any other contacts with anybody at the Justice
20 Department with regard to the litigation?

21 A No.

22 MR. BLACKWOOD: Before you should

1 -- Let me ask. Mr. Court Reporter, she can
2 have all the exhibits. Now the --

3 (Off the record comments.)

4 MR. BLACKWOOD: The Court Reporter
5 just placed before you Exhibits A through D I
6 believe which are exhibits that you brought
7 with you here today.

8 (Whereupon, the above-referred to
9 documents were marked as Clarke
10 Exhibits A-D for identification.)

11 BY MR. BLACKWOOD:

12 Q Can you tell me what Exhibit A is?

13 A Exhibit A is an email that was
14 sent to me on January 13th.

15 Q 2009, correct?

16 A 2009. That's correct.

17 Q And then the email appears to be
18 from Judith Reed. Who is she?

19 A Judith Reed is an attorney in the
20 Civil Rights Division of the Justice
21 Department.

22 Q And is it typical for Ms. Reed to

1 send you just news clips of this kind?

2 A No.

3 Q Did you talk to Ms. Reed about the
4 content of this email?

5 A No, I did not.

6 Q The next exhibit, Exhibit B, is
7 dated July 31, 2009. I'm just giving you --
8 I'll ask you in a minute about that particular
9 email. But between the time of the first
10 email on Exhibit A, January 13, 2009 and then
11 July 31, 2009, do you recall having any
12 conversations or any communications of any
13 kind with anybody at DOJ about the New Black
14 Panther litigation?

15 A Now again as I indicated earlier,
16 I learned about the fact of the filing from a
17 Justice Department attorney. I received the
18 email that we just referenced that also make
19 mention of the fact of filing. Beyond that,
20 there were no additional contacts about the
21 litigation itself.

22 Q So if I -- The answer to the

1 question whether you talked about the case
2 with lawyers at the Justice Department would
3 simply be wrong. That's an incorrect
4 statement.

5 A That's incorrect. Repeat the
6 question.

7 Q All right. If I said that or it
8 was represented that you had talked about the
9 case with lawyers at the Justice Department
10 that would be an incorrect statement.

11 A That's incorrect.

12 Q Okay. I'm going to have -- It may
13 be very -- a lot of negative questions, but I
14 just want to make sure about some things. So
15 I'm going to mention some names. It sounds
16 like I know what the answer is. But did you
17 talk to anybody at Justice about the
18 litigation with Loretta King?

19 A No.

20 Q Christopher Coats?

21 A No.

22 Q Laura Coats?

1 A No.

2 Q Judith Reed other than the email
3 that you already referenced?

4 A No.

5 Q Bob Berman?

6 A No.

7 Q Spencer Overton?

8 A No.

9 Q Thank you. Next if I could
10 reference Exhibit B. Would you tell me what
11 that is?

12 A Exhibit B is an email from Judith
13 Reed to myself dated July 31st of 2009.

14 Q Now that would be the day after
15 the article ran in The Washington Times. Is
16 that correct?

17 A This is the day after the July
18 30th article that appeared in The Washington
19 Times.

20 Q Okay. And did you respond or
21 contact Ms. Reed?

22 A No.

1 Q Why not?

2 A There was -- There was just no
3 response. The article was false. Let me --
4 No response.

5 Q Okay. Who was Judith -- Why would
6 Judith Reed be sending this to you? By that,
7 I mean do you know Judith Reed?

8 A Yes, I do know her.

9 Q And how do you know her?

10 A She's a former colleague.

11 Q Okay. You worked at the Justice
12 Department, correct?

13 A Yes.

14 Q All right. And that's where you
15 knew Ms. Reed?

16 A Yes.

17 Q How long were you at the Justice
18 Department?

19 A Between 2000 and 2006.

20 Q I'm sorry. There was a sound.
21 Between 2000 and 2006?

22 A That's correct.

1 Q And what was your position then?

2 A I was a trial attorney in the
3 Voting Section between 2000 and 2003 and a
4 prosecutor in the Criminal Section of the
5 Civil Rights Division between 2003 and 2006.

6 Q Did Ms. Reed send you other
7 articles like this? I don't mean about the
8 Black Panthers, but just generally she would
9 send you emails.

10 MR. RELMAN: Objection. That is
11 beyond the scope of this inquiry. Whether she
12 sent her other emails has nothing to do with
13 what's going on here. The proper focus, Mr.
14 Blackwood, is communications that she had with
15 the Department of Justice about the Black
16 Panther litigation as you framed it. Whether
17 she had communications with Ms. Reed on other
18 matters is irrelevant.

19 MR. BLACKWOOD: Mr. Relman, to be
20 clear, I'm not asking about the substance of
21 any of those things. I'm trying to establish
22 is this an uncommon occurrence to get emails

1 from Ms. Reed or is it common. That's the end
2 of the question.

3 MR. RELMAN: You can answer that
4 question yes or no.

5 THE WITNESS: I get emails all
6 throughout the day from many sources and it's
7 neither common nor uncommon.

8 BY MR. BLACKWOOD:

9 Q Okay. Is Ms. Reed a friend?

10 A Yes, she is.

11 Q Okay. Would you look at Exhibit C
12 please? And if you could identify that.

13 A This is an email that was sent to
14 me from Luz Lopez-Ortiz on July 31, 2009.

15 Q And again this includes
16 information relating to the article that ran
17 in The Washington Times.

18 A Yes, it does.

19 Q And who is Ms. Ortiz or Lopez-
20 Ortiz?

21 A She is an attorney in the Civil
22 Rights Division of the Justice Department.

1 Q And again did you know her from
2 your prior work there?

3 A Yes, she's a former colleague.

4 Q Okay. Is she also a friend?

5 A Yes.

6 Q Okay. Did you call Ms. Ortiz or
7 otherwise communicate with her about this
8 email?

9 A I did respond to this message.

10 Q Okay, and we'll get to that.
11 That's the next exhibit. Did you call her or
12 otherwise communicate with her other than the
13 email that you have provided?

14 A I --

15 MR. RELMAN: Objection. Are you
16 framing --

17 MR. BLACKWOOD: About this
18 particular email.

19 MR. RELMAN: Okay. You can answer
20 that.

21 THE WITNESS: The only
22 communication that I may have had with her was

1 to voice my strong reaction to The Washington
2 Times article which contained false and
3 misleading statements about me.

4 Q And that's what you told her?

5 A That would be the only thing that
6 we discussed.

7 Q Okay. Let's go to Exhibit D then
8 and can you identify that?

9 A This is the same email which
10 includes a response from me and then a
11 subsequent response from Ms. Lopez-Ortiz also
12 on July 31st of 2009.

13 Q Okay. Now let me -- Because
14 emails sometimes it's unclear who is saying
15 what. I just want to make sure whether it's
16 your understanding. The first communication
17 from -- was from Ms. Lopez-Ortiz and she
18 indicates "Subject: From the clips today --
19 interesting stuff." Correct?

20 A That's correct.

21 Q Okay, and your response is "Lies."
22 Correct?

1 A That's correct.

2 Q All right. And then her response
3 to you is "They are disgusting. This is
4 C.C.'s doing." C.C. being C.C., C-C and
5 that's the response back to you.

6 A Yes, that's correct.

7 Q Do you know who she is referring
8 to when she says, C.C.?

9 A I don't know. I'm not certain.

10 Q Did you ask her who she meant?

11 A No.

12 Q Is it safe to say you were upset
13 about the representations made by The
14 Washington Times?

15 A Yes.

16 Q And that led to you sending the
17 letter that is -- what is it -- Exhibit D?

18 A That's --

19 Q Exhibit E, correct?

20 A That's correct.

21 Q Did you follow up with -- Bear
22 with me. Did you follow up with The

1 Washington Times other than the letter or did
2 you receive any response?

3 MR. RELMAN: Objection. I think
4 it goes beyond the scope of this deposition.
5 Mr. Blackwood, what's the purpose?

6 MR. BLACKWOOD: I'm just trying to
7 follow up whether The Washington Times had any
8 representation. Counsel, I'm allowed to
9 follow through a logical line because there
10 may be other witnesses. If The Washington
11 Times says, for example, they have a tape or
12 whatever, I'd like to find out.

13 MR. RELMAN: How is that relevant
14 to the inquiry here?

15 MR. BLACKWOOD: It goes veracity
16 and frankly it is clearly relevant. All I'm
17 asking -- You produced, by the way, the letter
18 which is a letter to a third party and
19 outside, if anything, the scope as well. I'm
20 just asking did The Washington Times respond
21 to your letter.

22 MR. RELMAN: You can answer that

1 yes or no.

2 THE WITNESS: Did they respond to
3 this letter? No, and I thought it unfortunate
4 that they I don't believe ever published or
5 ran it.

6 BY MR. BLACKWOOD:

7 Q Okay, and just to be clear, so
8 they didn't call you, they didn't run a
9 retraction, none of these things.

10 A After this letter, no.

11 Q Okay. Now given your testimony as
12 I mentioned before we even started, I have a
13 variety of questions I prepared assuming the
14 veracity of The Washington Times articles. So
15 bear with me. I'm going to skip around some
16 of them just to see if there are relevant
17 questions still given your testimony.

18 With regard to the New Black
19 Panther litigation, did you talk to anybody
20 who was actively involved in that and by
21 "that" I mean there are other parties.
22 There's the Department of Justice. There were

1 also defendants. Did you talk to any of the
2 defendants?

3 MR. RELMAN: Hang on one second.
4 I just want to be clear. When you say "the
5 New Black Panther Party litigation," you're
6 referring now once again to the case.

7 MR. BLACKWOOD: That's correct.

8 MR. RELMAN: Okay. To the
9 complaint.

10 MR. BLACKWOOD: Not to general
11 things that we're talking about with
12 colleagues about the validity or anything
13 else. The parties to litigation reflected in
14 Exhibit 2.

15 MR. RELMAN: Okay. You can
16 answer.

17 THE WITNESS: No.

18 BY MR. BLACKWOOD:

19 Q When you were working at the
20 Department of Justice, did you work -- I'm
21 going to mention some names and ask if you
22 worked or they were colleagues there.

1 Christopher Coats?

2 A Yes.

3 Q What was his position when you
4 were there?

5 A This is -- would be back in 2003
6 when I left the section. My memory seems to
7 be that he was special counsel in the Voting
8 Section at that time.

9 Q How about Robert Popper?

10 A I don't believe I've ever worked
11 with Mr. Popper.

12 Q Okay. On that email, I don't want
13 to be redundant, but I want to be clear on
14 Exhibit D. When Lopez-Ortiz wrote you about
15 it's C.C.'s doing, you didn't ask in any way
16 about who she was referring to?

17 MR. RELMAN: Objection. Asked and
18 answered. You can answer it again.

19 THE WITNESS: No.

20 BY MR. BLACKWOOD:

21 Q But at the same time to be
22 consistent you were saying you don't know who

1 C.C. is.

2 MR. RELMAN: Objection. That
3 wasn't her testimony.

4 MR. BLACKWOOD: All right.

5 BY MR. BLACKWOOD:

6 Q If you can tell me, did you know
7 who C.C. is or did you suspect who C.C. was?

8 A I don't know. I suspect.

9 Q Who did you suspect?

10 A This is just guesswork here.

11 Q Correct. That's right.

12 MR. RELMAN: No. Hang on a
13 second. Ms. Clarke, you're not to guess. Her
14 prior testimony said she wasn't certain who
15 C.C. was and she's not going to guess. I'm
16 instructing her not to guess.

17 BY MR. BLACKWOOD:

18 Q Not to guess, who did you assume?

19 MR. RELMAN: Again, this is not
20 about assumptions. It's not about guesswork.
21 You asked if she knew who C.C. was. She said
22 she was not certain.

1 MR. BLACKWOOD: Counsel, I'm not
2 certain about many things, but someone used
3 just someone's initials to write to your
4 client. Obviously, that person who wrote to
5 her assumed that she would know who she was
6 referring to.

7 BY MR. BLACKWOOD:

8 Q So I think that it is clear and
9 relevant to ask who did you assume it meant
10 to. I understand you don't have 100 percent
11 certainty because it was someone else's
12 asking. But who did you assume she was
13 referring to?

14 MR. RELMAN: You can answer this
15 question. Once again, you've already
16 testified to it. You can answer it to the
17 best of your ability again, but I'm cautioning
18 you and instructing you. Do not guess or
19 speculate as to who C.C. is.

20 A At the time that I saw this email
21 I did not know who C.C. was. My only reaction
22 again was a very strong reaction to the false

1 and misleading statements that are contained
2 in The Washington Times article.

3 Q Okay. So you're --

4 A That was the only focus, my only
5 focus, at the time of this exchange.

6 Q It wasn't a focus on who was C.C.

7 A My only focus again was a very
8 strong reaction to the false statements that
9 are contained in The Washington Times article.
10 At that moment, that was the only thing that
11 I was focused on.

12 Q Okay. I want to make sure or
13 follow up on one of the names I mentioned
14 before. To be clear, did you -- are you sure
15 that you did not have a conversation with
16 Laura Coats of the Justice Department with
17 regard to the litigation?

18 A As I indicated earlier, no. I
19 recall no such conversation with her.

20 MR. BLACKWOOD: Okay. At this
21 time, I have no questions, although I may come
22 back. Under our procedures, Commissioners may

1 ask questions in a round robin type thing.
2 But we have one Commissioner here who is
3 present. So, Commissioner Gaziano, I throw
4 the floor to him. But I may come back and ask
5 a few other questions after that.

6 DIRECT EXAMINATION (Cont.)

7 BY COMMISSIONER GAZIANO:

8 Q Thank you again for coming here
9 and for your friends and attorneys. Let me
10 begin with some of the people you said you did
11 not speak with. Do you know Loretta King?

12 A Yes.

13 Q Okay. How do you know her?

14 A I used to work in the Civil Rights
15 division of the Justice Department.

16 Q Okay. Do you know Laura Coats?

17 A Yes.

18 Q And who is she? What is her
19 position?

20 A I do not know. I believe she's an
21 attorney in the Voting Section. I don't know
22 her position or role.

1 Q But you've worked with her.

2 A No.

3 Q Oh, you don't know. How might you
4 have known her or do you remember?

5 A I believe I was introduced to her
6 at a conference. I can't recall how I met
7 her.

8 Q Okay.

9 A Nor do I know her well.

10 Q But you've known her for about how
11 many years?

12 A I would estimate one to two years.

13 Q Okay. Did you talk to anyone in
14 the White House --

15 A No.

16 Q -- about the New Black Panther
17 litigation?

18 A No.

19 Q Did you talk to anyone on the
20 Obama Transition team about the New Black
21 Panther litigation?

22 A No.

1 MR. RELMAN: Objection. I think
2 that goes beyond the scope of the inquiry.
3 We're here to talk about communications with
4 Government officials.

5 COMMISSIONER GAZIANO: I disagree,
6 but let me try to explain to both you and your
7 client why that is. As an experienced
8 Washington hand, we often if we're trying to
9 influence a public official and we don't
10 personally know that public official or even
11 sometimes if we do know that public official
12 we know that the bank shot, the indirect
13 route, is as effective, if not more effective,
14 sometime. Right?

15 MR. RELMAN: Objection. You don't
16 have to answer that question. Do not answer
17 that question.

18 COMMISSIONER GAZIANO: Why?

19 MR. RELMAN: Because her views
20 about how you influence a Government official
21 are not relevant to this inquiry.

22 COMMISSIONER GAZIANO: They're

1 relevant to her credibility of whether she is
2 an experienced political participation
3 director of a major and important institution.

4 MR. RELMAN: I've made my
5 objection. Do not answer that question.

6 COMMISSIONER GAZIANO: And I make
7 clear that I am asking for an answer.

8 MR. RELMAN: Okay, and I'm saying
9 do not answer.

10 COMMISSIONER GAZIANO: What is
11 your --

12 MR. RELMAN: Your next question,
13 Commissioner.

14 COMMISSIONER GAZIANO: No, what is
15 your --

16 MR. RELMAN: She is not going to
17 answer the question. Next question please.

18 COMMISSIONER GAZIANO: Is that --
19 Are you going to follow that advice of your --

20 THE WITNESS: I am going to follow
21 my lawyer's advice.

22 COMMISSIONER GAZIANO: Okay. That

1 will speed up the process. You're not a
2 potted plant either. So you can follow your
3 attorney's advice or not.

4 BY COMMISSIONER GAZIANO:

5 Q Okay. Did you speak to anyone in
6 the Obama Transition about the New Black
7 Panther litigation?

8 MR. RELMAN: At what period of
9 time are you asking her about?

10 COMMISSIONER GAZIANO: At any
11 time.

12 THE WITNESS: No.

13 BY COMMISSIONER GAZIANO:

14 Q Did you talk to anyone at
15 Covington & Burling who -- with the intent --
16 about the New Black Panther with the intent or
17 hope that they would talk to someone in either
18 the Justice Department, White House or the
19 rest of the Obama Administration about the New
20 Black Panther litigation?

21 MR. RELMAN: I object to the
22 question, but you may answer it to the extent

1 that the question is asking if you talked to
2 anyone with a purpose or intent of --

3 COMMISSIONER GAZIANO: Or hope.

4 MR. BLACKWOOD: Leave it at
5 purpose and intent.

6 MR. RELMAN: Purpose or intent of
7 effectuating a communication with the
8 Department of Justice.

9 THE WITNESS: No.

10 BY COMMISSIONER GAZIANO:

11 Q Did you talk with anyone -- I'm
12 not interested in who you may have talked with
13 regarding the case if you had no intent,
14 purpose or hope that they would communicate
15 with the Department. But did you talk to
16 anyone else about the New Black Panther
17 litigation with the purpose, intent or hope
18 that they would communicate to the White House
19 or the Justice Department or the rest of the
20 Administration about the litigation?

21 MR. RELMAN: Object to the
22 question, but you may answer it.

1 THE WITNESS: No, and again any
2 communications that I have had about this case
3 beyond merely sharing the fact of filing have
4 concerned the false and misleading statements
5 that appear in The Washington Times article
6 and subsequent editorial.

7 BY COMMISSIONER GAZIANO:

8 Q Okay. Well, go there then. I
9 agree with our general counsel that your
10 present assertion that the story is false is
11 relevant and that we need to probe that at
12 least a little bit.

13 Who did you speak with at The
14 Washington Times?

15 MR. RELMAN: Objection. I don't
16 understand the relevance of the reporter.

17 COMMISSIONER GAZIANO: It goes to
18 the credibility of her claim that they got it
19 wrong.

20 MR. RELMAN: Well.

21 MR. BLACKWOOD: If I might
22 respond.

1 MR. RELMAN: Yes. I --

2 MR. BLACKWOOD: I think it is
3 relevant in this fashion. We now have a clash
4 of versions of events and I understand your
5 point by saying Mr. Seper got that incorrect,
6 Mr. Seper being the person whose byline is
7 there. We're allowed to look into if there's
8 a clash of versions of event going to the core
9 of what this issue is. We're asked to follow
10 up about what contacts they had and when they
11 had them.

12 MR. RELMAN: You have specified,
13 Mr. Blackwood, in your letter that this is
14 about communications. This investigation,
15 this deposition, is about communications that
16 this witness had with the Department of
17 Justice and I'm allowing her to answer
18 questions with respect to the White House as
19 well. That is the focus of this
20 investigation.

21 The conversations that she had
22 with The Washington Times are not relevant to

1 that inquiry.

2 MR. BLACKWOOD: All right.

3 MR. RELMAN: One of the people --

4 COMMISSIONER GAZIANO: If I may,
5 it's my question time.

6 MR. BLACKWOOD: That's all right.

7 MR. RELMAN: I appreciate your
8 clarification, but this is --

9 COMMISSIONER GAZIANO: Please let
10 me respond. The Commission --

11 MR. RELMAN: Let me just clarify
12 my objection in full. My objection in full is
13 this is not an inquiry into her communications
14 with The Washington Times. This is not what
15 this is about.

16 COMMISSIONER GAZIANO: And please
17 don't interrupt me when I'm trying to explain
18 what the Commission's interest is. The
19 Commission established what the scope of the
20 investigation is pursuant to public documents
21 that have been released and I -- Either you've
22 gone over them or you had the ability to do

1 so.

2 The scope of our investigation is
3 broader than you indicate. I have not been a
4 party to some of the communications that
5 you've had with the general counsel. I
6 generally agree that that's the core of our
7 focus.

8 But we have a -- The witness is
9 saying here today that the facts in a
10 newspaper report are not true. She has
11 testified that she's spoke with the reporter.
12 I'm certainly entitled to see whether her
13 claim today is sound or whether it's not.

14 MR. RELMAN: Mr. Gaziano, let me
15 respond because I'm going to lay out my
16 objection. In the Notice of Deposition that
17 was sent to us, the subject matter of the
18 deposition is defined as "all information
19 relating to any communications by you with the
20 Department of Justice regarding acts of voter
21 intimidation by the New Black Panther Party
22 for self defense." That is the subject

1 matter. That's what we agreed to come here to
2 talk about. That I understand is the focus of
3 your inquiry.

4 COMMISSIONER GAZIANO: And --

5 MR. RELMAN: Whether -- Let me
6 finish, Mr. Gaziano, please. Whether or what
7 she said or what communications she had with
8 The Washington Times reporter is not relevant.
9 If you want to ask her whether the statements
10 in this article are true, you're free to do
11 that. You're free to do that and ask her if
12 she did have communications with the
13 Department of Justice.

14 But who she spoke to at The
15 Washington Times or what she said to The
16 Washington Times that is not the focus of this
17 inquiry and that is not a subject matter that
18 I'm going to have her testify about.

19 COMMISSIONER GAZIANO: It's a
20 ridiculous position you're maintaining.
21 Because what we're trying to resolve is
22 whether the statement that The Washington

1 Times reporter reported that she spoke with
2 Justice Department attorneys is true or not.

3 MR. RELMAN: And --

4 COMMISSIONER GAZIANO: And let me

5 --

6 MR. RELMAN: And she --

7 COMMISSIONER GAZIANO: And --

8 MR. RELMAN: She's already

9 testifying that --

10 COMMISSIONER GAZIANO: And it goes

11 to her denial of that report, who she spoke

12 with and what the conversation was.

13 Furthermore, we can call Ms. Clarke back and

14 I don't think she would like that. I don't

15 know if -- Your firm would enjoy the fees, but

16 I doubt that she would appreciate that. The

17 Commission probably wouldn't appreciate that.

18 So we ought not to be playing

19 games about something that is clearly central

20 --

21 MR. RELMAN: Mr. Gaziano, to --

22 COMMISSIONER GAZIANO: -- to what

1 she is trying to deny.

2 MR. RELMAN: She's already stated
3 she had no conversations with respect to these
4 issues that you're interested in with the
5 Department of Justice. That's the issue here,
6 not what she said to The Washington Times
7 reporter.

8 COMMISSIONER GAZIANO: One of the
9 issues is whether her denial today and the
10 denial in this letter, Exhibit E, is true.
11 And to get at that, I would like to ask a few
12 obviously relevant questions such who did you
13 speak with. Was it Mr. Seper or was it
14 someone else from The Washington Times?

15 MR. RELMAN: Objection, but you
16 can answer that question.

17 THE WITNESS: Jerry Seper is the
18 author of the article and, yes, the person I
19 spoke with.

20 BY COMMISSIONER GAZIANO:

21 Q Okay. Am I correct that he
22 initiated the telephone call to you?

1 A Yes.

2 Q Okay. What did he say relevant to
3 -- Well, did he indicate why he was calling
4 you?

5 MR. RELMAN: Objection. This goes
6 beyond the scope of this inquiry. Don't
7 answer that question.

8 COMMISSIONER GAZIANO: Are you
9 willing to refuse to answer the question?

10 THE WITNESS: I'm following my
11 counsel's advice.

12 COMMISSIONER GAZIANO: Okay.

13 BY COMMISSIONER GAZIANO:

14 Q Well, what did -- what was the
15 conversation you had with him?

16 MR. RELMAN: Objection. This goes
17 beyond the scope of this deposition. Don't
18 answer that question.

19 COMMISSIONER GAZIANO: How is it
20 going beyond the scope of the deposition to
21 test the claim in this exhibit that she did
22 not say certain things? I want to know what

1 she did say if she didn't say this.

2 BY COMMISSIONER GAZIANO:

3 Q What did you discuss about the New
4 Black Panther litigation?

5 MR. RELMAN: Objection. I want to
6 take a break for a moment and discuss this
7 with co-counsel.

8 (Commissioner Yaki joins
9 deposition via teleconference.)

10 COURT REPORTER: Is that
11 acceptable?

12 MR. BLACKWOOD: Yes, we can go off
13 the record for that purpose.

14 (Whereupon, the above-entitled
15 matter went off the record at 10:40 a.m. and
16 resumed at 10:42 a.m.)

17 MR. BLACKWOOD: Please go ahead
18 back on the record.

19 MR. RELMAN: Okay. Thank you. I
20 want to state my objection to the question.
21 Let me say once again that the subject matter
22 of this deposition is communications with the

1 Department of Justice. This witness has
2 testified now in response to Mr. Blackwood's
3 questions that she had no communications with
4 the Department of Justice about this
5 litigation other than what she's spoken to.

6 This is not an inquiry about who
7 she talked to at The Washington Times or any
8 other place about this litigation. This
9 Commission has no authority to inquiry into
10 that. It goes to core First Amendment values
11 and issues and rights and, furthermore, this
12 is not a libel suit against The Washington
13 Times. So I'm instructing the witness not to
14 answer for those reasons the question that has
15 been put to her.

16 COMMISSIONER GAZIANO: Since
17 Commissioner Yaki has joined, let me state the
18 relevance of my question which is -- I'm not
19 even sure that Commissioner Yaki is aware.
20 She has -- The witness has shared a letter
21 with us and she has also testified that the
22 statements in The Washington Times paper are

1 not true. And so I am and I maintain that it
2 is highly relevant to test the veracity of
3 that assertion today to ask her what she did
4 discuss with the reporter.

5 BY COMMISSIONER GAZIANO:

6 Q But based on your prior practice,
7 I assume you are going to follow your
8 counsel's advice and refuse to answer that
9 question at this time.

10 A I'm following my counsel's advice.

11 Q Okay. Well, I don't know if we'll
12 have to call you back. But for now let me
13 move onto what may be my last question.

14 MR. BLACKWOOD: If I could. I was
15 -- before we ask the next question, I was
16 informed by the Court Reporter that we failed
17 to have you sworn in. So I would like to have
18 you sworn in at this time with the
19 understanding that this applies to your
20 testimony up to this point. Is that
21 acceptable?

22 THE WITNESS: Yes.

1 MR. BLACKWOOD: Mr. Court
2 Reporter.

3 WHEREUPON,

4 KRISTEN CLARKE

5 was called as a witness by Counsel and, having
6 been first duly sworn, was examined and
7 testified as follows:

8 MR. BLACKWOOD: Sorry.

9 COMMISSIONER GAZIANO: And do you
10 reaffirm now on the record that what you've
11 said before is also --

12 THE WITNESS: Yes.

13 BY COMMISSIONER GAZIANO:

14 Q Okay. I think maybe my last
15 question at least unless other questions are
16 raised is The Washington Times also says that
17 you shared copies of the complaint or you
18 forwarded copies of the complaint. Did you
19 forward copies of the New Black Panther
20 complaint?

21 A I did.

22 Q Okay. Who did you share copies of

1 the complaint with?

2 MR. RELMAN: Well, if this
3 question -- If your question goes to whether
4 she shared copies of the complaint with
5 someone at the Department of Justice you can
6 answer that question. If you shared copies of
7 the complaint with anybody else, then you are
8 not to answer that question.

9 COMMISSIONER GAZIANO: Let me make
10 a two-part question.

11 BY COMMISSIONER GAZIANO:

12 Q Did you share -- I don't know why
13 you would need to share copies of the
14 complaint with the people at Department of
15 Justice. But let me -- Since they initiated
16 it, did you share/forward copies of the
17 complaint with anyone in the Department of
18 Justice, White House or rest of the Obama
19 Administration?

20 A No.

21 Q Did you share copies of the
22 complaint with anyone on the Obama Transition

1 Team?

2 A No.

3 Q Okay. As we've established
4 sometimes it is more effective to try to reach
5 someone through someone else. Did you share
6 a copy of the complaint in the New Black
7 Panther litigation -- Or who else did you
8 share a copy of the complaint in the New Black
9 Panther litigation?

10 MR. RELMAN: Objection. Do not
11 answer that question. It is over broad. This
12 is not an inquiry into her communications --

13 COMMISSIONER GAZIANO: Okay.

14 MR. RELMAN: -- with any person in
15 the world about this litigation. It is an
16 inquiry into whether she had communications
17 with the Department of Justice and we have
18 allowed questions with respect to the White
19 House and in this case the Obama Transition
20 Team. She's answered that question that she
21 did not.

22 Otherwise, your inquiry is over

1 broad. You have no authority in inquire into
2 that. It goes to core First Amendment values
3 and you have no right to do that.

4 COMMISSIONER GAZIANO: Absolutely
5 we have a right to investigate this. The
6 scope of our discovery is even broader than
7 the Federal rules and as you know this is
8 relevant to federal -- But let me ask it a
9 different way.

10 BY COMMISSIONER GAZIANO:

11 Q Did you -- Who else or did you
12 forward a copy of the complaint with anyone
13 with the hope, intent or purpose that it might
14 be dismissed?

15 MR. RELMAN: Objection to the
16 question as asked, but you may answer that
17 question.

18 THE WITNESS: No.

19 BY COMMISSIONER GAZIANO:

20 Q Why did you forward copies of the
21 complaint?

22 MR. RELMAN: Objection. First of

1 all, who are you referring to? Forward copies
2 to whom?

3 COMMISSIONER GAZIANO: You've
4 prevented her from answering to whom. So I
5 just want to know for what purpose were you
6 forwarding copies of the complaint in the New
7 Black Panther litigation.

8 MR. RELMAN: You can answer that
9 question.

10 THE WITNESS: For informational
11 purposes only.

12 BY COMMISSIONER GAZIANO:

13 Q What kind of informational
14 purposes?

15 A It is a practice to share
16 information with others that they may find of
17 interest.

18 Q Sure. Sometimes you share a funny
19 joke because you want to provide humor.
20 Sometimes you provide professional advice
21 because -- What was your purpose? What type
22 of information were you hoping to share in

1 forwarding the complaint in the New Black
2 Panther litigation?

3 A Again, merely sharing the fact of
4 filing with others who may have found it
5 interesting that a federal voting rights case
6 had been filed.

7 Q Hm. Isn't it easier to just write
8 in an email a case was filed than to actually
9 attach a complaint?

10 MR. RELMAN: Objection. That
11 question has no bearing on this investigation
12 whatsoever.

13 COMMISSIONER GAZIANO: It has a
14 bearing on her previous answer which says to
15 merely alert them to the fact of filing and
16 not anything contained herein.

17 MR. RELMAN: Mr. Commissioner, I'm
18 sorry. This is just wasting our time here.
19 You know, the question about whether it is
20 more effective to simply say a complaint's
21 been filed than to forward it is, the
22 complaint itself, a question that serves no

1 purpose or intent if the inquiry here is to
2 find out if she had communications with the
3 Department of Justice which she said she did
4 not have.

5 Next question please. Don't
6 answer that.

7 COMMISSIONER GAZIANO: I'm trying
8 to follow up on her answer. Are you --

9 BY COMMISSIONER GAZIANO:

10 Q Why else besides informing them of
11 the fact that the complaint was filed -- What
12 other reasons did you have to forward the
13 complaint?

14 MR. RELMAN: She -- If you had any
15 other reasons, you can answer the question.

16 THE WITNESS: I -- There is no
17 other purpose.

18 COMMISSIONER GAZIANO: No other
19 purpose. Okay. Well, I think I will rest at
20 that point.

21 MR. BLACKWOOD: Commissioner Yaki,
22 do you have any questions? Commissioner Yaki.

1 COMMISSIONER YAKI: Yes, I'm here.
2 I'm sorry. I was momentarily stupefied by the
3 line of questioning that was going on. The --
4 I really don't have any questions per se.

5 Well, I'm going to ask a question.
6 If counsel objects I will -- well, I'll ask my
7 question right now.

8 DIRECT EXAMINATION (Cont.)

9 BY COMMISSIONER YAKI:

10 Q Ms. Clarke, my name is Michael
11 Yaki. I'm a member of the U.S. Commission on
12 Civil Rights. Just so you know for the record,
13 I have serious qualms about the nature of this
14 investigation and my question goes really not
15 to your percipient knowledge of --

16 Well, let me ask you this
17 question. Number one, Ms. Clarke, you were
18 not present at Philadelphia during the time of
19 the events alleged in the Department of
20 Justice complaint, were you?

21 A No, I was not.

22 Q You were not a percipient witness

1 -- Is it fair to say you were not a percipient
2 witness to the events that went on in
3 Philadelphia? Is it not?

4 MR. RELMAN: I'm sorry. I didn't
5 understand that.

6 MS. DUNSTON: Commissioner Yaki,
7 this is Pam. That's not coming over clear.
8 Can you restate that please?

9 COMMISSIONER YAKI: Yes.

10 BY COMMISSIONER YAKI:

11 Q Is it fair to say you were not
12 percipient witness to the events in
13 Philadelphia that were alleged at the time of
14 the complaint?

15 MR. RELMAN: I'm sorry. This is
16 counsel. Commissioner, I apologize. I just
17 don't understand the term you're using
18 "percipient," as I understand it, witness.
19 Could you rephrase that?

20 COMMISSIONER YAKI: Okay.

21 BY COMMISSIONER YAKI:

22 Q You were not physically present to

1 witness any of the events in Philadelphia?

2 A No, I was not.

3 Q Were you -- May I ask a more open-
4 ended question? You are -- you have some
5 expertise in the laws surrounding voting
6 rights. Would that be a fair
7 characterization?

8 A Yes.

9 Q It is? My question goes to this.
10 Prior to the complaint and prior to the events
11 alleged in the complaint against the New Black
12 Panther Party, in your experience as a lawyer
13 engaged in -- prior to the time of the filing
14 of the New Black Panther Party, prior to the
15 events alleged at the time of the New Black
16 Panther Party complaint, in your expertise as
17 a voting rights lawyer, can you recall
18 incidents, any incident, prior to that
19 incident, prior to that time in which you
20 believe that there were violations of Section
21 11(b) of the Voting Right Act?

22 MR. RELMAN: I'm going to object

1 to the question. It goes beyond the scope of
2 the deposition. I'm going to instruct the
3 witness not to answer.

4 COMMISSIONER YAKI: Okay. That's
5 fine.

6 BY COMMISSIONER YAKI:

7 Q One last question, Ms. Clarke.
8 Did you involve a -- Were you involved in and
9 when I say involved, did you review and at
10 suggestions to or were consulted for the
11 filing of the New Black Panther Party
12 complaint?

13 MR. RELMAN: You can answer that
14 question.

15 THE WITNESS: I didn't catch the
16 latter part of your question, Commissioner.
17 By whom?

18 BY COMMISSIONER YAKI:

19 Q Were you -- Before a complaint was
20 filed, did you review the complaint brought by
21 the Black Panther Party?

22 A No, I did not.

1 COMMISSIONER YAKI: Okay. That's
2 all the questions I have.

3 MR. BLACKWOOD: I just have one
4 question to clarify matters.

5 BY MR. BLACKWOOD:

6 Q Did you receive -- You've got a
7 copy of the complaint. Did someone send to
8 you or did you get it yourself?

9 A I obtained it myself.

10 MR. BLACKWOOD: Thank you. Okay.
11 I have no further questions.

12 Does anyone have any further
13 questions before we terminate the deposition?

14 COMMISSIONER GAZIANO: Just to
15 follow up on yours.

16 BY COMMISSIONER GAZIANO:

17 Q From the court? Where did you
18 obtain the complaint?

19 A We did an internal -- We made an
20 internal effort to track it down through PACER
21 perhaps. I'm not sure exactly how.

22 Q So you're not sure. There was

1 someone --

2 A It was an internal -- internally
3 obtained.

4 Q So perhaps some one on your staff
5 obtained it. Is it the --

6 A A paralegal on my staff tracked
7 down a copy of the complaint. I'm not sure if
8 she got it from PACER.

9 Q So it's possible it was a public
10 source. Is it possible it was --

11 A It was absolutely a public source.

12 COMMISSIONER GAZIANO: Okay.

13 Thank you.

14 MR. BLACKWOOD: With that, the
15 deposition is concluded. Thank you very much.

16 THE WITNESS: You're very welcome.

17 MR. BLACKWOOD: Off the record.

18 (Whereupon, the taking of
19 deposition in the above-entitled matter was
20 concluded at 10:56 a.m., signature having not
21 been waived.)

22

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From: "Reed, Judith (CRT)" <Judith.Reed@usdoj.gov>
To: "KRISTEN CLARKE" <kclarke@NAACPLDF.ORG>
Date: 1/13/2009 1:04 PM
Subject: FW: Phila story

Don't know if you were aware of this latest lawsuit; below is a news article as well

Justice Department Seeks Injunction Against New Black Panther Party Lawsuit Seeks to Prohibit Voter Intimidation in Future Elections
WASHINGTON - The Justice Department today filed a lawsuit under the Voting Rights Act against the New Black Panther Party for Self-Defense and three of its members alleging that the defendants intimidated voters and those aiding them during the Nov. 4, 2008, general election.

The complaint, filed in the United States District Court in Philadelphia, alleges that, during the election, Minister King Samir Shabazz and Jerry Jackson were deployed at the entrance to a Philadelphia polling location wearing the uniform of the New Black Panther Party for Self-Defense, and that Samir Shabazz repeatedly brandished a police-style baton weapon.

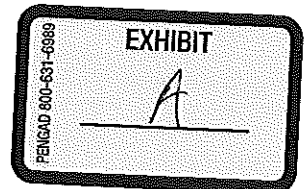
"Intimidation outside of a polling place is contrary to the democratic process," said Acting Assistant Attorney General Grace Chung Becker. "The Voting Rights Act of 1965 was passed to protect the fundamental right to vote and the Department takes allegations of voter intimidation seriously."

According to the complaint, party Chairman Malik Zulu Shabazz confirmed that the placement of Samir Shabazz and Jackson in Philadelphia was part of a nationwide effort to deploy New Black Panther Party members at polling locations on Election Day. The complaint alleges a violation of Section 11(b) of the Voting Rights Act of 1965, which prohibits intimidation, coercion or threats against "any person for voting or attempting to vote." The Department seeks an injunction preventing any future deployment of, or display of weapons by, New Black Panther Party members at the entrance to polling locations.

The New Black Panther Party for Self-Defense, which claims active chapters nationwide, is distinct from the Black Panther Party founded by Bobby Seale in the 1960s.

The Civil Rights Division enforces the Voting Rights Act of 1965. To file complaints about discriminatory voting practices, including acts of harassment or intimidation, voters may call the Voting Section of the Civil Rights Division at 1-800-253-3931. More information about the Voting Rights Act and other federal voting laws is available on the Department of Justice's web site at www.usdoj.gov/crt/voting/index.htm.

- > From afar, it looks like witness intimidation
- > By DANA DiFILIPPO
- > Philadelphia Daily News
- > difilid@phillynews.com 215-854-5934
- > On Election Day, two black supremacists stood watch over a Fairmount
- > polling site.
- > City police didn't charge them with any crime. And the District
- > Attorney's Office received no complaints about their behavior.
- > But the feds, from their D.C. digs 120 miles away, nonetheless
- > delivered a big smackdown this week when the U.S. Department of
- > Justice sued the pair - plus their group, the New Black Panther Party,
- > and its chairman - alleging voter intimidation.
- > The New Black Panther Party, in turn, suspended its Philadelphia
- > chapter, issuing a "public notice" characterizing chapter president
- > Minister King Samir Shabazz as a rogue who acted without the
- > organization's approval when he brought a nightstick on his Election
- > Day surveillance mission.
- > "The New Black Panther Party has never, and never will, condone or
- > promote the carrying of nightsticks or any kind of weapon at any
- > polling place," the notice stated. "It is true that volunteers in the
- > New Black Panther Party successfully served as poll watchers all over
- > the country and helped get the black vote out. [But] we were incident
- > free. We are intelligent enough to understand that a polling place is
- > a sensitive site and all actions must be carried out in a civilized



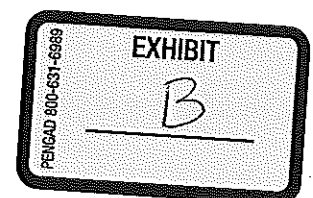
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- > and lawful manner."
- > The saga on Nov. 4 started when Shabazz and Jerry Jackson, a New Black Panther Party member who also is a member of the 14th Ward's Democratic Committee, showed up at the polling site at 12th Street and Fairmount Avenue.
- > Yesterday, Shabazz said that he had visited that site because "the community asked" for him.
- > "We had gotten calls earlier that morning that people in the community were getting harassed by neo-Nazis and skinheads," he said. "We were asked to secure the area, and that's what we done. We weren't saying anything; we weren't doing anything to violate anyone's civil rights or right to vote. Even the mayor and the D.A. spoke out on our behalf, somewhat."
- > Several news and amateur videos of the supremacists show them standing in black berets, boots and military garb, occasionally talking with news reporters. In one online video, a man can be seen nonchalantly entering the building behind the Panthers.
- > But according to the feds' nine-page complaint filed Wednesday, Shabazz menacingly tapped a nightstick in his hand throughout his "deployment" there. The complaint further charges that Shabazz and Jackson tried to block access to the building and hurled racial threats and insults at white and black voters and poll workers.
- > Party chairman Malik Zulu Shabazz also was named in the complaint but wasn't present at the Fairmount site on Election Day.
- > The complaint charges that the Panthers violated the Voting Rights Act of 1965, which prohibits intimidation, coercion or threats against voters. The feds want an injunction barring the Panthers from sending members - especially those with weapons - to polling places during future elections.
- > "Intimidation outside of a polling place is contrary to the democratic process," Acting Assistant Attorney General Grace Chung Becker said in a prepared statement. "The Voting Rights Act of 1965 was passed to protect the fundamental right to vote, and the Department takes allegations of voter intimidation seriously."
- > Scot Montrey, a spokesman for the department's civil-rights division, declined to say what sparked the federal complaint, when local authorities had decided that no offense had occurred.
- > "Generally, we let the legal filings speak for themselves," Montrey said.
- > The presence of a weapon typically elevates what some might view as free speech to an intimidation offense, one justice source said.
- > Shabazz is a familiar presence to many who pass by the Clothespin statue near City Hall; he often spends weekday afternoons there, selling the New Black Panther Party's \$2 newspaper and preaching to passers-by.
- > He declined to say yesterday whether the chapter suspension would alter his plans to spread his extremist message, which includes a black-separatist call to destroy whites. He also refused to reveal how he would respond to the complaint and chapter suspension.
- > "A wise general never reveals his tactics," Shabazz said.
- > Jackson couldn't be reached for comment.
- > The New Black Panther Party, which officials have labeled a hate group, is different from the Black Panther Party founded by Bobby Seale in the 1960s, which emphasized self-help programs for blacks. *
- >

From: "Reed, Judith (CRT)" <Judith.Reed@usdoj.gov>
To: "KRISTEN CLARKE" <KCLARKE@NAACPLDF.ORG>
Date: 7/31/2009 12:03 PM
Subject: unwanted fame?

Rep Smith Seeks Answers From DOJ in Voter Intimidation Case. The Washington Times
<<http://www.washingtontimes.com/news/2009/jul/31/senior-republican-wants-answers-panther-party-case/>> (7/31, Seper) reports that Rep. Lamar Smith (R-TX), the ranking Republican on the House Judiciary Committee, "wants a closed-door briefing with the head of the Justice Department's Voting Rights Section on Friday over the department's decision to seek a dismissal in a voter intimidation case against the New Black Panther Party." Smith "Smith said he has been unsuccessful since May in getting answers on whether political appointees were involved in the dismissal of three of four counts in the case after the Justice Department had won default judgments on all counts and why the department has refused to respond to congressional inquiries on the investigation." Citing a report Thursday in the Washington Times
<http://www.washingtontimes.com/news/2009/jul/30/no-3-at-justice-okd-panther-reversal/?feat=home_cube_position1> , Smith "said Associate Attorney General Thomas J. Perrelli knew about discussions to dismiss the complaint, but the Justice Departments responses to Congress 'make no mention of his involvement in the decision-making process. Instead, they continually refer to vague justifications for the Obama Justice Departments actions, none of which include a legitimate explanation for why a case would be dropped,' he said. 'It is clear that political appointees at the Justice Department allowed career employees to be pressured to drop a case against the presidents political allies. That is politicizing justice and it undermines democracy.'" Rep. Frank Wolf (R-VA), "said on the House floor Thursday he was 'deeply troubled by the Department of Justices questionable dismissal of an important voter intimidation case in Philadelphia, where I grew up and my father was a policeman.'" Justice Department spokeswoman Tracy Schmalder "said the department has tried to cooperate with Congress and agreed to a meeting with" Wolf "and career attorneys 'in which they made a good-faith effort to respond to his inquiries about this case. We will continue to try to clear up any confusion Congressman Wolf has about this case."

More Commentary. The Washington Times
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CLARKE 000010

From: "Lopez-Ortiz, Luz (CRT)" <Luz.V.Lopez-Ortiz@usdoj.gov>
To: "KRISTEN CLARKE" <KCLARKE@NAACPLDF.ORG>
Date: 7/31/2009 12:16 PM

Subject: from the clips today --interesting stuff

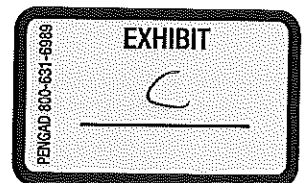
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CLARKE 000004

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Supreme Court

Alexander To Support Sotomayor. The AP
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From: "Lopez-Ortiz, Luz (CRT)" <Luz.V.Lopez-Ortiz@usdoj.gov>
To: "KRISTEN CLARKE" <KCLARKE@NAACPLDF.ORG>
Date: 7/31/2009 1:10 PM
Subject: RE:

They are disgusting. This is CC's doing.

-----Original Message-----

From: KRISTEN CLARKE [mailto:KCLARKE@NAACPLDF.ORG]
Sent: Friday, July 31, 2009 12:45 PM
To: Lopez-Ortiz, Luz (CRT)
Subject: Re:

lies.

>>> "Lopez-Ortiz, Luz (CRT)" <Luz.V.Lopez-Ortiz@usdoj.gov> 7/31/2009
12:12 PM >>>

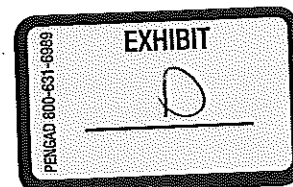
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CLARKE 000007

(1/5/2010) KRISTEN CLARKE - RE:

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CLARKE 000008

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National Office
99 Madison Street, Suite 1600
New York, NY 10013
T 212 263 2200
F 212 236 7552



Washington, D.C. Office
1444 Eye Street, NW, 10th Floor
Washington, DC 20004
T 202 682 1300
F 202 682 1312

Richard Minter
Editorial Page Editor
3600 New York Ave NE
Washington, DC 20002
Tel: (202) 636-4876
Fax: (202) 715-0037
Email: yourletters@washingtontimes.com

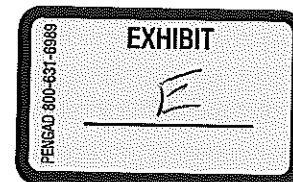
July 31, 2009

Dear Mr. Minter:

This letter is intended to correct misstatements in the Washington Times July 30 article: *No. 3 at Justice OK'd Panther reversal* and July 31 editorial: *Huck Panthers*. I did not indicate to any Washington Times reporter that I ever had any discussion with Department of Justice attorneys about a lawsuit that they filed against members of the New Black Panther Party. Nor have I ever engaged in advocacy to any Department of Justice official regarding this case or urged that the Department take a position on this case, one way or the other. While this lawsuit is not one that I have closely followed, I did confirm to the Washington Times that the NAACP Legal Defense and Educational Fund, Inc. has long believed, and continues to believe, that it is vitally important for the Department of Justice to investigate and pursue claims of voter intimidation to ensure minority voters' access to the polls.

Thanks,

Kristen Clarke
Co-Director, Political Participation Group



Page 1

1 UNITED STATES COMMISSION ON CIVIL RIGHTS
 2 -----
 3 IN RE:
 4 NEW BLACK PANTHER PARTY
 5 -----
 6 Philadelphia, Pennsylvania
 7 Monday, January 11, 2010
 8
 9 TRANSCRIPT of testimony of RONALD VANN,
 10 as taken by and before Cherilyn M. McCollum, a
 11 Registered Professional Reporter, at the HILTON
 12 GARDEN HOTEL, 1100 Arch Street, commencing at 10:03
 13 o'clock in the forenoon.
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 24

Page 2

1 B E F O R E:
 2 (BY TELEPHONE)
 3 JOHN MARTIN, SPECIAL ASSISTANT
 4 DOMINIQUE LUDVIGSON, SPECIAL ASSISTANT
 5
 6 A P P E A R A N C E S:
 7 UNITED STATES COMMISSION ON CIVIL RIGHTS
 8 OFFICE OF THE GENERAL COUNSEL
 9 BY: DAVID P. BLACKWOOD, ESQ.
 10 MAHA JWEIED, ESQ.
 11 624 Ninth Street, N.W.
 12 Suite 631
 13 Washington, D.C. 20424
 14 (202) 376-7622
 15 dblackwood@usccr.gov
 16 Attorneys for The Commission
 17
 18
 19
 20
 21
 22
 23
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Page 3

1 I N D E X
 2 WITNESS PAGE
 3 RONALD VANN
 4 By Mr. Blackwood 4
 5
 6 E X H I B I T S
 7 NUMBER DESCRIPTION PAGE
 8 Exhibit 1 Printout from Internet 26
 9
 10
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Page 4

1 RONALD VANN, after having been first
 2 duly sworn, was examined and testified as follows:
 3 EXAMINATION
 4 BY MR. BLACKWOOD:
 5 Q. Good morning, Mr. Vann.
 6 A. Good morning.
 7 Q. Appreciate your coming.
 8 A. Thank you for having me.
 9 Q. As you know, you and I talked before
 10 about some of the activities by the New Black
 11 Panther Party on Election Day as well as what
 12 Department of Justice looked into. I want to ask
 13 you, you were there on Election Day, right?
 14 A. That is correct.
 15 Q. What was your capacity?
 16 A. A poll watcher.
 17 Q. That was for the Democratic Party?
 18 A. That's correct.
 19 Q. How often have you served as a poll
 20 watcher?
 21 A. I've served numerous times during an
 22 election.
 23 Q. Four, five times?
 24 A. Four, five times.

Page 5

1 Q. Do you get paid for that?
 2 A. Yes.
 3 Q. How much?
 4 A. About \$75.
 5 Q. And usually -- do you work with Mr.
 6 Jackson?
 7 A. Yes.
 8 Q. And that's Jerry Jackson, correct?
 9 A. That's correct.
 10 Q. Mr. Jackson is a member of the New
 11 Black Panther Party. Is that right?
 12 A. I have no idea.
 13 Q. Are you a member of New Black
 14 Panther Party?
 15 A. Not at all.
 16 Q. On Election Day 2008, Mr. Jackson
 17 showed up wearing a black -- what I would describe
 18 as a Black Panther uniform: black pants, black
 19 shirt, black jacket, and black beret. Right?
 20 A. Yes.
 21 Q. Is that the first time he wore his
 22 uniform to --
 23 MR. BLACKWOOD: Who is there?
 24 MR. MARTIN: John.

Page 6

1 MS. JWEIED: Who else joined?
 2 MS. LUDVIGSON: Dominique.
 3 MR. BLACKWOOD: We'll give you the
 4 name.
 5 BY MR. BLACKWOOD:
 6 Q. Had he ever wore a uniform before?
 7 A. I have no idea.
 8 Q. The times you've worked for them,
 9 did he wear his uniform at the polling place?
 10 A. I never really took notice.
 11 Sometimes you have a jacket on or have a coat. If
 12 he do have a black uniform, you couldn't see it.
 13 Only thing you could see is bottom.
 14 Q. Because he'd have an overcoat?
 15 A. Exactly.
 16 Q. Now, you were wearing a green and
 17 white jacket?
 18 A. Green and white jacket.
 19 Q. And that had the white stripes on
 20 it?
 21 A. That is correct.
 22 Q. Describe the polling place. Not
 23 physically, but who is where?
 24 By the way, it's at 1221 Fairmount,

Page 7

1 right?
 2 A. That is correct.
 3 Q. Excuse me.
 4 A. You have people that's outside
 5 giving out pamphlets. You have people inside
 6 that's signing up to vote, okay.
 7 Q. But the people handing out
 8 pamphlets, they have to stay a certain distance
 9 from the door. Is that correct?
 10 A. That's correct.
 11 Q. Who is inside?
 12 A. You have -- you have the people that
 13 work the polls.
 14 Q. Those are people that work for the
 15 city?
 16 A. Right. The judge and couple other
 17 people that's inside.
 18 Q. Okay. And what about the poll
 19 watchers?
 20 A. Well, the poll watchers are around
 21 the place. You know, like me myself, I'm outside,
 22 I'm inside, I'm outside, I'm inside.
 23 Q. What do you view your role is as a
 24 poll watcher?

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1 A. To make sure everything is no
 2 trouble. No one is jumping in the line. No one in
 3 there to cause mass confusion.
 4 Q. And you were an official for the
 5 Democratic Party, correct?
 6 A. That is correct.
 7 Q. Is that an elected position?
 8 A. Yes.
 9 Q. How does the election occur?
 10 A. To get the position?
 11 Q. Yes.
 12 A. A petition, and you go around in the
 13 neighborhood and you ask people to, you know, sign
 14 a petition, and they sign it. And you take it back
 15 to the state representative, and they take it from
 16 there.
 17 Q. And who actually votes on whether
 18 you get to be a poll watcher?
 19 A. That's a good question. I don't
 20 know how that works. You sign the petition, and
 21 you give it to the representative, and he does the
 22 rest. Now, who decides whether you're a poll
 23 watcher or not I don't know. Unless the
 24 commissioner.

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1 Q. And the commissioner is what? Is he
 2 like a block captain?
 3 A. No. Commissioner is like -- the
 4 voter commission.
 5 Q. A what?
 6 A. A voter commission.
 7 Q. Voter, okay.
 8 A. Yeah.
 9 Q. Are you part of your block
 10 organization?
 11 A. No.
 12 Q. Okay. You're not a block captain?
 13 A. No, no. Just a committee person.
 14 Q. What's the committee?
 15 A. Committee person, he is like trying
 16 to keep the neighborhood clean. Trying to keep the
 17 drugs out of the neighborhood. Trying to keep
 18 people looking to see whose house they can break in
 19 or what cars they can break in, that sort of thing.
 20 Q. It's still affiliated with the
 21 Democratic Party?
 22 A. Yes.
 23 Q. By way of an example -- I'm not
 24 going to make this an exhibit -- this is a watcher

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1 certificate and this one is for Jerry Jackson.
 2 A. I have one.
 3 Q. Each election you get one, too?
 4 A. That is correct.
 5 Q. After the presidential election in
 6 2008, did Mr. Jackson continue to serve as a poll
 7 watcher?
 8 A. Yes.
 9 Q. About how many elections?
 10 A. What is it? It was one more, I
 11 think, after.
 12 Q. Was that a -- bear with me.
 13 A. For the district attorney.
 14 Q. Or a judge I think it might have
 15 been.
 16 A. District attorney or judges.
 17 Q. A judge of the Common Pleas Court,
 18 does that sound familiar, May 19, 2009?
 19 A. Maybe so.
 20 Q. But it was a local election?
 21 A. Yeah, local.
 22 Q. On that election did Mr. Jackson
 23 come in his black uniform?
 24 A. I don't recall. I don't know.

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1 Q. Now, I've seen -- unfortunately, we
 2 don't have a wi-fi connection here, but I have seen
 3 a tape, and I wasn't sure it was you, but I saw a
 4 gentleman in a green jacket.
 5 A. Yes, it was me.
 6 Q. Did Mr. Jackson arrive in his
 7 uniform or did he change there?
 8 A. I don't know.
 9 Q. Did he come with his friend?
 10 A. I don't know that either.
 11 Q. All right. I believe the other
 12 gentleman is Minister King Samir Shabazz.
 13 A. I don't know him.
 14 Q. Never seen him before?
 15 A. I've seen him, but I don't know him.
 16 Q. Where have you seen him?
 17 A. In the neighborhood.
 18 Q. Does he live in that neighborhood?
 19 A. No, I don't think he does.
 20 Q. Jerry Jackson does?
 21 A. Jerry Jackson does.
 22 Q. Do they seem to be friends?
 23 A. I don't know that either.
 24 Q. Have you seen them doing things,

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1 like handing out leaflets?
 2 A. You know, I'll tell you, I don't get
 3 in people's business. What Jerry Jackson does with
 4 his friends or whatever he wears, that's his
 5 business. My thing is my business and I'm better
 6 off that way. Now, I don't mean no disrespect, of
 7 course. If that Jerry's friend, then Jerry has a
 8 right that he wants to be his friend.
 9 We working the polls and I'm doing
 10 what I'm supposed to be doing. Jerry working the
 11 polls and he doing what he supposed to be doing.
 12 Only thing I observed was the guy that with him had
 13 the stick and was doing the stick like this now.
 14 Wasn't swinging at anyone, he was just --
 15 Q. Smacking it in his hand?
 16 A. Right. Then the police was called.
 17 Q. Who called the police, do you know?
 18 A. I have no idea. The police was
 19 called. The police came. Police asked him, "What
 20 you doing with the stick?" and whatever he said to
 21 the police. He put the stick away and they left.
 22 Q. And he left, too?
 23 A. He left, too.
 24 Q. And that's the smaller gentleman?

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1 A. Yeah.
 2 Q. The video -- let me back up. Inside
 3 the facilities there were also Republican poll
 4 watchers, right?
 5 A. I don't know who they were.
 6 Q. Did you see --
 7 A. There was other people there.
 8 Q. What did they look like? If you
 9 recall.
 10 A. I don't remember.
 11 Q. Was it an African-American couple?
 12 A. It was one African-American, one
 13 Caucasian.
 14 Q. Who was which?
 15 A. The female was Caucasian.
 16 Q. Okay.
 17 A. I think -- I think it was another
 18 female or it was another male African-American.
 19 I'm not quite sure.
 20 Q. But a total of two: one male, one
 21 female?
 22 A. That I can remember.
 23 Q. Have you ever seen them before?
 24 A. No.

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1 Q. Do you know whether they were
 2 members of the Republican Party one way or the
 3 other?
 4 A. I didn't ask.
 5 Q. So you just didn't talk to them?
 6 A. No, no. I spoke, I mean, you know,
 7 but -- "Where you from? Who are you?" I didn't --
 8 Q. You didn't introduce yourself?
 9 A. No. "How you doing?" and that was
 10 it.
 11 Q. Now, there came a time, as you
 12 mentioned, the police came at one point.
 13 A. Uh-huh.
 14 Q. And I've seen some videos. There is
 15 also a white woman wearing a little blue jacket
 16 that's talking on a cell phone. Do you know who
 17 I'm referring to?
 18 A. (No response.)
 19 Q. Let me see if I have a picture.
 20 Were you in contact with Democratic -- I assume
 21 there is a headquarters that you report to.
 22 A. There is a ward that I report to.
 23 Q. The ward leaders, you check in with
 24 them by phone?

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1 A. They come and may check things going
 2 smoothly.
 3 Q. Kind of like a roving team?
 4 A. Yes.
 5 Q. Would the ward leader be by himself?
 6 A. Depends. May be by himself or
 7 someone with him.
 8 Q. Who was that person?
 9 A. Arthur Green.
 10 Q. Was Mr. Green driving an SUV around?
 11 A. Yes.
 12 Q. There is one scene showing you and
 13 Mr. Green and Jerry Jackson talking to each other.
 14 Was that about the incident that occurred?
 15 A. I have no idea.
 16 Q. Mr. Jackson at the time was writing
 17 something down. Do you recall what you all were
 18 discussing?
 19 A. I don't remember that neither.
 20 Q. Okay. Well, we'll see if we can get
 21 a picture of it. You don't remember, though, a
 22 young white woman who was chatting behind Jerry
 23 Jackson and the other gentleman constantly on the
 24 telephone?

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1 A. I remember a woman was there. It
 2 was a Caucasian woman and it was either an
 3 African-American woman or an African-American male.
 4 I can't really --
 5 Q. You mean two different people?
 6 A. There was so much going on that day
 7 that --
 8 Q. When did all this start?
 9 A. Well, as far as I can recollect, we
 10 was all standing out. I'm inside, I'm outside, I'm
 11 inside, I'm outside. Jerry Jackson and his friend
 12 was outside. I think a couple of people came in to
 13 vote or something or something to that effect, and
 14 the guy had the stick and doing the stick like this
 15 and --
 16 Q. I'm just going -- smacking it in his
 17 hand, right?
 18 A. Yeah.
 19 Q. Did the voters come in and complain
 20 about it?
 21 A. I guess they did, because I wouldn't
 22 be sitting here now.
 23 Q. Did you hear anybody complain about
 24 it?

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1 A. No, I didn't hear no one complain
 2 about it.
 3 Q. Did you go outside to Jerry and say,
 4 "Hey, your friend should knock this off"?
 5 A. No, I just mind my business. People
 6 going to do what they want anyway, so.
 7 I feel that the guy shouldn't have
 8 been there. That's my personal business. I don't
 9 matter.
 10 Q. The guy you're talking about is the
 11 guy with the nightstick?
 12 A. Yeah, he shouldn't have been there.
 13 Q. Did Jerry ever come inside?
 14 A. Yeah, he came in and out. He was in
 15 and out.
 16 Q. I guess I'm really talking about the
 17 time that the police got there. That was pretty
 18 early in the morning, or do you recall?
 19 A. I think it was somewhere in the
 20 afternoon probably. Around lunchtime. Vaguely.
 21 Q. What time do the polls open?
 22 A. What, 7:00?
 23 Q. I'm asking you. I don't know.
 24 A. 7:00.

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1 Q. Jerry was there because that was his
 2 job, right?
 3 A. Yes.
 4 Q. Was his friend there the whole time?
 5 A. I don't know. Because I didn't get
 6 there until late.
 7 Q. What time did you get there?
 8 A. I got there about maybe nine.
 9 Q. Was Jerry there with his friend at
 10 that time?
 11 A. Yes.
 12 Q. Just to be clear, you didn't talk to
 13 him, "Hey, Jerry, what is your friend doing here
 14 with a nightstick?"
 15 A. Uh-uh.
 16 Q. I'm sorry. You have to say no.
 17 A. Oh, okay. No.
 18 Q. Did you report the fact that this
 19 guy was there with a nightstick to your ward
 20 leader?
 21 A. No. I didn't report it. But with
 22 all the publicity, somebody reported it.
 23 Q. And after -- was it after the police
 24 came your ward leader showed up?

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1 A. Yes.
 2 Q. And what did the ward leader say?
 3 A. I don't know what he said to Jerry,
 4 but I know he said to me, "Man, what's going on
 5 around here?"
 6 And I'm like, "What you mean?"
 7 You know, "Like the TV news
 8 reporters and police. What's going on?"
 9 I'm like -- I'm flabbergasted.
 10 Q. If you were flabbergasted -- I want
 11 to make sure, and I know you kind of hinted before,
 12 if you were flabbergasted, why didn't you go up to
 13 Jerry and say, "Why don't you ask your friend to
 14 leave?"
 15 A. Mr. Black, some things unsaid. If I
 16 said something to Jerry, it would be an argument,
 17 so I don't even want to go there. My thing is keep
 18 my mouth shut, stay out of it, and that's the best
 19 method.
 20 Q. Okay. One of the things that I
 21 heard on the tape is the Fox reporter I think at
 22 one point say, "Somebody has called the police on
 23 us," the reporters.
 24 Do you know if anybody called the

Page 20

1 police on them?
 2 A. I don't know.
 3 Q. He pointed -- he turned around and
 4 pointed to someone standing behind him. It wasn't
 5 you. I think it was a white man with a lanyard on
 6 his chest.
 7 Do you recall anybody like that
 8 working the polls that day?
 9 A. Vaguely.
 10 Q. Would that be the judge?
 11 A. No, no.
 12 Q. Okay.
 13 A. Uh-uh.
 14 Q. Let's go back to the white woman
 15 again who is behind --
 16 MS. JWEIED: It's not working.
 17 MR. BLACKWOOD: Before we break, I
 18 have a photo of it downstairs.
 19 Off the record a second.
 20 (Discussion held off the record.)
 21 MR. BLACKWOOD: Okay. Back on the
 22 record.
 23 BY MR. BLACKWOOD:
 24 Q. I'm sorry. We're going to try to

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1 get a photo of the woman I'm referring to.
 2 Was there any -- did you see any
 3 evidence of a white supremacist group or skinheads
 4 showing up?
 5 A. I mean, people coming in to vote. I
 6 mean --
 7 Q. No, no, I mean specifically was
 8 there any white group or, you know, white
 9 supremacists out there trying to stir up the voters
 10 or block people?
 11 A. I don't know, sir.
 12 Q. You didn't see it?
 13 A. I didn't see it. I didn't see it.
 14 Q. Did anybody express concern to you
 15 about Jerry and his friend?
 16 A. Well, you know, I mean, people was
 17 talking about all the publicity going on about the
 18 police and the news media and stuff like that and
 19 the guy with the stick.
 20 But, you know, my thing is I just
 21 listen, keep my mouth shut. This way can nobody
 22 come back and say, "Mr. Vann said this," or
 23 "Mr. Vann said that." Sometimes it's just best to
 24 keep your mouth shut.

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1 Q. Did you even talk to Jerry until the
 2 ward leader got there?
 3 A. Kept my mouth shut.
 4 Q. I'm just asking. You didn't talk to
 5 Jerry at all and you didn't call the ward leader or
 6 anybody else at the Democratic Party to say, "We
 7 have a problem here"?
 8 A. No.
 9 Q. Going back from when you arrived, I
 10 just want to make sure I was clear. I understand
 11 you didn't get there until around nine. Jerry's
 12 friend was already there, correct?
 13 A. That's correct.
 14 Q. And he already had his nightstick
 15 out and was hitting it with his hand?
 16 A. Right.
 17 Q. Okay.
 18 When the ward leader got there, did
 19 you overhear what Jerry or the ward leader was
 20 saying?
 21 A. No.
 22 Q. Did you see anyone turn away from
 23 the polls?
 24 A. No, not that I can remember. No. I

Page 23

1 don't think.
 2 Q. And you were inside and outside?
 3 A. I'm all over the place.
 4 Q. Okay.
 5 Did you call the police at any time?
 6 A. No.
 7 Q. Do you know if anybody else called
 8 the police?
 9 A. Someone did.
 10 Q. But did you hear, for example,
 11 someone call the police or someone say, "I am going
 12 to call the police"?
 13 A. When the police arrive, only thing
 14 police say is someone called. That's the only
 15 thing the police said. You know, I just stayed out
 16 of it.
 17 Q. What were the Republican poll
 18 watchers doing throughout this time?
 19 A. I don't recall.
 20 Q. The couple that we mentioned before
 21 who were serving as Republican poll watchers, did
 22 they stay inside the building most of the time?
 23 A. I don't recall.
 24 Q. At some point the Fox News person

Page 24

1 arrives. Do you recall when that person got there?
 2 A. I don't recall that neither. It was
 3 so many people there, Fox, 6, 10.
 4 Q. When you say 6 and 10, those are TV
 5 channels?
 6 A. TV channels.
 7 Q. So there was more than just Fox
 8 here?
 9 A. That I can recall, yes.
 10 Q. Fox is -- what channel are they?
 11 A. 29.
 12 Q. And so 6 and 10 are what, NBC and
 13 CBS?
 14 A. Yes.
 15 Q. Did you give any interviews to any
 16 of them?
 17 A. No.
 18 Q. If you could, walk me back again.
 19 Who was the judge inside the polling place?
 20 A. The judge is Jeannie. She's a
 21 judge.
 22 Q. How do you spell her name?
 23 A. J-e-a-n -- what is it? You can
 24 spell it a number of ways. J-a-n-i-e or

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1 J-e-a-n-n-i-e.
 2 Q. And that's her last name?
 3 A. Just the first name.
 4 Q. Do you know her last name?
 5 A. I don't know her last name.
 6 Q. Did she do anything that you're
 7 aware of?
 8 A. No. Not that I can remember.
 9 Q. And the ward leader, again, you
 10 didn't call him, he just showed up?
 11 A. Well, yeah, he checking up on the
 12 polls and stuff like that. He's like a rover, you
 13 know, just doing his rounds.
 14 Q. Here we go. We'll mark this as an
 15 exhibit later on, but see that white woman in the
 16 background?
 17 A. Okay.
 18 Q. She's got like a long T-shirt on and
 19 a small jacket.
 20 A. Okay.
 21 Q. And she's got a cell phone on.
 22 A. Okay.
 23 Q. I mean, cell phone to her ear.
 24 Do you recall seeing her?

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1 A. I do.
 2 Q. Do you know who she was?
 3 A. No, I don't.
 4 Q. Do you know if she's a Democratic --
 5 working with the Democratic Party?
 6 A. I don't know who she is.
 7 Q. So you never went up to her?
 8 A. No.
 9 Q. Okay.
 10 A. I mean, I know she was there, but I
 11 didn't know who she were.
 12 MR. BLACKWOOD: Tell you what, why
 13 don't we make that Exhibit 1.
 14 (Exhibit 1 marked for
 15 identification.)
 16 BY MR. BLACKWOOD:
 17 Q. Sir, who we're referring to is the
 18 woman on the lower left-hand side --
 19 A. Let me ask you, how did I get caught
 20 up in this mess?
 21 Q. Well, I will tell you. We are
 22 trying to learn who was there, and, frankly, if I
 23 had her name, I'd probably want to talk to her.
 24 Nobody implies you did anything improper one way or

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1 the other. We are trying to talk to everyone at
 2 the polling place.
 3 A. I don't have time to get mixed up in
 4 anybody else's mess.
 5 Q. If you could identify that person,
 6 I'd like to talk to her.
 7 A. I don't know who she is. I don't
 8 have a clue who she is. I remember her being
 9 there, but I don't know who she is.
 10 Q. She wasn't there when you arrived?
 11 A. She might have been.
 12 Q. You don't even recall?
 13 A. I don't recall.
 14 Q. She's not someone you've seen before
 15 on other elections?
 16 A. Uh-uh.
 17 Q. And she hasn't been there since
 18 2008?
 19 A. Right, since then.
 20 Q. Did you speak to anybody from the
 21 Department of Justice?
 22 A. No.
 23 MR. BLACKWOOD: Tell you what, just
 24 wait a second. We'll step outside and be right

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1 back in.
 2 (Recess at 10:25 a.m.)
 3 (Resumed at 10:26 a.m.)
 4 BY MR. BLACKWOOD:
 5 Q. Just one more question. Are you
 6 aware of whether DOJ tried to speak to you?
 7 A. No one tried to speak with me. The
 8 only one that called me was you.
 9 Q. Okay.
 10 A. You're the only one.
 11 MR. BLACKWOOD: All right. Are
 12 there any commissioners on the phone?
 13 Okay. I don't hear any, so thank
 14 you, Mr. Vann. I very much appreciate your coming
 15 down here.
 16 (10:26 a.m.)
 17
 18
 19
 20
 21
 22
 23
 24

1 C E R T I F I C A T E
 2 I, Cheryl M. McCollum, a Certified
 3 Court Reporter and Notary Public, do hereby certify
 4 that, prior to the commencement of the examination,
 5 the witness and/or witnesses were sworn by me to
 6 testify to the truth and nothing but the truth.

7 I do further certify that the
 8 foregoing is a true and accurate computer-aided
 9 transcript of the testimony as taken
 10 stenographically by and before me at the time,
 11 place and on the date hereinbefore set forth.

12 I do further certify that I am
 13 neither of counsel nor attorney for any party in
 14 this action and that I am not interested in the
 15 event nor outcome of this litigation.

16
 17
 18
 19
 20

21 _____
 22 Certified Court Reporter
 23 XI02094
 Notary Public
 My commission expires 3-22-11

24 Dated: _____

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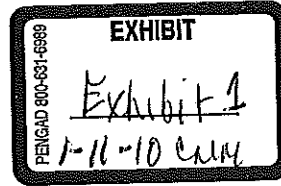
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Obama's corruption of civil rights law



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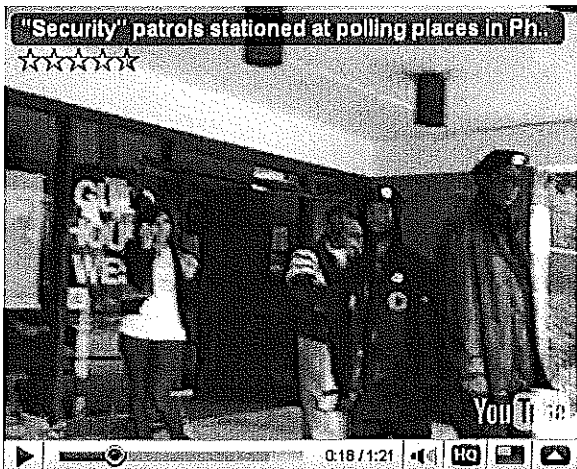
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In the Obama administration, try to apply the civil rights laws equally and you're gone. That was the experience of the justice department attorney who pressed charges against a group of Black Panthers that were intimidating voters in a Pennsylvania polling place. (Story is [here](#).)

Christopher Coates, the department's veteran voting rights section chief, has been "detailed" (duties unknown) for 18 months to the U.S. Attorney's office in South Carolina. The department is trying to pass off the transfer as having nothing to do with his enforcement of the voting rights act against the Black Panthers; the effort is utterly unconvincing.

The incident was captured on video (below) and widely circulated on YouTube, raising a national furor. Despite the clear evidence before everyone's eyes, political appointees in Obama's justice department dismissed the charges. The U.S. Commission on Civil Rights sought to investigate the dismissal, but has been rebuffed by Obama's justice department.

This is serious stuff. The message is clear to career administrators: Try to enforce the law in a fair and impartial way, and you're gone. Political interference of the enforcement of our laws--as Democrats correctly reminded us during the Bush administration--is unacceptable. Congress, in its oversight function, should get to the bottom of this miscarriage of justice. But because all the committees are control by Democrats, it won't.



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1 UNITED STATES COMMISSION ON CIVIL RIGHTS
 2 -----
 3 IN RE:
 4 NEW BLACK PANTHER PARTY
 5 -----
 6 Philadelphia, Pennsylvania
 7 Tuesday, January 12, 2010
 8
 9 TRANSCRIPT of testimony of LARRY COUNTS,
 10 as taken by and before Cherilyn M. McCollum, a
 11 Registered Professional Reporter, at the HILTON
 12 GARDEN HOTEL, 1100 Arch Street, commencing at 9:08
 13 o'clock in the forenoon.
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 23
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1 B E F O R E:
 2 (BY TELEPHONE)
 3 MICHAEL YAKI, COMMISSIONER
 4 ALEC DEULL, SPECIAL ASSISTANT
 5 NICK COLTEN, SPECIAL ASSISTANT
 6 JOHN MARTIN, SPECIAL ASSISTANT
 7
 8 A P P E A R A N C E S:
 9 UNITED STATES COMMISSION ON CIVIL RIGHTS
 10 OFFICE OF THE GENERAL COUNSEL
 11 BY: DAVID P. BLACKWOOD, ESQ.
 12 MAHA JWEIED, ESQ.
 13 624 Ninth Street, N.W.
 14 Suite 631
 15 Washington, D.C. 20424
 16 (202) 376-7622
 17 dblackwood@uscrr.gov
 18 Attorneys for The Commission
 19
 20
 21 A L S O P R E S E N T:
 22 KIMBERLY TOLHURST, ESQ. (BY TELEPHONE)
 23
 24

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1 LARRY COUNTS, after having been
 2 first duly sworn, was examined and testified as
 3 follows:
 4 EXAMINATION
 5 BY MR. BLACKWOOD:
 6 Q. Appreciate you being here.
 7 Mr. Counts, just so you're aware, we
 8 have some special rules because we are a
 9 commission. Any deposition with regard to an
 10 individual remains private unless and until we use
 11 it in a report or as part of a hearing. So we
 12 don't release what happens here unless it's part of
 13 a hearing.
 14 Can you give your full name and your
 15 address.
 16 A. Larry Counts, 3413 North Lee Street,
 17 Philadelphia, Pennsylvania, 19134.
 18 Q. And where are you employed?
 19 A. I'm not employed.
 20 MR. BLACKWOOD: Who is here?
 21 MS. TOLHURST: Kim.
 22 BY MR. BLACKWOOD:
 23 Q. All right. And did there come a
 24 time that you were working at 1221 Fairmount for

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1 the 2008 presidential election?
 2 A. Yes.
 3 Q. In what capacity?
 4 A. I was a poll watcher.
 5 Q. And that was for the Republican
 6 Party?
 7 A. Yes, I think so.
 8 Q. Are you a registered Republican?
 9 A. No, I'm a Democrat.
 10 I can't -- I can't really recall was
 11 it for a Democratic or a Republican that I was, you
 12 know, working the poll for, but I'm a Democrat.
 13 Q. Okay. Do you recall how you got
 14 selected as a poll watcher?
 15 A. Through a friend. They had -- they
 16 had asked me, you know, would I like to be -- work
 17 for the polls even, like, passing literature or
 18 possibly have a chance to be a poll watcher. Then
 19 when that day came, they said I could be a poll
 20 watcher.
 21 Q. Did you get paid for it?
 22 A. Yes.
 23 Q. How much?
 24 A. I think it was \$200.

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1 Q. You didn't have to get elected to
 2 get the poll watching position?
 3 A. No.
 4 Q. It was just a job?
 5 A. Yes.
 6 Q. And your wife was with you at that
 7 time?
 8 A. Yes.
 9 Q. And did she also get \$200?
 10 A. Yes.
 11 Q. Have you ever worked as a poll
 12 watcher before?
 13 A. Yes.
 14 Q. Approximately how many times?
 15 A. Once. Once before that.
 16 Q. At the Fairmount Avenue place?
 17 A. No, a different place.
 18 Q. At that time were you still living
 19 in the City of Philadelphia?
 20 A. Yes.
 21 Q. So you've -- you worked as a poll
 22 watcher at least once before. Have you worked
 23 subsequently --
 24 A. No.

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1 Q. -- as a poll watcher?
 2 When you worked before, were you
 3 also with your spouse?
 4 A. Yes.
 5 Q. Do you recall when it was?
 6 A. No, I -- a few years back.
 7 Q. Was it the 2004 presidential
 8 election?
 9 A. It could have been 2004.
 10 Q. Let's talk about that day, Election
 11 Day 2008. When did you get to the polls?
 12 A. When did I get there?
 13 Q. Yes.
 14 A. Between 6 and 7. Between 6 and
 15 7:00.
 16 Q. Did you have to check in with
 17 anybody to let them know that you were there?
 18 A. Yes. Yes, I had to sign in. We had
 19 to check with somebody once we got there and notify
 20 them we were poll watchers.
 21 Q. Was that the election judge?
 22 A. Yes.
 23 Q. Do you know who the election judge
 24 was?

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1 A. No.
 2 Q. This neighborhood where you worked
 3 as a poll watcher, is that near where you lived?
 4 A. Pretty fair where I live at, but
 5 not -- not in like a mile area. Like a couple
 6 miles.
 7 Q. A couple miles?
 8 A. Yes, a few miles.
 9 Q. It's not in the same voting
 10 district, right?
 11 A. No.
 12 Q. Did you have to check in with
 13 anybody from the Republican Party?
 14 A. No.
 15 Q. When you got to the polling place,
 16 was anybody from the New Black Panther Party
 17 already there?
 18 A. No.
 19 Q. When did they arrive?
 20 A. I don't know when they arrived. I
 21 was -- once I got there, I stayed inside the whole
 22 time.
 23 Q. When did you become aware that
 24 members had arrived?

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<p>1 A. I wasn't aware. All I know when I 2 was inside, all I saw was the news people outside, 3 and I didn't see anybody. I didn't see anybody 4 outside. Nobody said nothing to me about anything. 5 I didn't go outside. All I just saw the news 6 people outside. I don't know whether they were 7 just there for the election, talking to the 8 election people outside, or whatever. But as far 9 as telling me, I didn't see nobody come inside or 10 outside. 11 Q. So you stayed inside the building 12 the whole time? 13 A. Yes. 14 Q. And from where you were sitting you 15 couldn't see outside the building? 16 A. No. It was like -- the windows was 17 like -- like a walled-off area. I couldn't see 18 straight out front. 19 Q. Walk me through what the building -- 20 where you are in relationship to the building. If 21 I come in through the entrance -- 22 A. Yeah, I'm facing this way. My back 23 is facing towards the wall. 24 Q. All right. But are you down a</p>	<p>1 the Black Panthers? 2 A. No, I never seen them. I told the 3 guy when they came to my house that I never see any 4 of the Black Panthers. 5 Q. Who came to your house? 6 A. The guy that gave me these papers. 7 Q. Oh, the processor for us? 8 A. Yes, yes. 9 Q. Okay. 10 You mentioned, though, you became 11 aware that there were some newspaper -- I'm saying 12 newspaper, but reporters were outside? 13 A. Yeah. The news people that were 14 there, they came to the front door, they came in, 15 and then they went back out. That's the only way I 16 saw them. 17 Q. Okay. So you saw reporters come 18 into the entrance? 19 A. Right. 20 Q. Was anybody telling you anything 21 about there's -- there are people outside? 22 A. No. Wasn't no commotion inside. 23 Q. I'm sorry? 24 A. There wasn't no kind of commotion</p>
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<p>1 hallway or what? 2 A. No. Once like -- once I -- like 3 once I come through the door -- like once I come 4 through the door, it's like -- I go straight to the 5 left and there is a room right there. It's got a 6 little area right there. 7 Q. All right. So it's around the -- 8 A. Around the corner. 9 Q. You come in the entrance, it's 10 around the corner, and that's where the voting room 11 is? 12 A. Yes. 13 Q. And that's where you are? 14 A. Right. 15 Q. How are you and your wife situated? 16 A. We're -- like right there at the 17 doors. 18 Q. Okay. Right near the door? 19 A. Yes. 20 Q. But you can't see outside the 21 entrance? 22 A. No. Once you get inside and go 23 around, you can't see outside. 24 Q. So did you actually ever see any of</p>	<p>1 inside. 2 Q. All right. 3 But people weren't coming inside and 4 saying there was anybody outside? 5 A. No, not that I hear of. 6 Q. Let me run you through some -- 7 because there are videos of the situation outside. 8 A. Right. 9 Q. Did you ever become aware -- and I 10 know I've asked this, but let me run through it -- 11 did you become aware that members of the New Black 12 Panther Party were outside? 13 A. No. 14 Q. Okay. Did you become aware -- 15 A. I didn't know what they would be 16 wearing. Would they have regular clothes or -- 17 Q. Well, I'm not going to -- 18 A. Oh, oh. 19 Q. I'm asking you. 20 A. Oh, no. 21 Q. All right. Do you know whether the 22 police were outside? 23 A. Police? 24 Q. And I'm asking not just did you see</p>

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1 them, but did people tell you, for example, that
 2 the police were outside?
 3 A. Yes, I heard that police was
 4 outside.
 5 Q. Okay. Who told you that?
 6 A. I heard that from -- who that?
 7 Couple people at the door when the news people was
 8 coming in, they said the police was out there with
 9 the news people.
 10 Q. Okay. Did you ask them why they're
 11 here?
 12 A. No. I ain't ask no questions. I
 13 was just -- I just stayed inside. I figured wasn't
 14 none of my business to ask questions what was going
 15 on out there, if anything was. My main concern was
 16 just stay inside.
 17 Q. What did you understand was your
 18 job -- what were your duties as a poll watcher?
 19 A. Just to count people that come in.
 20 Q. Did Mr. Wayne -- do you know who
 21 Wayne Byman is?
 22 A. No.
 23 Q. All right.
 24 So you don't recall if Mr. Byman

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1 came in and spoke to you early in the morning about
 2 there are members of the Black Panther Party
 3 outside?
 4 A. No. No, I don't.
 5 Q. Did anybody from the Republican
 6 Party come in and speak to you during Election Day?
 7 A. No.
 8 Q. Let me be specific. There is a tall
 9 gentleman who was wearing a white shirt and blue
 10 jeans. His name is Chris Hill. Did he come in and
 11 speak to you?
 12 A. Not that I recall, no.
 13 Q. I'll be explicit. If Mr. Hill is on
 14 videotape saying that he spoke to you and you
 15 indicated that you were afraid, you don't recall
 16 any statement like that to Mr. Hill?
 17 A. No. I had no reason to be afraid.
 18 No.
 19 Q. Had you ever heard of the New Black
 20 Panther Party before Election Day?
 21 A. No. I mean, I heard of Black
 22 Panthers before that to now -- to just now. I
 23 ain't even know they exist anymore. They dead, you
 24 know.

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1 Q. Okay.
 2 Since Election Day have you seen any
 3 pictures of what went on outside the polling place?
 4 A. No.
 5 Q. Let me show you what we'll marked as
 6 Exhibit 1.
 7 (Exhibit 1 marked for
 8 identification.)
 9 BY MR. BLACKWOOD:
 10 Q. Mr. Counts, I only want you to refer
 11 to the photo at the bottom of that scene.
 12 A. Is it all right if I get my glasses?
 13 Q. No, go ahead.
 14 A. I ain't never seen these two guys.
 15 Q. Okay. Just to be explicit so it's
 16 on our written record, there appear to be two
 17 members of the -- I won't even say they're
 18 definitely members of the New Black Panther Party,
 19 but the two gentlemen there in dark black uniforms
 20 and one of them has a nightstick. You don't recall
 21 seeing either one of those gentlemen on Election
 22 Day. Is that right?
 23 A. No.
 24 Q. There is a white woman pictured in

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1 the background. She's wearing a white T-shirt and
 2 a dark jacket talking on a cell phone. Had you
 3 ever seen her before?
 4 A. I don't know. She could have -- she
 5 could have -- could have walked in the building
 6 because there was a few, like, white females coming
 7 in and out of the building. She could have been
 8 one of ones that walked in. I don't recall seeing
 9 her, but she could have been one that walked in the
 10 building.
 11 Q. Did you talk to her?
 12 A. No.
 13 Q. You have no idea who she is?
 14 A. I don't know who she is.
 15 Q. Now, during the whole time -- you
 16 were there all day Election Day?
 17 A. Yes.
 18 Q. And you never heard anybody inside
 19 the election room say that there is two members of
 20 the Black Panther Party outside?
 21 A. No. Nobody was, you know,
 22 communicating or talking about no Black Panthers on
 23 the inside.
 24 Q. Let me just run through some names

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1 and see if you know these individuals.
 2 Robert Vann?
 3 A. (Witness indicating.)
 4 Q. Jerry Jackson?
 5 I'm sorry. You have to answer.
 6 A. Oh, no.
 7 Q. Let me ask it again. Robert Vann,
 8 have you ever met him, or do you know that name?
 9 A. No.
 10 Q. Jerry Jackson?
 11 A. I don't know him either. I never
 12 heard of them names neither.
 13 Q. Now, a Republican team, if you will,
 14 arrived and they were shown outside the building.
 15 Some of them, as I mentioned, said they came in and
 16 spoke to you. But you don't recall that?
 17 A. No. No, sir.
 18 Q. It would have been either, as I
 19 mentioned before, a gentleman who is tall, thin,
 20 wearing a white shirt with blue jeans.
 21 A. Uh-huh.
 22 Q. You don't recall anybody like that?
 23 A. No.
 24 Q. Or it was a young gentleman, also

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1 white, who was wearing a blue suit.
 2 A. No, I can't recall none of them or
 3 first names.
 4 Q. The two names were -- the first man
 5 was Chris Hill.
 6 A. Right.
 7 Q. The second man in a suit, his name
 8 was Mike Mauro. But you don't recall talking to
 9 him as well?
 10 A. No.
 11 Q. The third name -- early in the
 12 morning a man by the name of Wayne Byman indicated
 13 that he came to see you. Wayne Byman is an
 14 African-American man. He said he spoke to you
 15 around 8 or 9 in the morning. You don't recall
 16 that?
 17 A. Nobody spoke to me.
 18 Q. Mr. Counts, I sent you two letters,
 19 one on October 26th and one on November 19th.
 20 These letters.
 21 Is there a reason you didn't
 22 respond?
 23 A. I tried -- I tried -- it was a
 24 number on there, wasn't it?

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1 Q. Yes.
 2 A. I tried to call the number, but
 3 nobody ever answered the phone. I did call. Once
 4 I read the letter, I tried to call. I tried to
 5 respond to the letter.
 6 Q. Okay. So the first -- well, strike
 7 that.
 8 Did you ever talk to anybody from
 9 the Department of Justice?
 10 A. No.
 11 Q. Did you see any white supremacists
 12 that day?
 13 A. No.
 14 Q. Did anybody from the New Black
 15 Panther Party contact you after the election about
 16 what occurred on Election Day?
 17 A. No.
 18 Q. Do you know who called the police?
 19 A. No.
 20 Q. Did you ask anybody to call the
 21 police?
 22 A. No.
 23 Q. Were you reluctant to testify today?
 24 A. No.

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1 Q. This is a somewhat personal
 2 question, but are you taking any medication that
 3 would affect your ability to testify today?
 4 A. I have my medication, but I didn't
 5 take it.
 6 Q. Were you on that medication during
 7 Election Day?
 8 A. Yes.
 9 Q. What is it?
 10 A. [REDACTED]
 11 [REDACTED]
 12 Q. And what are those for?
 13 A. [REDACTED]
 14 Q. Did you see any voters turned away
 15 at the polling site?
 16 A. No.
 17 Q. Did anybody who came in to vote
 18 indicate that they were concerned or worried about
 19 their safety?
 20 A. No.
 21 Q. Did you talk to any voters?
 22 A. No, they just came in, got in line,
 23 voted, got back out.
 24 Q. So nobody talked to you about any

1 complaints, any concerns?
 2 A. No.
 3 MR. BLACKWOOD: Commissioner Yaki,
 4 do you have any questions? Commissioner?
 5 COMMISSIONER YAKI: Sorry, sorry. I
 6 hit the wrong mute button. No, I have no
 7 questions.
 8 MR. BLACKWOOD: Then thank you,
 9 Mr. Counts. I very much appreciate you're coming
 10 today.
 11 (9:25 a.m.)

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1 C E R T I F I C A T E
 2 I, Cherilyn M. McCollum, a Certified
 3 Court Reporter and Notary Public, do hereby certify
 4 that, prior to the commencement of the examination,
 5 the witness and/or witnesses were sworn by me to
 6 testify to the truth and nothing but the truth.
 7 I do further certify that the
 8 foregoing is a true and accurate computer-aided
 9 transcript of the testimony as taken
 10 stenographically by and before me at the time,
 11 place and on the date hereinbefore set forth.
 12 I do further certify that I am
 13 neither of counsel nor attorney for any party in
 14 this action and that I am not interested in the
 15 event nor outcome of this litigation.
 16
 17
 18
 19
 20
 21
 22 Certified Court Reporter
 23 XI02094
 24 Notary Public
 My commission expires 3-22-11
 Dated: _____

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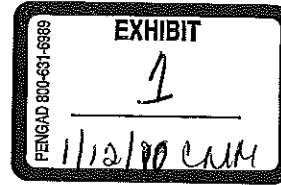
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Obama's corruption of civil rights law



Dennis Byrne

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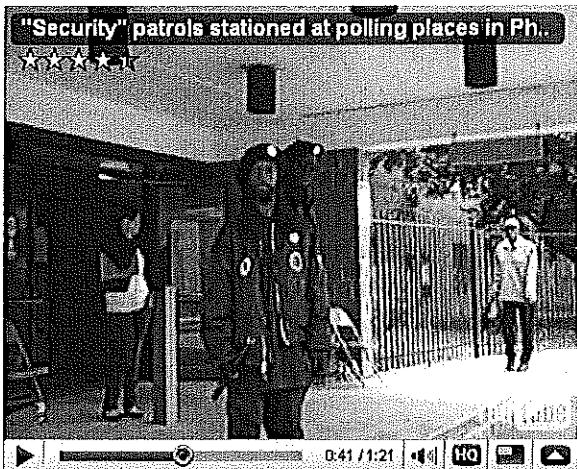
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In the Obama administration, try to apply the civil rights laws equally and you're gone. That was the experience of the justice department attorney who pressed charges against a group of Black Panthers that were intimidating voters in a Pennsylvania polling place. (Story is [here](#).)

Christopher Coates, the department's veteran voting rights section chief, has been "detailed" (duties unknown) for 18 months to the U.S. Attorney's office in South Carolina. The department is trying to pass off the transfer as having nothing to do with his enforcement of the voting rights act against the Black Panthers; the effort is utterly unconvincing.

The incident was captured on video (below) and widely circulated on YouTube, raising a national furor. Despite the clear evidence before everyone's eyes, political appointees in Obama's justice department dismissed the charges. The U.S. Commission on Civil Rights sought to investigate the dismissal, but has been rebuffed by Obama's justice department.

This is serious stuff. The message is clear to career administrators: Try to enforce the law in a fair and impartial way, and you're gone. Political interference of the enforcement of our laws--as Democrats correctly reminded us during the Bush administration--is unacceptable. Congress, in its oversight function, should get to the bottom of this miscarriage of justice. But because all the committees are control by Democrats, it won't.



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Page 1

1 UNITED STATES COMMISSION ON CIVIL RIGHTS
 2 -----
 3 IN RE:
 4 NEW BLACK PANTHER PARTY
 5 -----
 6 Philadelphia, Pennsylvania
 7 Tuesday, January 12, 2010
 8
 9 TRANSCRIPT of testimony of ANGELA COUNTS,
 10 as taken by and before Cherilyn M. McCollum, a
 11 Registered Professional Reporter, at the HILTON
 12 GARDEN HOTEL, 1100 Arch Street, commencing at 9:26
 13 o'clock in the forenoon.
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24

Page 2

1 B E F O R E:
 2 (BY TELEPHONE)
 3 MICHAEL YAKI, COMMISSIONER
 4 ALEC DEULL, SPECIAL ASSISTANT
 5 NICK COLTEN, SPECIAL ASSISTANT
 6 JOHN MARTIN, SPECIAL ASSISTANT
 7
 8 A P P E A R A N C E S:
 9 UNITED STATES COMMISSION ON CIVIL RIGHTS
 10 OFFICE OF THE GENERAL COUNSEL
 11 BY: DAVID P. BLACKWOOD, ESQ.
 MAHA JWEIED, ESQ.
 12 624 Ninth Street, N.W.
 Suite 631
 13 Washington, D.C. 20424
 (202) 376-7622
 dblackwood@usccr.gov
 Attorneys for The Commission
 14
 15 A L S O P R E S E N T:
 16 KIMBERLY TOLHURST, ESQ. (BY TELEPHONE)
 17
 18
 19
 20
 21
 22
 23
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Page 3

1 I N D E X
 2 WITNESS PAGE
 3 ANGELA COUNTS
 4 By Mr. Blackwood 4
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Page 4

1 ANGELA COUNTS, after having been
 2 first duly sworn, was examined and testified as
 3 follows:
 4 EXAMINATION
 5 BY MR. BLACKWOOD:
 6 Q. Mrs. Counts, would you please state
 7 your full name and address for the record.
 8 A. Angela Counts, 3413 North Lee
 9 Street.
 10 Q. And are you employed?
 11 A. No.
 12 Q. The questions I'm going to ask you
 13 about are what occurred on Election Day in 2008.
 14 You were working at 1221 Fairmount?
 15 A. Yes.
 16 Q. And as a poll watcher?
 17 A. Yes.
 18 Q. For what party were you working for?
 19 A. Republican.
 20 Q. Are you registered as a Republican?
 21 A. No.
 22 Q. Are you registered as a Democrat?
 23 A. Yes.
 24 Q. And had you ever worked as a poll

Page 5

1 watcher before?
 2 A. Yes.
 3 Q. How many times?
 4 A. About three or four times.
 5 Q. Is that usually with your husband?
 6 A. Yes.
 7 Q. Always with your husband or --
 8 A. Well, no. Sometimes -- we both are
 9 poll watchers. But that was the second time they
 10 put us together. Normally we're not in the same
 11 location.
 12 Q. Okay. So you had worked with him
 13 together as a team in 2004, or do you recall when
 14 it was?
 15 A. I don't know what year it was, but I
 16 know we did work together before.
 17 Q. And you generally work for the
 18 Republicans?
 19 A. Yes.
 20 Q. Have you ever worked for the
 21 Democrats?
 22 A. No.
 23 Q. How did you get the job?
 24 A. It was through Ms. Denise. I

Page 6

1 believe she passed. But she worked with -- he's a
 2 minister. I can't remember -- I can't think of his
 3 name right now. But I know Ms. Denise was the one
 4 that started us with being poll watchers. I can't
 5 think of --
 6 Q. Did she have an Italian last name?
 7 A. No, I don't know. I just know her
 8 name was Ms. Denise.
 9 Q. Okay.
 10 And do you get paid to be a poll
 11 watcher?
 12 A. Yes.
 13 Q. How much did you get in 2008?
 14 A. I believe \$200.
 15 Q. Okay.
 16 When did you arrive -- now, going
 17 back to Election Day in 2008 --
 18 A. Okay.
 19 Q. -- around what time did you all
 20 arrive?
 21 A. 6:00, I believe.
 22 Q. And you arrived together?
 23 A. Yes.
 24 Q. Was anybody from the New Black

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1 Panther Party there when you arrived?
 2 A. Nobody was there when we arrived.
 3 When we arrived at like -- nobody was outside, like
 4 no voters.
 5 Wait. I don't know -- I don't know
 6 if we arrived at 6 or 7. I know it was early in
 7 the morning.
 8 Q. Did you get there before the polls
 9 actually opened?
 10 A. Yes. Yes, we got there before they
 11 opened, because they opened the machines while we
 12 were there. But there was nobody, like, outside,
 13 nobody around.
 14 Q. Could you describe for us the
 15 physical layout. For example, I come up to
 16 Fairmount; I go through the doors. Where are you
 17 going to be?
 18 A. We were at the left. When you go
 19 in, you go around, and it was a desk there, and
 20 there was a door right -- like around the front of
 21 the desk where the security is, there was a door
 22 right on the side that goes right through the
 23 doors, and the voting machines was in there.
 24 Q. Is this a nursing home or a

Page 8

1 retirement home?
 2 A. I don't know if it's a nursing home
 3 or a retirement home. I know it's like elderly
 4 people in there.
 5 Q. And from where you were sitting
 6 could you see the entrance?
 7 A. No. No. We were -- when you go
 8 around and go in, it was like a -- we could see
 9 like -- it was like a wall right here and we were
 10 sitting right here in the corner, and you can see,
 11 like, the glass. We could see out the window.
 12 Q. Of the entrance?
 13 A. No, we couldn't see the entrance.
 14 Q. Okay. You could see out a window on
 15 the side?
 16 A. Right, right.
 17 Q. Did there come a time when people
 18 indicated that there was some kind of disturbance
 19 out front?
 20 A. Well, we saw when the cops came. We
 21 didn't hear, because where we were we couldn't hear
 22 anything, because when the people were coming in,
 23 they had lines, like, at the door. Like, we
 24 couldn't even get out the entrance because the

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1 doorway was so crowded with people, the line coming
 2 in to vote.
 3 Q. And that was first thing in the
 4 morning?
 5 A. As soon as they opened up, yes.
 6 Q. Okay.
 7 And tell me about when the police
 8 arrived.
 9 A. That's all we saw was the police
 10 arrive, but we didn't know what was going on.
 11 Q. Did either of you get up to look
 12 outside to see what was happening?
 13 A. No. No.
 14 Q. How did you know that the police had
 15 arrived?
 16 A. We saw them through the window.
 17 Q. Oh, through that side window --
 18 A. Yes, that's where we were looking
 19 out the window when we saw -- we didn't know
 20 something was going on because we couldn't see. We
 21 just saw when the police came, and I said to Larry,
 22 I said, "The cops are here. I wonder what's going
 23 on."
 24 And we just sat there watching out

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1 the windows, but we couldn't, like, stay watching
 2 because we had to watch -- you know, like poll
 3 watchers. We were watching the people coming in to
 4 vote and everything.
 5 Q. And just so the record is clear, the
 6 window that you looked out to see the police was
 7 the side window in the voting room, not the front
 8 entrance?
 9 A. Right.
 10 Q. Okay.
 11 Did anybody tell you what was going
 12 on?
 13 A. No. Well, the people were talking.
 14 People were talking, but -- we heard them say the
 15 Panthers was there, but they didn't tell us, like
 16 come in and to talk to us, because we didn't talk
 17 to the people.
 18 Q. When you say "the people," who --
 19 A. Like the voters. They were talking
 20 as they were coming in, like saying stuff. They
 21 were talking to each other and we heard them, but
 22 nobody came in, like, and said to us, "The Panthers
 23 are here." Nobody did that.
 24 Q. Okay. So you were just overhearing

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1 other people talk about it?
 2 A. Yes, yes.
 3 Q. Did either you or your husband
 4 contact anybody about what you were hearing from
 5 people saying that the Panthers were outside?
 6 A. No.
 7 Q. Did you ever speak to a Mr. Wayne
 8 Byman?
 9 A. I don't know.
 10 Q. He's an -- he's African-American.
 11 He claims he came by early in the morning and saw
 12 the Black Panthers there and then talked to you.
 13 A. No.
 14 Q. Okay.
 15 A. Nobody talked to me about the
 16 Panthers. I don't know anything about the
 17 Panthers. Nobody came to me and said anything. I
 18 just overheard the people when they were coming in.
 19 Q. Right.
 20 A. But talk to anybody, I didn't talk
 21 to anybody, because we were informed when we became
 22 poll watchers that we don't talk to anybody, and
 23 they introduced us to the guy that would be coming
 24 by to check on us.

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1 Q. Who was that guy?
 2 A. I can't remember his name, but he
 3 was at the office where Ms. Denise was. And he was
 4 the one that, like, took us over there. When we
 5 had to go down -- we were poll watchers downtown
 6 one time, and, like, wherever we had to go, he
 7 would drop us off to our locations. And we know
 8 him because he was always -- it was always the same
 9 guy.
 10 But he didn't talk to us about the
 11 Panthers because he didn't know anything about the
 12 Panthers. He came, he bought us lunch and coffee,
 13 but --
 14 Q. Do you know who was that?
 15 A. I can't remember his name.
 16 Q. Do you know what he looks like?
 17 A. Yes.
 18 Q. Could you describe him?
 19 A. He was a Caucasian guy. He was,
 20 like, muscular build. He drove, like, a sports
 21 car.
 22 I mean, I don't know if I'm helping
 23 you or not, but I don't know -- that's all I know.
 24 Q. About how old is he?

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1 A. Probably about early 40's,
 2 something. I don't know.
 3 Q. And he's the one that -- and you had
 4 worked with him before?
 5 A. Yes.
 6 Q. Was that at the election that you
 7 mentioned before that you and your husband had
 8 worked at together?
 9 A. Yes.
 10 Q. So he drives you there --
 11 A. He drove us. We were in Center City
 12 one time and he dropped us off down there to our
 13 location because he had to go down and check to see
 14 if, you know, all the people were there. And he
 15 said he was -- we had went to the office where he
 16 was at and he dropped -- he said he would drop us
 17 off down there.
 18 Q. Okay. And in 2008 he drops you off,
 19 right?
 20 A. No, he didn't drop us off in 2008.
 21 Q. Let's talk about 2008 then.
 22 A. Okay.
 23 Q. All right.
 24 But he at least worked with you?

Page 14

1 A. Yes.
 2 Q. All right. Did he bring you lunch?
 3 A. He brought us coffee and doughnuts.
 4 Q. What, in the morning?
 5 A. Yes.
 6 Q. At that time did he tell you
 7 anything about any incidents or anything going on
 8 outside?
 9 A. No. There was nothing going on when
 10 he came the first time.
 11 The second time when he came was
 12 when the -- like -- but the crowd had died down
 13 when he came. And he was asking was everything
 14 okay. And we was like, yeah, everything was fine,
 15 because nothing happened inside. Whatever happened
 16 happened outside.
 17 But we couldn't even see because we
 18 couldn't even see the front to see what was going
 19 on. We could see from the side. I saw, like, the
 20 news channels out there and, like, the cameras. I
 21 could see the cameras from the side, but over here
 22 we couldn't see anything, so I don't know what was
 23 going on out front.
 24 Q. Did he tell you what he had

Page 15

1 observed?
 2 A. No. I don't think he observed
 3 anything. He wasn't there when all that was going
 4 on. When he came, everything had died down.
 5 Q. Let me back up so I understand the
 6 timing. The first time is he's bringing you coffee
 7 and doughnuts?
 8 A. Right.
 9 Q. The second time is --
 10 A. But he came, like, lunch -- the
 11 first time he came was, like, in the morning just
 12 to make sure we were there. He talked to us to
 13 make sure everything was okay. He asked us were we
 14 there when the machines opened, stuff like that,
 15 and then he left. He told us he would be back to
 16 check on us.
 17 And then he came back -- when he
 18 came back at lunchtime, that's when everything --
 19 the commotion and everything, like, had died down,
 20 like the cops were gone. You could see people were
 21 out there talking, but there was nothing going on
 22 when he came.
 23 Q. Did the reporters stay out there for
 24 a while longer?

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1 A. They were there for a while, yes.
 2 Q. Okay. So they stayed much longer
 3 than the police?
 4 A. Yes.
 5 Q. Was there any sort of system, if you
 6 had seen any irregularities or problems, for you to
 7 contact the Republican Party?
 8 A. No, there was nothing that we needed
 9 to contact them for.
 10 Q. No, I know what you're saying.
 11 A. Okay.
 12 Q. But was there a method by which you
 13 were supposed to contact them?
 14 A. Yes.
 15 Q. All right. And what was that?
 16 A. If anything happened, like if
 17 anybody came in there, like, trying to be
 18 disruptive or anything, we were supposed to call
 19 them.
 20 Q. And you had what, cell phones to
 21 call?
 22 A. Yes.
 23 Q. Okay.
 24 And your view is that only mattered

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1 if it happened inside the polling place itself?
 2 A. No, because I couldn't see what was
 3 going on outside, so I didn't know what to tell
 4 them. What was I going to tell them if I called?
 5 The cops were outside?
 6 We were told not to go outside.
 7 Like, we were told to stay inside; we were poll
 8 watchers, to stay inside and watch the polls. If
 9 something's going on outside and I leave to go
 10 outside, then who's watching the polls inside?
 11 So we just stayed inside, but we
 12 kept watching to see, you know, if whatever was
 13 going on outside was going to come in. We kept
 14 looking around the people out the door and we
 15 couldn't see anything. It was so crowded at the
 16 doorway to get in.
 17 Q. At the morning?
 18 A. In the morning, yes.
 19 Q. Okay.
 20 Let me just show you what's been
 21 marked as Exhibit 1.
 22 A. Okay.
 23 Q. And only for the purposes of looking
 24 at that photo at the bottom.

Page 18

1 A. I didn't see this.
 2 Q. That's what I'm trying to find out.
 3 This is just a still part of a video
 4 that was taken about the outside of the building.
 5 A. Okay.
 6 Q. And did you ever see any of the two
 7 black gentlemen before?
 8 A. No.
 9 Q. And you didn't see them that day
 10 either, correct?
 11 A. No.
 12 Q. The white woman standing behind
 13 them, her face is somewhat obscured, but she's
 14 wearing the white T-shirt and short jacket talking
 15 on the cell phone, did you ever see her before?
 16 A. No.
 17 Q. Let me mention some names and give
 18 you some descriptions and tell me whether you saw
 19 these individuals that day.
 20 A. Okay.
 21 Q. There was a tall white man wearing a
 22 long white shirt and blue jeans. I believe his
 23 name was Chris Hill. Did he ever come in to speak
 24 to you or your husband?

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1 A. I don't remember -- I can't -- I
 2 really can't remember, but nobody came in to talk
 3 to us.
 4 Q. Okay. Nobody?
 5 A. No, just the man that we worked
 6 with. Like, we didn't talk to anybody. We didn't
 7 talk to anybody. Nobody came in to talk to us.
 8 The most I found out about this is
 9 when they came to my house asking me questions.
 10 And I was like, I didn't even know what was going
 11 on. I heard the people talking about it, but to
 12 see it for myself, I didn't see anything.
 13 Q. Okay. The people that were coming
 14 in that you were overhearing, what were they
 15 saying?
 16 A. They were saying something about
 17 the -- they heard that the Panthers was out there
 18 and the cops was out there, and they was trying to
 19 see what was the cops going to do. That's what we
 20 heard the people saying.
 21 But when me and Larry looked out the
 22 window -- because we even walked, like, further
 23 down in the room, because it was a big window,
 24 trying to go down as far as we could go to see what

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1 we could see, and we still couldn't see. Because I
 2 guess the way the building is made, we couldn't see
 3 the front. It guess because it goes around like
 4 that and it's like a wall right here, we couldn't
 5 see around the front. We couldn't see anything.
 6 Q. The entrance kind of sticks out?
 7 A. Yes.
 8 Q. So that kind of blocked your view
 9 from that side room?
 10 A. Yes.
 11 Q. Did any of those people that you
 12 overheard, did they indicate any concern?
 13 A. No. They were still voting. The
 14 people came in and voted regardless. It didn't
 15 break up the line. It didn't stop the people from
 16 voting. They still came in.
 17 Q. Was there any indication what time
 18 the Panthers left?
 19 A. I don't know. I never saw them
 20 there, so I don't know what time they left.
 21 Q. Did you ever introduce or meet the
 22 Democratic poll watchers there?
 23 A. Yes.
 24 Q. So you met Mr. Vann?

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1 A. I don't remember names, but I did
 2 meet some people there.
 3 Q. Do you recall what they looked like?
 4 A. One of them was -- there was a
 5 Caucasian man there and there was an
 6 African-American guy there from the Democrat Party.
 7 Q. Was the African-American man wearing
 8 a green jacket with white stripes on the shoulder?
 9 A. Oh, I don't know.
 10 Q. Don't recall?
 11 A. I can't remember. No.
 12 I saw a lot of people on that day.
 13 Q. Did you ever talk to the election
 14 judge at all?
 15 A. Yes.
 16 Q. Did the election judge ever at any
 17 point get outside -- get up and look outside to see
 18 what was happening?
 19 A. Oh, I don't remember, sir.
 20 Q. Okay. The Caucasian man that you
 21 say was a Democratic worker, what position did he
 22 have?
 23 A. He was a poll watcher, also.
 24 Q. Do you know whether he called the

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1 police?
 2 A. I have no idea. Where he was
 3 sitting, I couldn't see him calling the police,
 4 because he was sitting -- Larry and I was on this
 5 side. The doorway was here. He was sitting in the
 6 corner over there. So we saw more than what he
 7 could see. So I couldn't see him calling the
 8 police and he couldn't see what we could see.
 9 Q. So you were closer to the window?
 10 A. Right.
 11 Q. He was on the other side of the
 12 room --
 13 A. There was no window over there. He
 14 was, like, in the corner against the wall, just
 15 like that. He couldn't see no more -- and we could
 16 see -- the people were coming in and the line was
 17 here. He couldn't even see us from the line.
 18 So if he called the police, I don't
 19 know why he called the police, because all he could
 20 see was the crowd coming in. He couldn't see what
 21 we could see. And what we saw, you know, was like
 22 the cops and the camera. That's all we saw. We
 23 couldn't see the people.
 24 Q. So it's safe to say you don't know

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1 who called the police?
 2 A. Right. I have no idea.
 3 Q. Okay.
 4 You had mentioned just a minute ago
 5 some people came to talk to you about it. Do you
 6 know who they were?
 7 A. Came to talk -- oh, to my house?
 8 Q. Yes.
 9 A. The FBI. The FBI came. And
 10 somebody else came, but I can't remember who they
 11 are. Like, they came up to talk to us and they
 12 asked us questions about it.
 13 Q. Can you describe the other people?
 14 A. What other people?
 15 Q. White? Black?
 16 A. They were white. Two white
 17 gentlemen.
 18 Q. Two white guys. And those were the
 19 FBI agents?
 20 A. One was the FBI and one said he was
 21 a -- something else. I don't know what he was.
 22 Q. From the Department of Justice?
 23 A. Yes.
 24 Q. Heavyset? Young? Old? Or you just

Page 24

1 don't remember?
 2 A. One was an older guy, like an older
 3 man, thin build. And the other one was a younger
 4 guy.
 5 Q. And there's just the two of them?
 6 A. Yes.
 7 Q. Did they talk to your husband as
 8 well?
 9 A. Yes.
 10 Q. And about how soon after the
 11 election was that?
 12 A. That was like this year sometime. I
 13 would say probably about June.
 14 Q. June of --
 15 A. July.
 16 Q. Of 2009?
 17 A. Yes.
 18 Q. Okay.
 19 The election is in November, and it
 20 was about six, seven months after that?
 21 A. Right.
 22 Q. Okay.
 23 And did you give a statement?
 24 A. No. I told them I didn't -- I told

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1 them like I'm telling you, I didn't know anything.
 2 We didn't see anything; we didn't know anything.
 3 And I asked him, like, why -- we
 4 told them -- because when we was leaving -- when we
 5 were leaving from the site where we were poll
 6 watchers, the guy that I was telling you about that
 7 came to check on us, like, we were telling him,
 8 like, we didn't know, like, what was going on
 9 outside. And he said don't worry about it because
 10 we didn't know anything. We didn't know what was
 11 going on, and I wasn't going to lie and make up
 12 something. The people said it, but we couldn't see
 13 it. You know, and that's, like, hearsay. I'm
 14 hearing what you're saying, but I can't see what
 15 you're talking about it. And he said, "Don't worry
 16 about. It's okay."
 17 And then, like, later on I'm
 18 wondering, like, why the people coming to my house
 19 when I told people we don't know what was going on?
 20 I told Larry, "I'm not going to lie and tell them
 21 we saw something we didn't see."
 22 These are the Panthers right here?
 23 Q. That's my understanding, yes.
 24 A. I never saw these people. I never

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1 saw none of this. I didn't see these people like
 2 this. I never saw none of that.
 3 Q. You stayed in your room?
 4 A. We stayed in the room.
 5 From where we were at, I never saw
 6 them outside. If I saw them, I would say I saw
 7 them.
 8 If I saw them, I wouldn't have known
 9 who they was anyway. I don't know who the Panthers
 10 are.
 11 Q. Okay. Did you hear about any
 12 incident involving white supremacists that day?
 13 A. No.
 14 Q. Did anybody from the Black Panther
 15 Party contact you after the election?
 16 A. No, uh-uh.
 17 Q. And just to be clear, when the FBI
 18 and some other man met you, they didn't ask you to
 19 sign any statement?
 20 A. No.
 21 Q. Did you see or hear any voters being
 22 turned away?
 23 A. No.
 24 Q. Did anybody indicate to you -- and I

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1 understand you're inside -- that people were
 2 turning away from the polls?
 3 A. No.
 4 MR. BLACKWOOD: Commissioner Yaki,
 5 do you have any questions?
 6 COMMISSIONER YAKI: No, I don't.
 7 MR. BLACKWOOD: Thank you very much.
 8 I very much appreciate you taking the time.
 9 THE WITNESS: You're welcome.
 10 (9:45 a.m.)
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1 C E R T I F I C A T E
 2 I, Cheryl M. McCollum, a Certified
 3 Court Reporter and Notary Public, do hereby certify
 4 that, prior to the commencement of the examination,
 5 the witness and/or witnesses were sworn by me to
 6 testify to the truth and nothing but the truth.
 7 I do further certify that the
 8 foregoing is a true and accurate computer-aided
 9 transcript of the testimony as taken
 10 stenographically by and before me at the time,
 11 place and on the date hereinbefore set forth.
 12 I do further certify that I am
 13 neither of counsel nor attorney for any party in
 14 this action and that I am not interested in the
 15 event nor outcome of this litigation.
 16
 17
 18
 19
 20
 21
 22 Certified Court Reporter
 23 XI02094
 24 Notary Public
 My commission expires 3-22-11

24 Dated: _____

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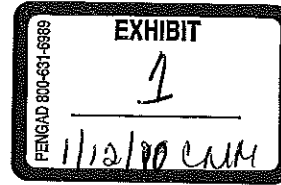
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Obama's corruption of civil rights law



Dennis Byrne

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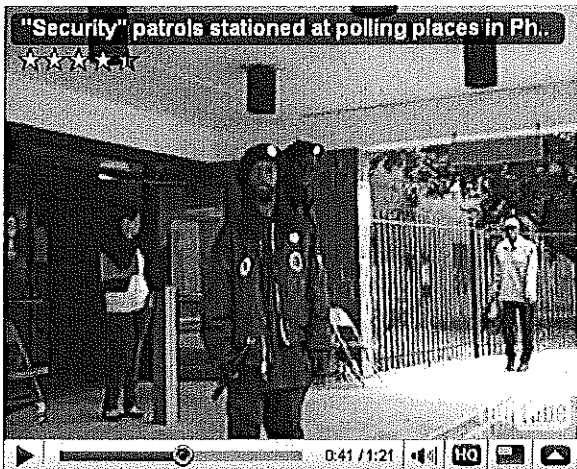
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In the Obama administration, try to apply the civil rights laws equally and you're gone. That was the experience of the justice department attorney who pressed charges against a group of Black Panthers that were intimidating voters in a Pennsylvania polling place. (Story is [here](#).)

Christopher Coates, the department's veteran voting rights section chief, has been "detailed" (duties unknown) for 18 months to the U.S. Attorney's office in South Carolina. The department is trying to pass off the transfer as having nothing to do with his enforcement of the voting rights act against the Black Panthers; the effort is utterly unconvincing.

The incident was captured on video (below) and widely circulated on YouTube, raising a national furor. Despite the clear evidence before everyone's eyes, political appointees in Obama's justice department dismissed the charges. The U.S. Commission on Civil Rights sought to investigate the dismissal, but has been rebuffed by Obama's justice department.

This is serious stuff. The message is clear to career administrators: Try to enforce the law in a fair and impartial way, and you're gone. Political interference of the enforcement of our laws--as Democrats correctly reminded us during the Bush administration--is unacceptable. Congress, in its oversight function, should get to the bottom of this miscarriage of justice. But because all the committees are control by Democrats, it won't.



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DEPOSITION

IN THE MATTER OF: :
NEW BLACK PANTHER PARTY :
_____ :

Tuesday,
February 2, 2010

Washington, D.C.

DEPOSITION OF:

MALIK ZULU SHABAZZ

called for examination by Counsel for the U.S. Commission on Civil Rights, pursuant to Notice of Subpoena/Agreement of Counsel, in the offices of the U.S. Commission on Civil Rights, located at 624 Ninth Street, N.W., when were present on behalf of the respective parties:

ORIGINAL

NEAL R. GROSS
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1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

APPEARANCES:On Behalf of the US Commission on Civil Rights:

DAVID P. BLACKWOOD, ESQ.
Office of the General Counsel
of: U.S. Commission on Civil Rights
624 Ninth Street, N.W.
Washington, D.C. 20425
(202) 376-7622

On Behalf of the Witness:

MALIK ZULU SHABAZZ, pro se
(did not appear)
4043 Clay Place, N.E.
Washington, D.C. 20019

ALSO PRESENT:

Todd Gaziano, Commissioner (via telephone)
Michael Yaki, Commissioner (via telephone)
Alec Deull, Assistant (via telephone)
Nick Colten, Staff
Pam Dunston, Staff
Tim Fay, Staff
Maha Jweied, Staff
John Martin, Staff
Alison Schmauch, Staff
Kimberly Tolhurst, Staff
Michele Ramey

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WASHINGTON, D.C. 20005-3701

1 P R O C E E D I N G S

2 10:01 a.m.

3 MR. BLACKWOOD: Good morning.

4 This is David Blackwood, the General Counsel
5 for the U.S. Commission on Civil Rights.6 It is now a little after 10:00
7 o'clock on February 2nd, 2010.8 Could the person who just came on
9 line please identify themselves?

10 (conference call tone)

11 COMMISSIONER GAZIANO: Todd
12 Gaziano.13 MR. BLACKWOOD: Okay. For the
14 record, the following people are present:
15 John Martin, Alison Schmauch, Nick Colten, Tim
16 Fay. On the telephone are: Commissioner
17 Gaziano and special assistant Alec Deull.18 It is, as I say, a little after
19 10:00 o'clock and, at the moment, our witness
20 is not present.21 We are going to be here for at
22 least 20 minutes waiting --**NEAL R. GROSS**COURT REPORTERS AND TRANSCRIBERS
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1 (conference call tone)

2 MR. BLACKWOOD: Who else is on
3 line?

4 COMMISSIONER YAKI: Commissioner
5 Yaki just joined.

6 MR. BLACKWOOD: Commissioner Yaki,
7 I have started the deposition. We're just
8 going on the record. Our witness is not
9 present.

10 COMMISSIONER YAKI: I see.

11 MR. BLACKWOOD: What I just said
12 is that we will wait approximately 20 minutes
13 to see if he appears.

14 I also went on the record that I
15 had sent a letter asking him to confirm that
16 he would appear; and asking if he had counsel
17 to confirm that; and, 3, if he was going to
18 assert the Fifth Amendment, that he also
19 acknowledge that. I received no response.

20 So, that said, we are going to
21 just sit here and wait for the witness.

22 (Whereupon, the proceeding went

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1 off the record from 10:02 a.m. to 10:26 a.m.)

2 MR. BLACKWOOD: Okay, we are back
3 on the record. This is, again, David
4 Blackwood, General Counsel at the U.S.
5 Commission on Civil Rights.

6 It is 10:25 on February 2nd, 2010.
7 We are here for the deposition and return of
8 documents involving Dr. Malik Zulu Shabazz.

9 Dr. Shabazz has not appeared. It
10 is, as I say, 10:26. The deposition was
11 scheduled for 10:00 o'clock.

12 The record should also reflect
13 that on January 25, 2010 I sent a letter to
14 Dr. Shabazz by certified regular mail as well
15 as by email requesting that he confirm that
16 he'd appear for his deposition and that he
17 indicate whether he was going to assert any
18 Fifth Amendment rights and whether he would be
19 represented by counsel. I received no
20 response to that letter.

21 Based on this record, we will be
22 requesting that the Department of Justice

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1 enforce this subpoena and the document
2 request.

3 I'm going to close the record at
4 this time unless any of the Commissioners wish
5 to make any additional statement.

6 COMMISSIONER YAKI: It's time to
7 wrap this puppy up.

8 MR. BLACKWOOD: Then the record is
9 closed.

10 Thank you, Mr. Court Reporter and,
11 thank you, everyone else.

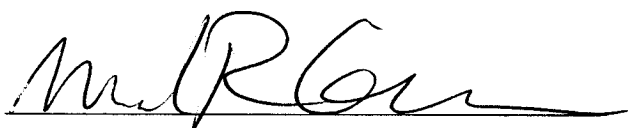
12 (Whereupon, the proceeding was
13 concluded at 10:27 a.m.)

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CERTIFICATE

This is to certify that the foregoing proceedings
in the matter of: The Deposition of
Malik Zulu Shabazz
held on: February 2, 2010
at the location of: Washington, DC

were duly recorded and accurately transcribed under my
direction; further, that said proceedings are a true
and accurate record of the testimony given by said
witness; and that I am neither counsel for, related
to, nor employed by any of the parties to this action
in which this deposition was taken; and further that
I am not a relative nor an employee of any of the
parties nor counsel employed by the parties, and I am
not financially or otherwise interested in the outcome
of the action.



Notary Public/Reporter in and for
District of Columbia
My commission expires
March 31, 2011

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Testimony of Christopher Coates

U.S. Commission on Civil Rights

September 24, 2010

Good morning, Chairman Reynolds, Vice-Chair Thernstrom, and other members of this Commission. I am here to testify about the Department of Justice's (DOJ) final disposition of the New Black Panther Party (NBPP) case and the hostility in the Civil Right Division (CRD) and Voting Section toward the equal enforcement of some of the federal voting laws.

This Commission served me with a subpoena in December 2009 to testify in its investigation of the DOJ's actions in the *NBPP* case. Since service of that subpoena, I have been instructed by DOJ officials not to comply with it. I have communicated with these officials, including Assistant Attorney General for Civil Rights, Thomas Perez, and expressed my view that I should be allowed to testify concerning this important civil rights enforcement issue. I have pointed out that I have personal knowledge that is relevant to your investigation - - - personal knowledge that Mr. Perez does not have - - - because he was not serving as AAG for Civil Rights at the time of the final disposition of the *NBPP* case. My requests to be allowed to testify and your repeated requests to the DOJ for it to allow me to respond to the lawfully-issued subpoena have all been denied.

Furthermore, I have reviewed the written statements and the testimony that Mr. Perez and others from the DOJ have given to this Commission and to Congress concerning the CRD's enforcement activities, including its enforcement activities in the *NBPP* case. In addition, I have reviewed Mr. Perez' August 11, 2010 letter to this Commission in which he again denied your request that I be allowed to testify before you and in which he made various representations concerning the CRD's enforcement practices. Based upon my own personal knowledge of the events surrounding the CRD's actions in the *NBPP* case and the atmosphere that has existed and continues to exist in the CRD and in

the Voting Section against fair enforcement of certain federal voting laws, I do not believe these representations to this Commission accurately reflect what occurred in the *NBPP* case and do not reflect the hostile atmosphere that has existed within the CRD for a long time against race-neutral enforcement of the Voting Rights Act (VRA).

In giving this testimony, I do not claim that Mr. Perez has knowingly given false testimony to either this Commission or to Congress. Indeed, as I have previously indicated, Mr. Perez was not present in the CRD at the time the decisions were made in the *NBPP* case, and he may not be fully aware of the long-term hostility to the race-neutral enforcement of the VRA in either the CRD or in the Voting Section. Instead, my testimony claims that DOJ's public representations to this Commission and other entities do not accurately reflect what caused the dismissals of three defendants in the *NBPP* case and the very limited injunctive relief obtained against the remaining defendant, and they do not accurately describe the long-standing opposition in the CRD and in the Voting Section to the equal enforcement of the provisions of the VRA.

I did not lightly decide to comply with your subpoena in contradiction to the DOJ's directives not to testify. I had hoped that this controversy would not come to this point; however, I have determined that I will no longer fail to respond to your subpoena and thereby fail to provide this Commission accurate information pertinent to your investigation. Quite simply, if incorrect representations are going to successfully thwart inquiry into the systemic problems regarding race-neutral enforcement of the VRA by the CRD - - - problems that were manifested in the DOJ's disposition of the *NBPP* case - - - that end is not going to be furthered or accomplished by my sitting silently by at the direction of my supervisors while incorrect information is provided. I do not believe that I am professionally, ethically, legally, much less, morally bound to allow such a result to occur. In addition, in giving this testimony I am claiming the protections of all applicable federal whistleblower statutes.

On the other hand, in giving this testimony I will not answer questions which will require me to

disclose communications in the NBBP case that are protected by the deliberative process privilege. That privilege that the DOJ has asserted in this matter can, in my opinion, be protected while at the same time, I can provide you information that you need to conduct your investigation - - - indeed, first hand information you will not have if I do not testify - - - that respects the privilege.

THE IKE BROWN CASE

To understand what occurred in the *NBPP* case, those action must be placed in the context of *United States v. Ike Brown et al.* Prior to the filing of the *Brown* case in 2005, the CRD had *never* filed a single case under the VRA in which it claimed that white voters had been subjected to racial discrimination by defendants who were African American or members of other minority groups. Moreover, the CRD and the Voting Section had never objected to any voting change under the preclearance requirement of Section 5 of the VRA on the ground that the change had a racially discriminatory purpose or effect on white voters. (No such objection, even in jurisdictions that have majority-minority populations, has been interposed to date. I will return to that subject later in my presentation.) I am very familiar with the reaction of many employees, both line and management attorneys and support staff in both the CRD and the Voting Section, to the *Ike Brown* investigation and case because I was the attorney who initiated and led the investigation in that matter and was the lead trial attorney throughout the case in the trial court.

Opposition within the Voting Section was widespread to taking actions under the VRA on behalf of white voters in Noxubee County, MS, the jurisdiction in which Ike Brown is and was the Chairman of the local Democratic Executive Committee. In 2003, white voters and candidates complained to the Voting Section that elections had been administered in a racially discriminatory manner and asked that federal observers be sent to the primary run-off elections. Career attorneys in the Voting Section recommended that we not even go to Noxubee County for the primary run-off to do election coverage,

but that opposition to going to Noxubee was overridden by the Bush Administration's CRD Front Office. I went on the coverage and while traveling to Mississippi, the Deputy Chief who was leading that election coverage asked me, "can you believe that we are going to Mississippi to protect white voters?" What I observed on that election coverage in Noxubee County was some of the most outrageous and blatant racially discriminatory behavior at the polls committed by Ike Brown and his allies that I have seen or had reported to me in my thirty three-plus years as a voting rights litigator. A description of this wrongdoing is well summarized in Judge Tom Lee's opinion in that case, which is reported at 494 F. Supp. 2d 440 (2007) and in the Fifth Circuit Court of Appeals' opinion affirming the judgment and injunctive relief against Mr. Brown and the local Democratic Executive Committee, which is reported at 561 F. 3d 420 (2009).

Sometime, as best I recall, in the winter of 2003-04 I wrote a preliminary memorandum summarizing the evidence we had to that point and made a recommendation as to what action to take in Noxubee County. In that memorandum, I recommended that the Voting Section go forward with an investigation under the VRA and argued that a civil injunction against Ike Brown and the local Democratic Executive Committee was the most effective way of stopping the pattern of voting discrimination that I had observed. I forwarded this memorandum to Joe Rich who was the Chief of the Voting Section at that time. I later found out that Mr. Rich had forwarded the memorandum to the CRD Front Office, but he had omitted the portion of the memorandum in which I discussed why it was best to seek civil injunctive relief in the *Brown* case. Because I am aware that Mr. Rich and Mr. Hans von Spakovsky have filed conflicting affidavits on this point with this Commission, I believe that I am at liberty to address this issue without violating DOJ privileges.

I want to underscore that my memorandum in which Mr. Rich omitted portions was not the subsequent justification memorandum that sought approval to file the case in Noxubee County, but was a preliminary memorandum that sought permission to go forward with the investigation. Nevertheless,

it is my clear recollection that Mr. Rich omitted a portion of my memorandum - - - a highly unusual act - - - and that I was later informed by the Division Front Office that Mr. Rich had stated that the omission was because he did not agree with my recommendation that the investigation needed to go forward or that a civil injunction should be sought. Nevertheless, approval to go forward with the investigation was obtained from the Bush Administration CRD Front Office in 2004.

Once the full investigation into Ike Brown's practices commenced, opposition to it by career personnel in the Voting Section was widespread. Several examples will suffice. I talked with one career attorney with whom I had previously worked successfully in a voting case and ask him whether he might be interested in working on the *Ike Brown* case. He informed me in no uncertain terms that he had not come to the Voting Section to sue African American defendants. One of the social scientists who worked in the Voting Section and whose responsibility it was to do past and present research into a local jurisdiction's history flatly refused to participate in the investigation. On another occasion, a Voting Section career attorney informed me that he was opposed to bringing voting rights cases against African American defendants, such as in the *Ike Brown* case, until we reached the day when the socio-economic status of blacks in Mississippi was the same as the socio-economic status of whites living there. Of course, there is nothing in the statutory language of the VRA that indicates that DOJ attorneys can decide not to enforce the racial-neutral prohibitions in the Act against racial discrimination or intimidation until socio-economic parity is achieved between blacks and whites in the jurisdiction in which the cases arises.

But with the help of one attorney and one paralegal who was new to the Voting Section, and the support of the CRD Front Office, we were able to investigate and bring suit. By the time the case went into discovery and to trial in 2007, the Bush Administration had hired some attorneys, such as Christian Adams and Joshua Rogers, who did not oppose working on lawsuits of this kind. They and I were able to complete discovery and try the case and win and obtain meaningful injunctive relief, including the

removal of Ike Brown from his position as Superintendent of the Democratic Primary elections. However, I have no doubt that this investigation and case would not have gone forward if the decision had been ultimately made by the career managers in the Voting Section when the case was first approved for investigation and then filing.

A regrettable incident occurred during the trial of the case. A young African American who worked in the Voting Section as a paralegal volunteered to work on the *Ike Brown* case, and he later volunteered to work on the *NBPP* case. Because of his participation in the *Ike Brown* case, he and his mother who was an employee in another Section of the CRD were harassed by an attorney in that other Section and by an administrative employee and a paralegal in the Voting Section. I reported this to the Bush Administration CRD Front Office, and the harassment was addressed.

But even after the favorable ruling in the *Ike Brown* case, opposition to it continued to occur. At a meeting with CRD management in 2008 concerning preparations for the general election, I pointed to the ruling in the *Ike Brown* case as precedent supporting race-neutral enforcement of the VRA. Mark Kappelhoff, then Chief of the CRD's Criminal Section, complained that the *Brown* case had caused the CRD problems in its relationship with civil rights groups. Mr. Kappelhoff was correct in claiming that a number of these groups are opposed to the race-neutral enforcement of the VRA, that they only want the Act enforced for the benefit of racial minorities, and that they had complained bitterly about the *Ike Brown* case. But of course, what Mr. Kappelhoff had not factored in his criticism of the *Brown* case was that the primary role of the CRD is to enforce the civil rights laws enacted by Congress, not to serve as a "crowd pleaser" for many of the civil rights groups.

Many of those groups on the issue of race-neutral enforcement of the VRA frankly have not pursued the goal of equal protection of law for all people. Instead, many of these groups act, as they did in the *Brown* case, not as civil rights groups, but as special interest lobbies for racial and ethnic minorities and demand, not equal treatment, but enforcement of the VRA only for racial and language

minorities. Such a claim for unequal treatment is the ultimate demand for preferential racial treatment.

When I became Chief of the Voting Section in 2008 and because I had experienced, as I have described, employees in the Voting Section refusing to work on the *Ike Brown* case, I began to ask applicants for trial attorney positions in their job interviews whether they would be willing to work on cases that involved claims of racial discrimination against white voters, as well as cases that involved claims of discrimination against minority voters. For obvious reasons, I did not want to hire people who were politically or ideologically opposed to the equal enforcement of the voting statutes the Voting Section is charged with enforcing. The asking of this question in job interviews did not ever, to my knowledge, cause any problems with the applicants to whom I ask that question, and in fact every applicant to whom I asked the question responded that he or she would have no problem working on a case involving white victims such as in the *Ike Brown* case.

However, word that I was asking applicants that question got back to Loretta King. In the spring of 2009, Ms. King, who by then had been appointed Acting AAG for Civil Rights by the Obama Administration, called me to her office and specifically instructed me that I was not to ask any other applicants whether they would be willing to, in effect, race-neutrally enforce the VRA. Ms. King took offense that I was asking such a question of job applicants and directed me not to ask it because she does not support equal enforcement of the provisions of the VRA and had been highly critical of the filing and civil prosecution of the *Ike Brown* case. From Ms. King's view, why should I ask that question when a response that an applicant would not be willing to work on a case against minority election officials would not in any way, in her opinion, weigh against hiring that applicant to work in the Voting Section.

The election of President Obama brought to positions of influence and power within the CRD many of the very people who had demonstrated hostility to the concept of equal enforcement of the VRA. For example, Mr. Kapplehoff, who had complained in 2008 that the *Brown* case had caused

problems with civil rights groups, was appointed as the Acting Chief of Staff for the entire CRD. And Loretta King, the person who forbid me even to ask any applicants for a Voting Section position whether he or she would be willing to enforce the VRA in a race-neutral manner, was appointed as Acting Assistant Attorney General for Civil Rights.

Furthermore, one of the groups who had opposed the CRD's civil prosecution of *Ike Brown* case the most adamantly was the NAACP Legal Defense Fund (LDF), through its Director of Political Participation, Kristin Clark. Ms. Clarke has spent a considerable amount of her time attacking the CRD's decision to file and prosecute the *Ike Brown* case. Grace Chung Becker, the Acting AAG for Civil Rights during the last year of the Bush Administration, and I were involved in a meeting in the fall of 2008 with representatives of a number of civil rights organization concerning the Division's preparations for the 2008 general election. At this meeting Ms. Clarke spent considerable time criticizing the Division and the Voting Section for bringing the *Brown* case when, in fact, the district court had already ruled in the case. Indeed, it was reported to me that Ms. Clarke approached an African American attorney who had been working in the Voting Section for only a short period of time in the winter of 2009 before the dismissals in the *NBPP* case and ask that attorney when the *NBPP* case was going to be dismissed. The Voting Section attorney to whom I refer was not even involved in the *NBPP* case. This reported incident led me to believe in 2009 that LDF Political Participation Director, Ms. Clarke, was lobbying for the dismissal of the *NBPP* case.

THE DECISION TO DISMISS AND TO LIMIT INJUNCTIVE RELIEF IN THE *NBPP* CASE

It was within this atmosphere, with these managers, and with pressure being applied by an organization - - - NAACP LDF - - - that is close to the Obama Administration's CRD management, that the decision to gut the *NBPP* case was made. Although there have been recent reports that indicate that senior political appointees at higher levels in the Department were involved in the *NBPP* case, it was

Ms. King, along with her Deputy, Steve Rosenbaum, who the Justice Department has claimed made the decision to dismiss three of the party-defendants in the case and ordered the limitation on the broader injunctive relief recommended by both Voting Section and Appellate Section attorneys against the one remaining defendant.

It is my opinion that this disposition of the *NBPP* case was ordered because the people calling the shots in May 2009 were angry at the filing of the *Ike Brown* case and angry at our filing of the *NBPP* case. That anger was the result of their deep-seated opposition to the equal enforcement of the VRA against racial minorities and for the protection of whites who have been discriminated against. Ms. King, Mr. Rosenbaum, Mr. Kappelhoff, Ms. Clarke, a large number of the people who work in the Voting Section and the CRD, and many of the liberal private groups that work in the civil rights field believe, incorrectly but vehemently, that enforcement of the protections of the VRA should not be extended to white voters but should be limited to protecting racial, ethnic and language minorities.

The final disposition of the *NBPP* case, even in the face of a default by the defendants, was caused by this incorrect view of civil rights enforcement, and it was intended to send a direct message to people inside and outside the CRD. That message is that the filing of voting cases like the *Ike Brown* and the *NBPP* cases would not continue in the Obama Administration. The disposition of the *NBPP* case was not required by the facts developed during the case or the applicable law, as has been claimed, but was because of this incorrect view of civil rights enforcement that is at war with the statutory language in the VRA and with racially fair enforcement of federal law.

FAILURE TO ENFORCE SECTION 5

If anyone doubts that CRD and the Voting Section have failed to enforce the VRA in a race-neutral manner, one only has to look at the enforcement of the Section 5 preclearance requirements. Those requirements mandate that federal preclearance for voting changes within the covered

jurisdictions be obtained for any covered change and that preclearance not be given for changes that have a racially discriminatory purpose or effect. The statutory language of Section 5 speaks in terms of protecting all voters from racial discrimination. But the Voting Section has *never* interposed an objection under Section 5 to a voting change on the ground that it discriminated against white voters in the forty-five (45) year history of the Act.

This failure includes no objections in the many majority-minority jurisdictions in the covered states. Indeed, the personnel in the Voting Section's unit which handles Section 5 submissions are instructed only to see if the change discriminates against racial, ethnic, and language minority voters. This practice of not enforcing Section 5's protections for white voters includes jurisdictions, such as Noxubee County, Mississippi where the *Ike Brown* case arose, where white voters are in the racial minority. It is in those jurisdictions the Voting Section's failure to apply Section 5's protections for the white minority is particularly problematic. On two occasions, while I was Chief of the Voting Section, I tried to persuade officials at the CRD level to change this policy so that white voters would be protected by Section 5 in appropriate circumstances, but to no avail. I believe that present management in both the CRD and the Voting Section are opposed to race-neutral enforcement of Section 5 and continue to enforce those provisions in a racially selective manner.

REASONS GIVEN BY THE DOJ FOR ITS ACTIONS IN *NBPP* CASE

As I have indicated, I am not going to testify about the statements made during my meetings with Ms. King and Mr. Rosenbaum, because of the DOJ's assertion of the deliberative process privilege. However, the DOJ and Mr. Perez have publicly articulated the reasons for the disposition of the *NBPP* case, and I will therefore address here several of these publicly stated reasons for dismissals of three of the defendants and the limitation on the injunctive relief.

The primary reason cited by the CRD for not obtaining injunctive relief against Black Panther

Jerry Jackson who stood at the Philadelphia polling place in uniform with follow Panther King Samir Shabazz , but without a weapon, was that a Philadelphia police officer who came to the polling place made the determination that King Samir Shabazz had to leave the polling place, but that Black Panther Jackson could stay because he was a certified Democratic Party poll watcher. During my thirteen and one-half (13 1/2) years in the Voting Section, I cannot remember another situation where the decision not to file suit under the VRA, much less to dismiss pending claims and parties, as in the NBPP case, was made in whole or in part on a determination of a local police officer. In my experience, officials in the Voting Section and the CRA always reserved for themselves, and correctly so, the determination as to what behavior constitutes a violation of federal law, and what does not. One of the reasons for this federal preemption of the determination of what constitutes a VRA violation is that a local police officer is not normally trained in what constitutes a VRA violation. In addition, in the Philadelphia Police Incident Report provided to this Commission, the Philadelphia police officer who came to the polling place did not determine that Black Panther Jackson's actions were not intimidating; instead, he simply reported that Mr. Jackson was certified by the Democratic Party to be a poll watcher at the polling place.

Further, as the history underlying the enactment and extension of the VRA shows, local police on occasion have had sympathy for persons who were involved in behavior that adversely affected the right to vote and violated the protections of the VRA. In this case, however, the fact that one Philadelphia police officer did not require Black Panther Jackson to leave the area became such a compelling piece of evidence that it was cited by the Assistant Attorney General Perez in his May 14, 2010 statement to this Commission. There Mr. Perez stated that “the Department placed significant weight on the responses of the law enforcement first responder to the Philadelphia polling place,” in allowing Black Panther Jackson to escape a default judgment and escape the entry of injunctive relief against his future actions. Based upon my experience, this reasoning is extraordinarily strange and an

unpersuasive basis to support the CRD's disposition of the *NBPP* case.

Another publicly stated reason by the DOJ was in a July 13, 2009 letter to Congressmen Frank Wolf and Lamar Smith that pointed out that Panther Jackson lived at the apartment building whose lower level was being used as the polling place. This reason was later abandoned by the CRD, but the fact that it was asserted by the DOJ as a reason for the dismissals in the *NBPP* case strongly suggests that it was a reason asserted at some point close to the time of the dismissals. Regarding the location of Black Panther Jackson's residence, our investigation determined that Jackson's claim that his residence was at this apartment building was not true. However, even if Black Panther Jackson had resided there, it should be quite clear to all that such a fact would not have provided him a legal basis for intimidating voters.

To understand the irrationality of these articulated reasons for gutting this case, one only has to state the facts in the racial reverse. Assume that two members of the KKK, one of which lived in an apartment building that was being used as a polling place, showed up at the entrance in KKK uniform and that one of the Klansman was carrying a billy stick. Further assume that the two Klansmen were yelling racial slurs at black voters who were a minority of people registered to vote at this polling place, and the Klansmen were blocking ingress to the polling place. Assume further that a local policeman comes on the scene and determines that the Klansman with the billy club must leave but that the other Klansman could stay because he was certified as a poll watcher for a local political party.

In those circumstances does anyone seriously believe that the Assistant Attorney General for Civil Rights would contend that on the basis of the facts and law, the CRD did not have a case under the VRA against this hypothetical Klansman because he resided in the apartment building where the polling place was located, or because he was allowed to stay at the polling place by a local police officer because he was a poll watcher? I certainly hope Mr. Perez would not find that hypothetical case lacking in merit, and I will guarantee you that Ms. King, Mr. Rosenbaum, Mr. Kappelhoff and Ms.

Clarke would not either. However, such reasons are a part of the publicly articulated grounds for the CRD's decision to instruct me to dismiss a significant portion of the *NBPP* case.

Based upon my own personal knowledge of the events surrounding the *NBPP* case and the atmosphere that has existed in the CRD and the Voting Section against racially fair enforcement of certain federal voting laws, I do not believe these publicly stated representations to this Commission and other entities accurately reflect what occurred in the *NBPP* case. They do not know the hostile atmosphere that has existed within the CRD against race-neutral enforcement of the VRA.

MS. FERNANDEZ'S STATEMENTS TO THE VOTING SECTION

In the summer of 2009, Julie Fernandez was appointed as the Deputy Assistant Attorney General for Civil Rights by the Obama Administration. One of her responsibilities is to oversee the Voting Section. Ms. Fernandez and I had worked together in the Voting Section during the Clinton Administration. She had spent years working for civil rights groups since our Clinton Administration days, mainly with the Leadership Conference for Civil Rights, but I hoped that she might have an enforcement approach different than Ms. King's and Mr. Rosenbaum's. I was to be disappointed.

Ms. Fernandez began scheduling lunches in the conference room of the Voting Section at which times the various statutes the Voting Section has the responsibility for enforcing were discussed as well as other enforcement activities. In September 2009, Ms. Fernandez held such a meeting to discuss enforcement of the anti-discrimination provisions of Section 2 of the VRA. At this meeting one of the Voting Section trial attorneys asked Ms. Fernandez what criteria would be used to determine what type of Section 2 cases the CRD Front Office would be interested in pursuing.

Ms. Fernandez responded by telling the gathering that the Obama Administration was only interested in bringing traditional types of Section 2 cases that would provide political equality for racial and language minority voters, and she went on to say that this is what we are all about, or words to that

effect. When Ms. Fernandez made that statement, everyone in the room understood exactly what she meant - - - no more cases like the *Ike Brown* or *NBPP* cases. Ms. Fernandez reiterated that directive in another meeting held in December 2009 on the subject of federal observer election coverage, in which she stated to the entire group in attendance that the Voting Section's goal was to ensure equal access for voters of color or minority language.

In November 2009, a similar lunch meeting was held by Ms. Fernandez on the subject of the National Voter Registration Act (NVRA). The NVRA has three provisions that have led to enforcement activity by the Voting Section. The first is Section 7 which requires that certain government offices, such as the local office that provides public assistance, also provide their clients the opportunity to register to vote. The other two provisions of the NVRA are found in Section 8 of that Act. They require states to ensure that voter registration list maintenance be conducted so that registration lists do not have the names of persons who are no longer eligible to vote in the jurisdiction. Further, Section 8 also provides that certain notice procedures are to be followed in order to legally remove persons from a voter registration list.

In discussions specifically addressing the list maintenance provision of Section 8 of the NVRA, Ms. Fernandez stated that list maintenance had to do with the administration of elections. She went on to say that the Obama Administration was not interested in that type of issue, but instead interested in issues that pertained to voter access. During the Bush Administration, the Voting Section began filing cases under the list maintenance provision of Section 8 to compel states and local registration officials to remove ineligible voters. These suits were very unpopular with a number of the groups that work in the area of voting rights. When Ms. Fernandez told the Voting Section that the Obama Administration was not interested in Section 8 list maintenance enforcement activity, everyone in the room understood exactly what she meant. We understood that she was *not* talking about Section 8 cases in which there is a claim that the removal procedures of Section 8 were not being complied with; instead, she was

talking about the types of cases that the Voting Section filed during the Bush Administration whose purpose was to compel the states to comply with the Section 8 directive that they do list maintenance by removing ineligible from the list.

In June 2009, the Election Assistance Commission (EAC) issued its bi-annual report concerning which states appeared not to be complying with Section 8's list maintenance requirements. The report identified eight states that appeared to be the worst in terms of their non-compliance with the list maintenance requirements of Section 8. These were states that reported that no voters had been removed from any of their voters' list in the last two years. Obviously, this is a good indication that something is not right with the list maintenance practices in that state. As Chief of the Voting Section, I assigned attorneys to work on this matter, and in September 2009, I forwarded a memorandum to the CRD Front Office asking for approval to go forward with Section 8 list maintenance investigations in these states.

During the time that I was Chief, no approval was given to this project, and it is my understanding that approval has never been given for that Section 8 list maintenance project to date. That means that we have entered the 2010 election cycle with eight states appearing to be in major noncompliance with the list maintenance requirements of Section 8 of the NVRA, and yet the Voting Section which has the responsibility to enforce that law has yet to take any action. From these circumstances I believe that Ms. Fernandez's statement to the Voting Section in November 2009 not to, in effect, initiate Section 8 list maintenance enforcement activities has been complied with.

In Mr. Perez's letter to this Commission of August 11, 2010, he stated that the CRD currently has active matters under the NVRA, "including investigations under Section 8." In making this statement, I do not believe Mr. Perez was referring to Section 8 list maintenance cases, the kind of cases Ms. Fernandez was referring to when she talked about no interest in enforcing Section 8, because I do not believe that Voting Section has recently been involved in any list maintenance enforcement

during the Obama Administration.

I believe that federal prosecutors, criminal and civil, have prosecutorial discretion in deciding how we are going to use our resources, but I do not think that discretion goes so far as to allow us to decide not to do *any* enforcement of a law enacted by Congress, because political appointees determine that they are not interested in enforcing that law. That is an abuse of prosecutorial discretion.

Further, not to enforce the list maintenance provisions of Section 8 are likely to have partisan consequences as well. A number of the jurisdictions that have bloated voter registration lists are where there are sizable minority populations and are Democratic strongholds. For example, at the time of the trial in the *Ike Brown* case, the Noxubee County Election Commission had not purged its list, as required by Mississippi law and Section 8 of the NVRA, so that the number of persons on the voter registration list was approximately 130 percent of the number of people in that county who were eighteen (18) years or older. As Congress recognized in enacting the list maintenance provisions of Section 8, bloated voter registration lists increase the risk of voter fraud.

THE IMPORTANCE OF RACIAL-NEUTRAL ENFORCEMENT OF THE VRA

Equal enforcement of the VRA is absolutely essential for a number of reasons. First, it is required by the statutory language of the VRA. Congress did not use statutory language that speaks in terms of discrimination against racial or language minorities, but in terms of discrimination on the basis of race or color. In extending and amending Section 5 of the Act in 2006, the Congress used the term “any voter”, not racial or ethnic minority voters. Further, the statutory construction given the VRA by the courts supports that the Act is written in race-neutral terms and is intended for the protection of all.

When we go to work with the DOJ, we all take an oath faithfully to enforce the laws of the United States. Enforcing the VRA in a racially selectively manner or choosing not to enforce certain provisions of federal voting law is not in compliance with the oaths that we have taken.

Second, when the VRA was originally enacted in 1965, it probably did not make a great deal of difference, as a practical matter, whether its prohibitions against race discrimination and intimidation were enforced against minority wrongdoers as well as white wrongdoers. During that time period, there were very few minority election officials in the overwhelming majority of jurisdictions, and in a number of jurisdictions there were no minority election officials. However, during the last forty-five (45) years, the United States has changed for the better. Large numbers of minority persons now serve as election and poll officials in hundreds of jurisdictions throughout America. In such a multi-racial and multi-cultural country, not the one of Bull Connor or Ross Barnett, but the country in which an African American serves as the President and as the Attorney General of the United States, and it is absolutely essential that the VRA be enforced equally against all racial and ethnic groups.

During my years in the Voting Section, and particularly during the time I served in a management capacity, I became acutely aware based on complaints and conducting investigations that a sizable number of voting illegalities are committed by members of racial and ethnic minorities. Noxubee County, Mississippi is a prime example. Noxubee was not, as some critics have claimed, a mere aberration. Let me give you two other examples.

During the time I was Chief of the Voting Section, we conducted a prolonged investigation in Wilkinson County, Mississippi, a majority-black county in the southwestern part of the State. A long battle between an all-black faction and a racially integrated faction had been going on for a substantial period of time in that country. Relations between the two factions had reached the point where the all-black faction would not allow members of the racially-integrated faction to play any role in the conduct of the local elections, including the counts of absentee ballots or the choosing of persons to work at the polls. After a local election in Wilkinson County in 2007, the home of a white candidate for local office was burned. No one was ever prosecuted for this burning, and the burning of this candidate's home never received any national attention. The Voting Section in the end did not file a VRA lawsuit

in Wilkinson County for a number of reasons, including the pendency of multiple election contests in state courts during the time of our investigation and the fear that the filing of suit by the DOJ would suggest we were taking sides in election disputes. We did send federal observers to elections there, including the 2008 election. I came away from the Wilkinson County investigation with the clear impression that African American officials there were involved in voting-related acts of racial discrimination against whites.

In addition in 2005, I conducted an investigation in Hale and Perry Counties, Alabama, two other majority-black counties. Again, there were political factions in these counties with one faction all-black and the other a racially integrated faction. There were multiple claims by the racially integrated faction of absentee ballot and other types of voter fraud being perpetrated by the all-black factions in these counties. While investigating in Hale County, I learned that there had been a recent highly contentious election, and on the night of that election, election materials, including absentee ballots, were placed for safe keeping in a local bank vault so that those materials could be reviewed the next morning by election officials. Overnight that bank was set on fire. No one was ever prosecuted for that burning. Again, the Voting Section did not end up filing a VRA lawsuit in either of these Alabama counties for a number of reasons, including on-going voting fraud investigations by the state Attorney General's office in those counties. I have recently learned that several African American political officials have been convicted for absentee ballot fraud in Hale County. Again, I came away from the Hale and Perry County investigations with the clear impression that some individual African Americans in those counties were involved in acts of racial discrimination against whites.

In pointing these examples out, I am not suggesting that minority election and poll officials or minority political activists are more likely to commit voting law violations than are their white counterparts. What I am pointing out is that I believe that some minorities are just as likely to resort to lawlessness in the voting area as are some whites. For the CRD and Voting Section to pursue

enforcement practices that ignore VRA violations by members of minority groups will encourage lawlessness in the voting area by those who will have no fear that the Federal Government will enforce the federal law against them. In our increasingly multiethnic society, that is a clear recipe to undermine the public's confidence in the legitimacy of our electoral process.

I have heard some argue that prosecutors, both criminal and civil, have prosecutorial discretion that gives attorneys in the CRD and the Voting Section the authority not to bring VRA lawsuits against minority wrongdoers. It is certainly true that prosecutors have discretion to decide what cases to bring based upon resource issues and other legal considerations. But we do not have the discretion to decide not to enforce the law based upon the race of the perpetrators or the race of the victims of the wrongdoing. Those discretionary decisions cannot constitutionally be based upon race.

In conclusion, I thank you for the time you have given me to testify on these important enforcement issues. I commend the Civil Rights Commission for making inquiries into these areas. Individuals of good will, regardless of their race, ethnicity or language-minority status, should be concerned about the CRD not enforcing laws in a race-neutral manner. As important as the mandate in the VRA is to protect minority voters, white voters also have an interest in being able to go to the polls without having race-haters such as Black Panther King Samir Shabazz whose public rhetoric includes such statements as "kill cracker babies" standing at the entrance of the polling place with a billy club in his hand hurling racial slurs. Given this outrageous conduct, it was a travesty on justice for the DOJ not to allow attorneys in the Voting Section to obtain nation-wide injunctive relief against all four of the defendants.

Statement of Thomas E. Perez
Assistant Attorney General, Civil Rights Division
U.S. Department of Justice
Before the U.S. Commission on Civil Rights

May 14, 2010
9:30 a.m.

Thank you for the opportunity to testify today. The Civil Rights Division is committed to upholding the civil and constitutional rights of all individuals, particularly those who are the most vulnerable members of our society. The Division has primary responsibility for enforcing federal laws to protect voting rights.

The Department is providing this statement in accordance with its ongoing cooperation with the Commission and specifically in furtherance of our efforts to cooperate with the Commission in the preparation of its planned statutory enforcement report. The areas the Commission has chosen as the focus of its planned enforcement report – the Department’s efforts to combat voter intimidation and the litigation in *United States v. New Black Panther Party for Self-Defense* – represent just a small part of the Department’s work to enforce federal voting laws. The Civil Rights Division is also responsible for enforcing the many protections of the Voting Rights Act, including the non-discrimination requirements, preclearance requirements, minority language accessibility requirements, federal observer provisions, assistance protections for voters who are illiterate or have disabilities, the protections of the Uniformed and Overseas Citizens Absentee Voting Act, which ensure that members of our armed services and overseas citizens have access to the ballot, the voter registration requirements of the National Voter Registration Act, and the election administration and technology standards of the Help America Vote Act.

Protection of the right to vote is one of the Department's top priorities, and we want to be as responsive as possible to requests for information about our law enforcement activities in this area consistent with the Department’s need to protect confidential information. However, as noted in the written responses to the Commission’s inquiries, we are constrained by the need to protect against disclosures that would undermine well-established confidentiality interests that are integral to the discharge of our law enforcement responsibilities, particularly those related to litigation decisions. These limitations are described in the Department’s January 11, 2010 response to the Commission’s December 8, 2009 requests and in later correspondence with the Commission.

Set forth below is information that may be useful to you in addition to the information already provided to the Commission – including over 4,000 pages of documents – in response to the Commission’s December 8, 2009 requests.

I. The Civil Rights Division's Voter Intimidation Work

The Department is strongly committed to the enforcement of laws that protect the right of citizens to vote. There are both civil and criminal federal statutes enforced by the Department that relate to voter intimidation. Enforcement responsibility within the Department of Justice for combating voter intimidation rests with both the Criminal Division and the Civil Rights Division.

As the Assistant Attorney General for the Civil Rights Division, I supervise, among other matters, the anti-voter intimidation work of the Division's Voting Section and the Criminal Section. 28 C.F.R. § 0.50. The Assistant Attorney General for the Criminal Division supervises the work conducted by the Public Integrity Section of the Criminal Division to combat voter intimidation. 28 C.F.R. § 0.55.

A. *Criminal Enforcement of Voter Intimidation Laws*

Criminal statutes that can be enforced by the Department against voter intimidation include the following: 18 U.S.C. § 594, which prohibits intimidating, threatening or coercing anyone, or attempting to do so, with the purpose of interfering with an individual's right to vote or not to vote in a federal general election; 18 U.S.C. § 609, which prohibits the use of military authority to influence the vote of a member of the Armed Forces or to require a member of the Armed Forces to march to a polling place, or attempts to do so; 18 U.S.C. § 610, which prohibits the intimidation or coercion of a federal employee's "political activity," which includes voting; 18 U.S.C. § 241, which prohibits conspiracies to, among other things, intimidate any person in the free exercise of any right or privilege secured by the Constitution or federal law, including the right to vote; 18 U.S.C. § 242, which prohibits deprivation under color of law of a right secured by the Constitution or federal law, including voting; and 18 U.S.C. § 245(b)(1)(A), which makes it illegal to use or threaten to use physical force to intimidate individuals from, among other things, voting or qualifying to vote.

In addition, Section 12 of the National Voter Registration Act (NVRA), 42 U.S.C. § 1973gg-10(1), makes it a federal crime to intimidate, threaten or coerce, or attempt to intimidate, threaten or coerce any person for: (1) registering to vote, or voting, or attempting to register or vote; (2) aiding any person in so doing; or (3) exercising any right under the NVRA. A more comprehensive overview of the federal voting and election statutes and the Department's enforcement program can be found in the "Federal Prosecution of Election Offenses Manual" issued by the Public Integrity Section of the Criminal Division.

The Civil Rights Division handles all racially motivated voting offenses, including racially motivated voter intimidation offenses. For example, recently we secured the conviction of four defendants on Staten Island who, on election night 2008, targeted African Americans because the defendants perceived that they had voted for Barack Obama. The defendants used a baton, metal pipe and even their automobile to attack their victims, causing significant injuries, which rendered one victim comatose. *United States v. Nicoletti, et al.* (E.D.N.Y.). But these criminal cases can be difficult cases to prove because under the criminal voter intimidation statutes we enforce, we must show beyond a reasonable doubt that the defendants by force or

threat of force willfully interfered with a voter because of his or her race or national origin, or other enumerated characteristic.

In threats cases, where the subject does not actually use force, we must carefully decide whether the subject's threats are legally actionable "true threats" or protected speech. The Supreme Court has held that a true threat is one in which a speaker directs a threat to another person with the intent of placing that person in fear of bodily harm or death. *Virginia v. Black*, 538 U.S. 343, 360 (2003). On the other hand, speech or expressive acts that are insulting, outrageous, hostile, or even advocate the general use of force and violence may be protected under the First Amendment. See *Madsen v. Women's Health Ctr.*, 512 U.S. 753, 774 (1994); *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

These are often difficult calls to make. One example is the recent instance we have identified that most closely resembles the facts in the 2009 Philadelphia Section 11(b) case that is a primary focus for this hearing. The Civil Rights Division received a complaint from a national civil rights organization regarding a matter in Pima, Arizona alleging that during the 2006 election, three well-known anti-immigration advocates – one of whom was wearing a gun – allegedly intimidated Latino voters at a polling place by approaching several persons, filming them, and advocating against printing voting materials in Spanish. In that instance, the Department declined to bring any action for alleged voter intimidation.

In addition to the criminal matters within the Civil Rights Division's jurisdiction, the Criminal Division handles a far broader array of election-related offenses, including some voter intimidation matters in which race is not a factor. Both the Criminal Division and the Civil Rights Division also work with the United States Attorney's Offices and the FBI field offices throughout the United States to enforce the federal voting and election statutes. Intimidation referrals are, however, a relatively rare component of the election-related criminal cases handled by the Department.

B. *Civil Enforcement of Voter Intimidation Laws*

With regard to civil enforcement, the Voting Section of the Civil Rights Division enforces Section 11(b) of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973i(b). This statute prohibits anyone, whether or not acting under color of law, from intimidating, threatening, or coercing, or attempting to intimidate, threaten, or coerce, any person for voting or attempting to vote or for aiding any person to vote or attempt to vote or for exercising any powers or duties under certain sections of the Voting Rights Act. Section 12(d) of the Voting Rights Act, 42 U.S.C. § 1973j(d), provides for the filing of a civil action by the Attorney General to secure preventive relief for a violation of such statute. In 1968, Congress repealed the criminal penalties for violations of Section 11(b) that were part of the original 1965 Voting Rights Act. Pub. Law No. 90-284, § 103, 82 Stat. 73, 75 (1968).

There have been very few cases brought under Section 11(b). Possible explanations include the limited remedies available under Section 11(b) of the Voting Rights Act and the challenging legal standard of proof. As a result, the Department can find records of only three civil actions filed under this provision since its enactment in 1965, prior to the case of *United*

States v. New Black Panther Party for Self-Defense. One of these cases settled before trial, and in both of the others, the court ruled that the Department had failed to establish a Section 11(b) claim: 1) *United States v. Harvey*, 250 F. Supp. 219 (E.D. La. 1966) (Threats of eviction and other economic penalties against black sharecroppers who had recently registered to vote found not to be form of intimidation, threat or coercion prohibited by Section 11(b)); 2) *United States v. North Carolina Republican Party*, Civil Action No. 91-161-CIV-5-F (E.D.N.C.) (Section 11(b) claim regarding pre-election mailing resolved by consent decree dated Feb. 27, 1992); 3) *United States v. Brown*, 494 F. Supp. 2d 440, 477 n. 56 (S.D. Miss. 2007) (Publication by county political party chairman of list of voters to be challenged if they attempted to vote in party primary election found not to be form of intimidation, threat or coercion prohibited by Section 11(b)). Indeed, as demonstrated in the *Brown* case, Section 11(b) cases can be extremely difficult to prove. In that case, the most recent federal district court to reject a Section 11(b) claim noted that the United States had “found no case in which plaintiffs have prevailed under this section.” *Id.*

In some cases, because voter intimidation cases are difficult to prove, the Department has declined even to bring a case. In 2005, the Civil Rights Division received a complaint that armed Mississippi state investigators had allegedly intimidated elderly minority voters during an investigation of possible vote fraud in municipal elections by visiting them in their homes and asking for whom they voted, in spite of state law protections for the secrecy of the ballot. The Division did not bring a voter intimidation case in this instance.

The Voting Section also has jurisdiction to enforce 42 U.S.C. § 1971(b), part of the Civil Rights Act of 1957, which prohibits anyone, whether or not acting under color of law, from intimidating, threatening, or coercing, or attempting to intimidate, threaten, or coerce, any person for voting or attempting to vote in a federal election. Where appropriate, the Voting Section may also consider whether it has civil jurisdiction over complaints of voter intimidation or harassment under other sections of the Voting Rights Act, such as Section 2 of the Act, 42 U.S.C. § 1973.

C. *Process for Investigating, Evaluating, and Commencing Voter Intimidation Cases*

The Department of Justice may receive allegations of possible voter intimidation from a variety of sources, including but not limited to newspaper or other media accounts, complaints from organizations or groups, citizen calls or letters, referrals from state or local officials, other federal agencies, or Members of Congress.

Within the Department, such a complaint may fall within the supervisory or consultative criminal jurisdiction of the Election Crimes Branch of the Public Integrity Section of the Criminal Division, the U.S. Attorney’s Offices, or the jurisdiction of the Criminal Section of the Civil Rights Division, or within the civil jurisdiction of the Voting Section of the Civil Rights Division. *See, e.g.*, 28 C.F.R. §§ 0.50, 0.55; U.S. Attorneys’ Manual 8-1.000, 9-4.000; Federal Prosecution of Election Offenses (7th ed. 2007).

Upon the Department’s receipt of such a complaint, the appropriate component (or components) review the allegations contained in the complaint and make a determination of whether there is jurisdiction to pursue the complaint, as well as whether to investigate the

allegations. Based upon the facts that are identified in a matter, a decision is made whether to pursue criminal or civil litigation in federal court. In each case or matter, decisions on investigation and/or litigation are based on its unique facts and the application of existing law to this set of facts. The Division continues to collect facts even after litigation in a matter is commenced and therefore the evaluation concerning claims and relief continues throughout the course of a case through the time of final disposition, and in some instances even thereafter, if necessary to enforce the terms of such disposition as set forth in an injunction or judgment.

II. The Civil Rights Division's Work in the *New Black Panther Party* Litigation

The following summary is based on information that is available to me as Assistant Attorney General for Civil Rights.

The events in this matter took place at a polling place in Philadelphia, Pennsylvania on the day of the most recent federal general election, November 4, 2008. The Department became aware of these events on Election Day and decided to conduct further inquiry, a decision in which the Civil Rights Division, the Criminal Division and the United States Attorney's Office for the Eastern District of Pennsylvania concurred. After reviewing this matter, the Civil Rights Division determined that the facts did not constitute a prosecutable violation of the federal criminal civil rights statutes. In July 2009, the United States Attorney's Office for the Eastern District of Pennsylvania declined prosecution in the matter. Our understanding is that local law enforcement officials also declined to pursue state criminal charges.

The Department did, however, initiate a civil action in federal court. On January 7, 2009, the Department filed a complaint seeking injunctive and declaratory relief under Section 11(b) of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973i(b), against four defendants: the New Black Panther Party for Self-Defense and its leader Malik Zulu Shabazz, and two individuals who appeared at the Philadelphia polling place on November 4, 2008, Minister King Samir Shabazz and Jerry Jackson. The complaint alleged that the defendants violated Section 11(b) because they attempted to engage in, and engaged in, both voter intimidation and intimidation of individuals aiding voters.

Although none of the defendants responded to the complaint, that did not absolve the Department of its legal and ethical obligations to ensure that any relief sought was consistent with the law and supported by the evidence. The entry of a default judgment is not automatic, and the Pennsylvania Bar Rules impart a clear duty of candor and honesty in any legal proceeding; those duties are only heightened in the type of ex parte hearing that occurred in this matter. See Pa. RPC 3.3(d). At the remedial stage, as with the liability stage, the Department remains obliged to ensure that the request for relief is supported by the evidence and the law. In discharging its obligations in that regard, the Department considered not only the allegations in the complaint, but also the evidence collected by the Department both before and after the filing of the complaint.

After reviewing the evidence, the Department concluded that there was insufficient evidence to establish that the Party or Malik Zulu Shabazz violated Section 11(b).

Prior to the election, the New Black Panther Party for Self-Defense made statements and posted notice that over 300 members of the New Black Panther Party for Self-Defense would be deployed at polling locations during voting on November 4, 2008, throughout the United States. To the Department's knowledge, the single polling place in Philadelphia is the only location where an incident occurred. This apparent fact is inconsistent with the notion that the Party or Malik Zulu Shabazz directed a campaign of intimidation. The Department also considered the statement posted by the Party on its website regarding the incident. The statement posted on the Party web site provided: "Specifically, in the case of Philadelphia, the New Black Panther Party wishes to express that the actions of people purported to be members do not represent the official views of the New Black Panther Party and are not connected nor in keeping with our official position as a party. The publicly expressed sentiments and actions of purported members do not speak for either the party's leadership or its membership." As of May 2009, the Department had information indicating that this statement was posted prior to the filing of the civil action. A separate statement posted on the Party website, dated January 7, 2009 (the same date that the complaint in this case was filed), reported the suspension of the Philadelphia chapter because of these activities.

At a minimum, without sufficient proof that New Black Panther Party or Malik Zulu Shabazz directed or controlled unlawful activities at the polls, or made speeches directed to immediately inciting or producing lawless action on Election Day, any attempt to bring suit against those parties based merely upon their alleged "approval" or "endorsement" of Minister King Samir Shabazz and Jackson's activities would have likely failed. See *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 927 (1982). The Department therefore decided, based on its review of applicable legal precedent and the totality of the evidence, to dismiss the claims against the New Black Panther Party and Malik Zulu Shabazz.

With regard to the alleged activities at the Philadelphia polling place by the Minister King Samir Shabazz and Jerry Jackson, the Department considered all available information, including signed statements of poll observers or poll watchers at the polling place. In addition, Philadelphia police who arrived at the polling place on Election Day to assess the situation decided to direct Minister King Samir Shabazz to leave the polling place, but allowed Jackson, a certified pollwatcher, to remain.

The Department concluded that the evidence collected established that Minister King Samir Shabazz violated Section 11(b) by his conduct at the Philadelphia polling place on Election Day. This evidence included his display of a nightstick at the polling place during voting hours, an act which supported the allegation of voter intimidation. The Department therefore decided to seek an injunction against defendant Minister King Samir Shabazz. In approving the injunction, the district court found that the United States had alleged that Minister King Samir Shabazz "stood in front of the polling location at 1221 Fairmont Street in Philadelphia, wearing a military style uniform, wielding a nightstick, and making intimidating statements and gestures to various individuals, all in violation of 42 U.S.C. § 1973i(b)," (Order of May 18, 2009, at 1), and entered judgment "in favor of the United States of America and against Minister King Samir Shabazz, enjoining Minister King Samir Shabazz from displaying a weapon within 100 feet of any open polling location in the City of Philadelphia, or from otherwise violating 42 U.S.C. § 1973i(b)." Judgment (May 18, 2009). The federal court retains jurisdiction over its enforcement until 2012.

The Department concluded that a nationwide injunction was not legally supportable in the case against Minister King Samir Shabazz. The Supreme Court has emphasized that an injunction must be “no broader than necessary to achieve its desired goals.” *Madsen v. Women's Health Ctr.*, 512 U.S. 753, 765 (1994). To that end, a reviewing court must pay “close attention to the fit between the objectives of an injunction and the restrictions it imposes on speech” in keeping with the “general rule . . . that injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.” See *ibid.* (citation omitted).

Because injunctive relief is tailored to its objectives, a focus upon the facts alleged by the Department was critical to determining the scope of the injunction that could have been obtained. The Department alleged that Minister King Samir Shabazz is a resident of Philadelphia and is the leader of the Philadelphia chapter of the NBPP. Complaint ¶ 5. The complaint alleged that on November 4, 2008, Minister King Samir Shabazz brandished a weapon and made racially threatening and insulting remarks while standing in front of the entrance of a polling place in Philadelphia. Complaint ¶¶ 8-10. The complaint further alleged that on this specific occasion Minister King Samir Shabazz pointed the weapon at individuals, tapped it in his hand and elsewhere, and made menacing and intimidating gestures, statements and movements toward individuals who were present to aid voters. Complaint ¶¶ 9-10.

The evidence was insufficient to show that Minister King Samir Shabazz had engaged or planned to engage in a nationwide pattern of such conduct as he exhibited at the polling place in Philadelphia, or that he was inclined to disregard the injunction. Cf. *United States v. Dinwiddie*, 76 F.3d 913, 929 (8th Cir. 1996) (finding the scope of a nationwide injunction in a Freedom of Access to Clinic Entrance Act (FACE) case appropriate because of a protestor’s “consistent, repetitious, and flagrant unwillingness or inability to comply” with the proscriptions of the law, his “serious intent to do bodily harm to the providers and recipients of reproductive health services,” and the possibility, if the injunction were geographically limited, that he “could easily frustrate the purpose and spirit of the permanent injunction simply by stepping over state lines and engaging in similar activity at another reproductive health facility” (quotation and citation omitted)). Absent such facts, in other FACE cases, the geographic scope of injunctions the Department has obtained has been quite narrow, generally limited to a certain number of feet from a given clinic, see *United States v. Scott*, No. 3:95cv1216 1998 U.S. Dist. LEXIS 10420 (D. Conn. June 25, 1998), or simply preventing protestors from impeding ingress and egress to a particular clinic. See *United States v. Burke*, 15 F. Supp. 2d 1090 (D. Kan. 1998); *United States v. Brock*, 2 F. Supp. 2d 1172 (E.D. Wis. 1998).

Given the facts presented, the injunction sought by the Department prohibited Minister King Samir Shabazz from displaying a weapon within 100 feet of any open polling location on any election day in the City of Philadelphia, or from otherwise violating 42 U.S.C. 1973i(b), (see Order of May 18, 2009, at 4). The Department considers this injunction tailored appropriately to the scope of the violation and the requirements of the First Amendment, and will fully enforce the injunction’s terms. Section 11(b) does not authorize other kinds of relief, such as criminal penalties, monetary damages, or other civil penalties.

The Department concluded that the allegations in the complaint against Jerry Jackson, the other defendant present at the Philadelphia polling place, did not have sufficient evidentiary support. The Department's determination was based on the totality of the evidence. In reaching this conclusion, the Department placed significant weight on the response of the law enforcement first responder to the Philadelphia polling place on Election Day. A report of the local police officer who responded to the scene, which is included in the Department's production to the Commission, indicates that the officer interviewed Mr. Jackson, confirmed that he in fact was a certified poll watcher, and concluded that his actions did not warrant his removal from the premises.

The decisions regarding the disposition of the case, both seeking an injunction as to one defendant and voluntarily dismissing three other defendants, ultimately was made by the career attorney then serving as the Acting Assistant Attorney General for the Civil Rights Division. Another career attorney who was then serving as the Acting Deputy Assistant Attorney General with responsibility for supervising the Voting Section also participated directly in the decision-making process. These two career Civil Rights Division attorneys have over 60 years of experience at the Department between them, and each worked in the Voting Section at some point during their careers. Based on the totality of the evidence and the relevant legal precedent, the Acting Assistant Attorney General made a judgment about how to proceed, choosing to seek an injunction against the only defendant who brought a weapon to the Philadelphia polling place on Election Day and to voluntarily dismiss the other three defendants.

The decision to proceed with the claims against Minister King Samir Shabazz and to dismiss the claims against the three other defendants was based on the merits and reflects the kind of good faith, case-based assessment of the strengths and weaknesses of claims that the Department makes every day.

We assure you that the Department is committed to comprehensive and vigorous enforcement of both the civil and criminal provisions of federal law that prohibit voter intimidation. We continue to work with voters, communities, and local law enforcement to ensure that every American can vote free from intimidation, coercion or threats.

Thank you for giving the Department the opportunity to present this statement.

Statement of Gregory G. Katsas

Partner, Jones Day

Former Acting Associate Attorney General

Before the United States Commission on Civil Rights

DOJ Handling of the *New Black Panther Party* Litigation

Presented on April 23, 2010

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Chairman Reynolds and Members of the Commission: Thank you for inviting me to testify about the handling of *United States v. New Black Panther Party for Self-Defense* by the Department of Justice. In my testimony, I will address the specific questions asked by Chairman Reynolds in his February 4, 2010 letter to me.

Let me begin with a few words about my background. I am a partner in the Washington office of the law firm Jones Day. Between 2001 and 2009, I held many senior positions in the Department of Justice (“DOJ”). These included Deputy Assistant Attorney General, Civil Division (June 2001 to August 2006); Principal Deputy Associate Attorney General (August 2006 to April 2008); Acting Associate Attorney General (August 2007 to April 2008); Acting Assistant Attorney General, Civil Division

(May 2008 to June 2008); and Assistant Attorney General, Civil Division (June 2008 to January 2009). As the Acting Associate Attorney General, I was the third-ranking officer in the Justice Department (on an interim basis), and I was responsible for supervising the Civil Rights Division. I also helped to supervise that Division as the Principal Deputy Associate Attorney General, the top advisor to the Associate Attorney General.

My successors in the Office of the Associate Attorney General were Kevin O'Connor and Thomas Perrelli. Mr. O'Connor supervised the Civil Rights Division when the *New Black Panther Party* case was filed, and Mr. Perrelli supervised the Division when the government abandoned most of its claims in the case. Given their likely involvement in internal deliberations about the case, government privileges may constrain each of them from freely testifying here. On the other hand, I had left the Office of the Associate Attorney General before the case was filed; I was not involved in any internal DOJ deliberations about it; and I thus can testify without any privilege constraints.

1. Based on your experience, would the Office of the Associate Attorney General normally be consulted in the decision to file a Section 11(b) lawsuit similar to the one filed against the NBPP defendants, and if so, what role would the Office typically have played?

Yes. The Office of the Associate Attorney General (“OASG”) is the DOJ leadership office that directly supervises the Civil Rights Division,

which is responsible for pursuing civil actions under Section 11(b) of the Voting Rights Act. In order to discharge its supervisory responsibilities, OASG hosts regular meetings with the leadership of the Civil Rights Division, at which the Division is expected to report on significant developments in its important cases. Such meetings typically include the Associate Attorney General and the Principal Deputy Associate Attorney General, both of whom have supervisory responsibilities extending to each DOJ component that reports to OASG; the Deputy Associate Attorney General whose portfolio includes the Civil Rights Division; the Assistant Attorney General for the Civil Rights Division; and each of the Deputy Assistant Attorneys General for the Civil Rights Division, including the Deputy responsible for supervising its Voting Section. In my experience, these meetings typically occur weekly and last between 30 minutes and one hour. In them, each Deputy Assistant Attorney General is expected to report on significant matters within his or her area of responsibility. Under these institutional arrangements, the filing of a new voter-intimidation lawsuit – particularly one involving conduct that already had attracted national attention – would easily have warranted reporting from the Civil Rights Division to OASG.

In the vast majority of cases, OASG would immediately and informally approve (or at least decline to object) to proposed filings reported by a litigating division. In rare instances, the Associate Attorney General might become actively involved in internal deliberations; he or she might do so, for example, if a proposed filing raised significant questions of legal policy, or if different litigating divisions were proposing to take inconsistent positions. Neither of those considerations would have applied to the decision whether to file the *New Black Panther Party* complaint: on its face, the complaint appears to involve a straightforward and overwhelmingly strong case of voter intimidation, which would have raised neither policy sensitivities nor the possibility of conflicting positions within DOJ. Therefore, I would expect that OASG approved the decision to file the complaint quickly and informally, during the course of its regular meetings with the Civil Rights Division.

2. Assuming the Office of the Associate Attorney General was consulted in the filing of a lawsuit of this type, what procedures, standards, and other considerations normally would be used to determine whether to approve the filing of such a Section 11(b) action?

The decision whether to file a civil-enforcement action under Section 11(b) is vested in the Assistant Attorney General for the Civil Rights Division, subject only to the general supervisory authority of the Associate Attorney General. Accordingly, there would have been a formal

authorization process within the Civil Rights Division, which would have included written recommendations presented to the Assistant Attorney General, and a formal written authorization signed by the Assistant Attorney General. In contrast, the process of OASG review almost certainly would have been much more informal; as explained above, it most likely would have occurred in the ordinary course of the weekly meetings between the Civil Rights Division and OASG.

The standards of OASG review are at the discretion of the Associate Attorney General. Because the Associate is responsible for supervising thirteen different DOJ components, he or she can spend only limited time even on the Department's most important cases. Out of practical necessity, the Associate usually addresses only a limited number of threshold questions: Is the proposal of a litigating division egregiously wrong? Does it conflict with legitimate policy positions of the Department or the Administration? Does it conflict with positions taken by any other litigating division? In the *New Black Panther Party* case, the answer to all of those questions would have been no, and I would expect that OASG signoff was quickly provided on that basis.

3. In aid of our factfinding mission, the Commission will hear testimony from fact witnesses who observed the actions that are the subject of the NBPP complaint at the hearing on February 12. Assuming the allegations in the initial complaint are true, however, do

they present strong grounds to file the NBPP action and seek injunctive relief against all defendants?

On its face, the complaint states a strong case of voter intimidation against each of the four defendants. Section 11(b) of the Voting Rights Act makes it unlawful for any person to “intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote.” 42 U.S.C. § 1973i(b). Although sparse, the relevant caselaw indicates that Section 11(b) “is to be given an expansive meaning.” See *Jackson v. Riddell*, 476 F. Supp. 849, 859-60 (N.D. Miss. 1979).

The case for voter intimidation appears overwhelmingly strong against defendants Minister King Samir Shabazz and Jerry Jackson. As alleged in the DOJ complaint, those defendants “deployed” together to a Philadelphia polling station dressed in military uniforms of the New Black Panther Party; hovered together, “side by side, in apparent formation,” around the entrance of the station; hurled “racial threats and racial insults at citizens attempting to vote; “made menacing and intimidating gestures, statements, and movements directed at individuals who were present to aid voters; and brandished, pointed, and “menacingly tapped” a nightstick carried by Minister Shabazz. See Complaint ¶¶ 8-10. Videotapes of this behavior are readily available on the Internet, and appear to confirm the allegations in the complaint. Assuming that these allegations are true,

Minister Shabazz and Mr. Jackson plainly engaged in actual and attempted intimidation of voters and individuals aiding voters.

The complaint also alleges facially valid claims against Malik Zulu Shabazz and the New Black Panther Party itself. According to the complaint, Minister Shabazz and Mr. Jackson are members of the Philadelphia chapter of the New Black Panther Party (Complaint ¶¶ 5-6), and Malik Shabazz is the national head of the Party (*id.* ¶ 4). The complaint further alleges that Malik Shabazz and the Party “managed directed or endorsed” the behavior of Minister Shabazz and Mr. Jackson, and that, after the incidents at issue, Malik Shabazz “made statements adopting and endorsing the deployment, behavior, and statements” of Minister Shabazz and Mr. Jackson. *Id.* ¶ 12. If those allegations are true, then Malik Shabazz would be liable for the conduct of Minister Shabazz and Mr. Jackson under general principles of supervisory liability, see, *e.g.*, *International Action Center v. United States*, 365 F.3d 20, 28 (D.C. Cir. 2004) (Roberts, J.), and the Party would be liable under general principles of agency law, see, *e.g.*, *American Society of Mechanical Engineers v. Hydrolevel Corp.*, 456 U.S. 556, 566 (1982).

4. Assuming the allegations in the initial complaint are true, do you think there are other strong reasons *not* to file the NBPP action?

To the contrary, if the allegations in the complaint are true, then there were particularly strong reasons to file. The alleged misconduct appears egregious and intentional. Moreover, the complaint further alleges that the New Black Panther Party and Malik Shabazz “avowedly endorse and support racially-motivated violence”; that the Party “is a black-supremacist organization which uses military-style uniforms”; and that the Party “is explicitly hostile toward non-black and Jewish individuals in both rhetoric and practice.” Complaint ¶ 13. Assuming the truth of those allegations, the kind of aggressive conduct alleged in the complaint, if not enjoined, seems especially likely to recur. Finally, the nine-page complaint is legally and factually straightforward, and many of its key allegations appear corroborated by videotape and by incendiary public comments in the public record by Malik Shabazz and the Party itself. Thus, it is unlikely that litigation of the case would have been difficult or protracted.

5. Once a case like the NBPP matter was filed, would the Office of the Associate Attorney General normally be consulted before DOJ reversed course and refused to take a default judgment against several defendants, and if so, what role would the Office typically play?

Yes. As explained above, I would expect that OASG was kept routinely apprised of significant developments in the *New Black Panther*

Party litigation. Certainly DOJ's decision to abandon all claims against the Party, Malik Shabazz, and Mr. Jackson, despite their refusal even to defend the case, would have qualified as important enough for the leadership of the Civil Rights Division to raise with OASG. So too would have DOJ's decision to substantially narrow the scope of its requested injunction against Minister Shabazz.

I would expect that OASG played a far more active role in these decisions than it likely played in the initial decision to file the case. The initial decision – to file a straightforward and seemingly strong voter-intimidation lawsuit – would not likely have raised concerns with OASG. In contrast, the decisions at the end of the case would have been anything but straightforward. They amounted to nothing less than a decision by DOJ, following a change in presidential administrations, to reverse legal positions asserted in a pending case. Such reversals are extremely rare – and for good reason: they inevitably undermine DOJ's credibility with the courts, and they inevitably raise suspicion that DOJ's litigating positions may be influenced by political considerations. Accordingly, while a new Administration obviously has wide discretion to change its enforcement priorities and even its litigating positions in new cases, it is extremely rare for DOJ to shift course so dramatically in the course of a pending case.

Several considerations specific to the *New Black Panther Party* case would have exacerbated these general concerns. For one thing, DOJ did not merely abandon some of its claims in the course of ongoing and contested litigation; instead, it abandoned most of its claims after a default by all of the defendants, and an entry of that default pursuant to Federal Rule of Civil Procedure 55(a). I cannot think of any other instance when that has occurred. Moreover, the New Black Panther Party had endorsed President Obama in the 2008 election, and Mr. Jackson, during the events at issue, apparently was a registered poll watcher for the Democratic Party. Those facts inevitably would raise suspicion that the highly unusual decision to abandon a defaulted case was politically motivated, and that suspicion, in turn, would have heightened the sensitivity of deliberations within DOJ.

For these reasons, I believe that OASG would have been actively involved in deliberations about whether to reverse positions in the *New Black Panther Party* litigation. However, I cannot say whether OASG ultimately made the final decision or left it to the Acting Assistant Attorney General for the Civil Rights Division. In either case, no lower-ranking official would have been authorized to abandon claims approved by the prior Assistant Attorney General.

6. Assuming the allegations in the complaint are true, do you think there are serious First Amendment concerns with seeking discovery and maintaining the litigation against all defendants?

Assuming the allegations in the complaint, the *New Black Panther Party* litigation would have raised no serious First Amendment concerns.

The alleged conduct of Minister Shabazz and Mr. Jackson was not constitutionally protected. To begin with, the First Amendment does not protect intimidation in any context, even if carried out through speech or expressive conduct. See *Virginia v. Black*, 538 U.S. 343, 360 (2003). Moreover, to prevent against voter intimidation, states may prohibit even pure political speech around entrances to polling places. See *Burson v. Freeman*, 504 U.S. 191, 196-210 (1992) (plurality opinion) (upholding ban on such speech within 100 feet of entrance); *id.* at 213 (Scalia, J., concurring in the judgment) (“restrictions on speech around polling places on election day are as venerable a part of the American tradition as the secret ballot”).

The alleged conduct of Malik Shabazz and the New Black Panther Party, in directing and ratifying the conduct of Minister Shabazz and Mr. Jackson, also was unprotected. Even in cases involving some activity protected by the First Amendment, a supervisor “may be held liable for unlawful conduct that he himself authorized or incited.” *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 920 n.56 (1982). And a political

party or advocacy group, “like any other organization—of course may be held responsible for the acts of its agents throughout the country that are undertaken within the scope of their actual or apparent authority.” *Id.* at 930.

Finally, the relief requested would have raised no significant First Amendment problems. In its original complaint, DOJ asked the court for an order that “[p]ermanently enjoins Defendants, their agents and successors in office, and all persons acting in concert with them, from deploying athwart the entrance to polling locations either with weapons or in the uniform of the Defendant New Black Panther Party, or both, and from otherwise engaging in coercing, threatening, or intimidating, behavior at polling locations during elections.” Complaint ¶ 33(e). The first clause describes the specific unlawful conduct committed or authorized by the defendants, and the second clause describes more generally the conduct of intimidating voters “at polling locations during elections.” Neither clause plausibly encompasses constitutionally protected conduct.

7. Assuming the allegations in the complaint are true, do you think the suit should have been dropped against three defendants, and do you think the Department should have obtained a broader injunction against Minister King Samir Shabazz than the one sought?

Assuming the allegations in the complaint, I do not think the suit should have been dropped against the Party, Malik Shabazz, or Mr. Jackson.

As explained above, the complaint stated strong claims of voter intimidation against each defendant, and there would have been no good reason to abandon those claims near the end of the case, on the verge of a favorable default judgment.

Moreover, there is no basis for distinguishing the conduct of Minister Shabazz (against whom DOJ continued to litigate) from that of Mr. Jackson. The complaint alleges that Minister Shabazz and Mr. Jackson deployed together to the entrance of a polling place, dressed in the military uniform of an organization known for supporting racially-motivated violence; “stood side by side, in apparent formation, throughout most of this deployment”; hurled racial threats and insults at voters and poll workers; and “made menacing and intimidating gestures, statements, and movements directed at individuals who were present to aid voters.” Complaint ¶¶ 9-11. That conduct amounts to voter intimidation jointly perpetrated by two individuals. To distinguish between them on the ground that only Minister Shabazz actually brandished a weapon (*id.* ¶ 9) is akin to saying that, if two individuals conspire to rob a bank, the driver of the getaway car should not be held responsible for the acts of the triggerman. For obvious reasons, settled law is to the contrary. See, *e.g.*, *Salinas v. United States*, 522 U.S. 52, 63-64 (1997); *Pinkerton v. United States*, 328 U.S. 640, 646 (1946).

Even as to Minister Shabazz, the injunction ultimately requested and obtained by DOJ seems unduly narrow. That injunction prevents Minister Shabazz “from displaying a weapon within 100 feet of any open polling location on any election day in the City of Philadelphia, or from otherwise violating” Section 11(d) of the Voting Rights Act, see Order ¶ 2 (May 18, 2009). Moreover, the district court is to “maintain jurisdiction over this matter until November 15, 2012 to enforce this Order as necessary.” *Id.* ¶ 3. The injunction requested and obtained by DOJ after the default thus contains several limitations not present in the injunction originally requested by DOJ in the complaint: the injunction does not apply to persons acting in concert with Minister Shabazz; it does not apply to voter intimidation perpetrated outside of Philadelphia; and, while the substantive prohibition appears to be permanent, the injunction appears to be jurisdictionally unenforceable after 2012. Assuming the allegations in the complaint, none of these restrictions seems justified.

8. Under DOJ policies regarding contacts between the Department and the White House in place while you were at the Department, which Attorney General Holder pledged to keep in place, is it likely that the Associate Attorney General or other DOJ officials would have discussed with the White House staff whether to reverse course in a suit like the NBPP matter?

During my last year at DOJ, this question would have been governed by a December 19, 2007 memorandum from Attorney General Mukasey

titled “Communications with the White House.” In order to foster “public confidence that the laws of the United States are administered and enforced in an impartial manner,” the Mukasey memorandum significantly restricted communications between DOJ and the White House “with respect to pending criminal or civil-enforcement matters.” For such matters, communications between DOJ and the White House would have been allowed only to the extent that they were “important for the performance of the President’s duties” and “appropriate from a law enforcement perspective.”

Under these rules, I think it unlikely that DOJ would have consulted the White House regarding whether to reverse course in the *New Black Panther Party* litigation. That litigation was a pending civil-enforcement matter. Moreover, because DOJ (not the White House or the President) is charged with enforcement of the Voting Rights Act, it is difficult to see how consulting the White House would have been either “important for the performance of the President’s duties” or “appropriate from a law enforcement perspective.” To be sure, the White House may fairly become involved in establishing general legal policy or enforcement priorities for DOJ. But the decision to abandon most of the government’s claims in the *New Black Panther Party* litigation involved no such broad question of legal

policy or enforcement priorities. Instead, in my judgment, it should have involved simply an assessment of the merits of one individual enforcement action. In my experience, the White House does not, and should not, become involved that kind of decision.

9. Pursuant to such established DOJ policies, which DOJ and White House personnel would normally have been involved in discussions (assuming they existed) on whether to reverse course in a lawsuit like the NBPP case? How would those communications normally have been conducted?

The Mukasey memorandum also would have restricted which DOJ and White House officials could have engaged in any communications about the *New Black Panther Party* case while that case was pending. On the DOJ end, the communications could have involved only the Attorney General, the Deputy Attorney General, the Associate Attorney General, or other lower-ranking individuals specifically authorized by one of these three leadership officers to communicate with the White House about the case. On the White House end, the communications could have involved only the Counsel to the President or the Deputy Counsel to the President.

There is no specific procedure for making authorized communications between DOJ and the White House. In my experience, such communications frequently occur by telephone, by e-mail, or in meetings at the White House.

10. Assuming that DOJ officials had contacts with White House Counsel staff on litigation of this nature, would it be unusual for officials in the White House Counsel's office to consult others within the White House on such matters, e.g., the White House Chief of Staff or the President?

In my experience, upon learning of information from DOJ about pending cases, lawyers within the White House Counsel's Office often disseminate the information to other interested parties within the White House, including individuals responsible for domestic or foreign policy, congressional relations, media, or politics. I do not know how often lawyers in the White House Counsel's Office share such information with the Chief of Staff or the President, or whether they likely would have done so in this case.



UNITED STATES COMMISSION ON CIVIL RIGHTS

624 NINTH STREET, NW, WASHINGTON, DC 20425
www.usccr.gov

October 13, 2010

The Honorable Eric Holder, Jr.
Attorney General of the United States
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Holder:¹

In a separate letter, the Commission asks you to waive any purported privilege you have asserted and cooperate fully with all of its requests for information.² This letter concerns some particularly important writings that we request be produced without delay—and regardless of whether the Department will produce all other responsive documents.

In sworn testimony before the Commission, former Voting Section attorney J. Christian Adams stated that he participated in a meeting on May 13, 2010 to brief and help prepare Assistant Attorney General Perez for his testimony the next day before the Commission. On September 24, 2010, former Voting Section Chief Christopher Coates testified that he participated in this meeting by phone and that he informed Mr. Perez that the New Black Panther Party lawsuit was effectively dismissed because of hostility to the race-neutral enforcement of the voting laws.³ The day after that briefing, May 14, 2010, Mr. Perez testified in response to a question about the possibility that individuals in the Civil Rights Division harbored such views that “We don’t have people that are of that ilk” in the Division.⁴

¹ At a public meeting of the U.S. Commission on Civil Rights on October 8, 2010, the Commission approved this letter by a 5-1 vote. Commissioners Reynolds, Kirsanow, Taylor, Heriot and Gaziano voted in favor and Commissioner Yaki opposed. The motion to approve the letter allowed commissioners who were not present at the meeting to vote on the letter after the meeting, and Commissioner Melendez subsequently voted against sending the letter.

² See 42 USC § 1975b(e) (“All Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.”).

³ Hearing Testimony of Christopher Coates Before the U.S. Commission on Civil Rights at 145 (Sept. 24, 2010).

⁴ Hearing Testimony of Thomas Perez Before the U.S. Commission on Civil Rights at 35 (May 14, 2010).

The Honorable Eric Holder, Jr.

October 13, 2010

Page 2

The Commission is understandably interested in why Mr. Perez neglected to disclose the information he had learned from Mr. Coates the previous day regarding “people [who might be] of that ilk.” Our immediate problem is that Mr. Coates felt constrained by the Department’s privilege assertions not to provide details regarding such conversations. (He said he would be willing to provide details if the privilege is waived or ruled to be invalid.) We would like to recall Mr. Coates after you instruct him he may testify freely. In the meantime, we ask that you expedite the production of the following:

- Writings or emails Mr. Coates prepared about the New Black Panther Party litigation or hostility to the race-neutral enforcement of the voting laws in the month preceding Mr. Perez’s testimony, particularly one on or about April 26, 2010.
- Writings or emails J. Christian Adams prepared about the New Black Panther Party litigation or hostility to the race-neutral enforcement of the voting laws in the month preceding Mr. Perez’s testimony, particularly one on or about May 10, 2010.

Please also identify every person in the Department who saw or received these documents.

Finally, it is disappointing that private litigants seeking similar information pursuant to the Freedom of Information Act have received a 62-page privilege log of the documents that were withheld, while the Commission, which is entitled to the actual documents, has received neither the documents nor the courtesy of a privilege log of materials you refuse to provide, which the Department has also refused to provide.⁵ The Commission asked for such a privilege log ten months ago and several times since then. We respectfully renew our request for all documents and emails responsive to our requests and, if appropriate, for a detailed privilege log explaining the reasons why any documents responsive to our requests have been withheld.

⁵ See Letter of Joseph H. Hunt to Chairman Gerald Reynolds (May 13, 2010).

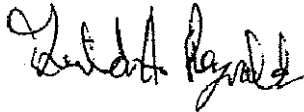
The Honorable Eric Holder, Jr.

October 13, 2010

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Thank you for your prompt attention to these matters.

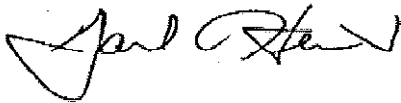
Sincerely,



Gerald A. Reynolds
Chairman



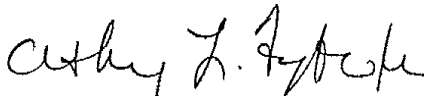
Todd Gaziano
Commissioner



Gail Heriot
Commissioner



Peter Kirsanow
Commissioner



Ashley Taylor, Jr.
Commissioner

cc: Vice Chair Abigail Thernstrom
Commissioner Arlan Melendez
Commissioner Michael Yaki



UNITED STATES COMMISSION ON CIVIL RIGHTS

624 NINTH STREET, NW, WASHINGTON, DC 20425
www.usccr.gov

October 13, 2010

The Honorable Eric Holder, Jr.
Attorney General of the United States
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Holder:¹

Since June 2009, the U.S. Commission on Civil Rights has sought information from the Department of Justice, much of which the Department refused to provide despite its statutory obligation to “cooperate fully” with such Commission requests.² Our original aim was to determine the reasons for and implications of DOJ’s dismissal of most of the New Black Panther Party (NBPP) voter intimidation lawsuit and its narrow injunction against the remaining defendant. Our current focus is on the following systemic issue: the growing evidence of a culture of hostility in the Civil Rights Division to the race-neutral enforcement of the civil rights laws that may involve both supervisory attorneys and some of your political appointees.

To date, the Department has ordered its employees under subpoena not to provide testimony to the Commission and has raised questionable and sweeping privilege claims. Notwithstanding that interference, the Commission has heard from eyewitnesses detailed allegations of malfeasance in the Civil Rights Division (CRD) which are at war with its core mission. The specific instances of alleged misconduct detailed by Christopher Coates and J. Christian Adams have not been disputed, and they also are supported by affidavits received from other former CRD attorneys. The live and affidavit testimony alleges: a broad culture of hostility to race-neutral enforcement of the civil rights laws; a pattern of harassment and intimidation against those who work on suits in which the defendants are racial minorities; and instructions from a political appointee that basic voting rights laws will not be enforced against racial minorities during this administration.

¹ At a public meeting of the U.S. Commission on Civil Rights on October 8, 2010, the Commission approved this letter by a 5-1 vote. Commissioners Reynolds, Kirsanow, Taylor, Heriot and Gaziano voted in favor and Commissioner Yaki opposed. The motion to approve the letter allowed commissioners who were not present at the meeting to vote on the letter after the meeting, and Commissioner Melendez subsequently voted against sending the letter.

² “All Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.” 42 USC § 1975b(e).

This testimony calls for a thorough investigation and specific confirmation, refutation or detailed explanations—not the bland assertion that the laws are properly enforced without regard to race. Coates and Adams testified that the hostility within CRD to bringing particular cases involving black defendants is symptomatic of deep-seated—and shockingly common—attitudes favoring racially-selective enforcement of the law. Although Assistant Attorney General for Civil Rights Thomas Perez has refused to admit, deny or explain the specific allegations of harassment and intimidation, the troubling statements by supervising attorneys, or the race-based instructions that were allegedly issued by Deputy Assistant Attorney General Julie Fernandes, we urge you to order full cooperation with our investigation and allow the Commission to finish its job.

To that end, we respectfully ask you to take the following actions:

1. Waive any purported privilege that might apply to the Commission's requests and promptly supply all the documents, emails, and other material that have been withheld. To the extent the Department has concerns about the waiver of privilege with respect to specific documents, emails and other materials, the Commission remains willing to meet with DOJ representatives to negotiate such waiver.

2. Instruct Mr. Coates, Mr. Adams, and other current or former employees who may come forward with similar information or accounts of malfeasance that they may testify freely before the Commission regarding the conversations and written exchanges they had with Loretta King, Steven Rosenbaum, Julie Fernandes, Thomas Perez, and others. (Mr. Coates and Mr. Adams withheld many important details about such exchanges because they felt an obligation to abide by the Department's asserted privilege claim. Particularly given the credible allegations of wrongdoing, they and others should have no fear about testifying freely.)

3. Instruct all other Department employees the Commission may subpoena to cooperate fully by first turning over all responsive documents and then testifying without restraint before the Commission. In the coming days, subpoenas for documents and testimony will be delivered to Steven Rosenbaum, Loretta King,³ Julie Fernandes,⁴ and possibly others.

³ The Department asserts that then Acting Assistant Attorney General Loretta King and her then-deputy Steven Rosenbaum made the decision to dismiss the NBPP case. There is no doubt they were the senior CRD officials who transmitted the order to the trial team to dismiss most of the suit, even if other Department appointees were involved in the decision. Coates and Adams have testified that members of the trial team had heated exchanges with Rosenbaum about the reasons for dismissal. Adams's testimony suggests that Rosenbaum did not even bother to read the trial team's legal memos regarding the NBPP case. Rosenbaum also sought and then ignored the advice of the CRD Appellate Section that the case should proceed against all four defendants. Instead, Coates testified that the reason he was ordered to dismiss the NBPP case was because of the "deep-seated opposition to the equal enforcement of the VRA against racial minorities . . ." Prepared Testimony of Christopher Coates Before the U.S. Commission on Civil Rights at 9 (Sept. 24, 2010). Whatever the true reason for dismissing the NBPP suit was, there is now

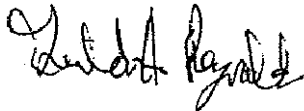
The Honorable Eric Holder, Jr.

October 13, 2010

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We appreciate your prompt actions to expedite our investigation.

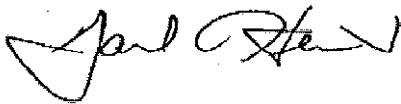
Sincerely,



Gerald A. Reynolds
Chairman



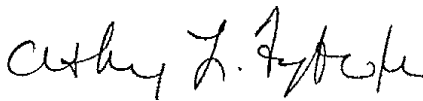
Todd Gaziano
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Peter Kirsanow
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Ashley Taylor, Jr.
Commissioner

cc: Vice Chair Abigail Thernstrom
Commissioner Arlan Melendez
Commissioner Michael Yaki

a compelling need to hear the full account of communications between these individuals and others who were present for these discussions.

⁴ Mr. Coates also testified that Loretta King instructed him to stop asking attorneys applying for jobs in the Voting Section whether they would be willing to enforce the laws in a race-neutral manner. See, e.g., Prepared Testimony at Coates, *supra*, at 7. And both Coates and Adams have testified that Deputy Assistant Attorney General Julie Fernandes announced to the Voting Section that the Division would only pursue Voting Rights Act cases on behalf of racial and language minorities. These and other statements need to be carefully and thoroughly investigated, with key witnesses testifying in a public forum.



U.S. Department of Justice

Civil Division

Joseph H. Hunt
Director

Washington, DC 20530
Tel: (202) 415-1259
Fax: (202) 616-0222

September 24, 2010

VIA ELECTRONIC MAIL, HAND-DELIVERY, AND FIRST-CLASS U.S. MAIL

Mr. David P. Blackwood
General Counsel
United States Commission On Civil Rights
624 Ninth Street, N.W.
Washington, D.C. 20425

Re: United States Commission on Civil Rights'
Planned Statutory Enforcement Report

Dear Mr. Blackwood:

This is in response to your letter of September 16, 2010, which enclosed excerpted portions of a draft report of the U.S. Commission on Civil Rights (draft report) and invited written comments from the Department of Justice. We appreciate your interest in receiving our comments.

At the outset, we note that the Department's review of the document was hampered by our inability to view the excerpted portions in full context, and we regret that you denied our request, made in a telephone conversation on September 20, for a complete copy of the draft report.

Moreover, we are precluded by longstanding Department of Justice policy from commenting on portions of the draft report that purport to describe confidential internal deliberations within the Department, based on the unauthorized disclosure of Department records and, in several instances, hearsay from anonymous sources. To address those portions of the report would require us to undermine the well-established confidentiality interests in pre-decisional deliberations that are integral to the Department's discharge of its law enforcement responsibilities. As a result, our silence on those portions of the report should in no way be construed as confirmation of the accuracy of anything they contain.

Despite these constraints, we have reviewed the portions of the report provided to the Department and have the following comments. Overall, we note that the selected portions of the draft we received rely heavily on unsubstantiated press accounts, while largely ignoring the more than 4,000 pages of documents and interrogatory answers that the Department provided to the Commission in connection with this matter.

In addition, we are aware of the Commission's press release indicating that it intends to take the testimony of Department of Justice employee Christopher Coates. As we have previously informed you, Mr. Coates has not been authorized to testify before the Commission. Testimony by Mr. Coates regarding this matter implicates the Department's longstanding institutional interest in protecting deliberative communications among Department attorneys. Furthermore, we do not believe that Mr. Coates, who has been on detail to the U.S. Attorney's Office for the District of South Carolina since January 2010, is an appropriate witness to discuss the Civil Rights Division's current enforcement policies. To the extent that the Commission revises its report to include any additional information relevant to the Department's litigation of this action, however, the Department requests the opportunity to comment on the revised draft.

More specific comments are set forth below. They are not intended to be exhaustive, but they illustrate the kinds of serious inaccuracies, distortions and other problems that, in our view, characterize the draft.

- Significant information about the reasons for the Department's decisions, which was set forth in the May 14, 2010 written statement of Assistant Attorney General for Civil Rights Thomas E. Perez to the Commission (Perez Statement), is omitted altogether from the draft. For example, as the Assistant Attorney General indicated, the Department had the legal and ethical obligation to ensure that any relief sought was consistent with the law and supported by the evidence, even when the defendants did not appear (*id.* at 5). He also explained – with citation to authority – the basis for the Department's conclusion that a nationwide injunction against Minister King Samir Shabazz was not legally supportable (*id.* at 7), and the reasons for the Department's dismissal of claims against the New Black Panther Party and the national head of the party (*id.* at 6). None of this is reflected in the draft report. Inexplicably, the report does not discuss the legal precedent the Department has identified explaining the reasons for the dismissal of claims against the national Party and its leader, and for the scope of its request for relief against the sole defendant who brought a nightstick to the polls. This legal precedent goes to the heart of the Commission's inquiry in this matter and therefore merits serious and detailed consideration.
- The draft inaccurately describes the acting Assistant Attorney General for Civil Rights who made the decision, and the acting Deputy Assistant Attorney General involved in the decision, as "political appointees" when the decision was made (draft report at 17-18). The draft bases this conclusion on an article in *The Weekly Standard* that the draft report says "argued that" these officials were political appointees. To the contrary, it cannot be disputed that both Loretta King and Steven Rosenbaum are long-time career civil service employees who remained career employees while serving in the capacities of Acting Assistant Attorney General and Acting Deputy Assistant Attorney General, respectively.

Ms. King was one of a number of career employees designated, pursuant to 5 U.S.C. § 3345, *et seq.*, to perform the functions and duties of a Senate-confirmed Department of Justice component head in an acting capacity during the presidential transition before political appointees were named to fill those positions. Mr. Rosenbaum, who like Ms. King was in the career Senior Executive Service (SES), was assigned to perform temporarily the duties of another SES position – Deputy Assistant Attorney General – that can be filled, even on a permanent basis, by a career (as well as a non-career) employee. As with any career employee who is asked to serve in an acting role, their status as career employees did not change during that period and they are not properly characterized as political appointees.

- In the same section, the draft states, “If no plausible explanation is offered for overruling numerous career lawyers, it raises questions as to whether the purported explanation is accurate and/or legitimate” (draft report at 17). However, the Department has indeed explained the decision to dismiss some of the claims in the complaint through the Department’s answers to interrogatories and the testimony of the Assistant Attorney General for Civil Rights; *see, e.g.,* Perez Statement at 5-8. As Mr. Perez’s statement notes, we believe that this decision “reflect[ed] the kind of good faith, case-based assessment of the strengths and weaknesses of claims that the Department makes every day.” (*Id.* at 8.) The Commission’s unfounded decision to ignore explanations such as these does not negate their accuracy or legitimacy.
- The draft offers only a brief, out-of-context quotation from Assistant Attorney General Perez’s oral testimony describing the basis for the conclusion that the claims against the New Black Panther Party and its chairman lacked sufficient evidentiary support (draft report at 16-17). The factual and legal bases for this conclusion are set forth more fully in Mr. Perez’s written statement on pages 5-6, in which he explained that the claims against these defendants were dismissed because of the absence of proof that the party or its chairman directed or controlled unlawful activities at the polls, and the existence of evidence – the statement on the party’s website disavowing the conduct and its notice suspending the Philadelphia chapter – contradicting the claim that they approved or endorsed such conduct.
- The chronology appended to the draft omits important facts, such as the New Black Panther Party’s disavowal, on its website, dated November 2008, of conduct at the Philadelphia polling place, and its notice suspending the Philadelphia chapter in January 2009. The chronology also does not mention the fact that, as of May 2009, the Department had information indicating that the party’s notice condemning the conduct at the Philadelphia polls had been posted on the Party’s website before the Department filed suit in this matter (*see* Perez Statement at 6).
- The draft asserts that the Commission “has not received any evidence of management-level communications and decision making about the NBPP litigation other than . . . statements submitted by the Department,” and then dismisses those statements because they cannot be independently verified (draft report at 20). Although the Department is not at liberty to publicly disclose internal deliberations regarding law enforcement

decisions, the Department's answers to the Commission's interrogatories and production of relevant documents set forth information about the Department's decision-making. For instance, the Civil Rights Division's Weekly Reports were provided by the Department and appear to be precisely the kind of evidence of management-level communications to which the draft report refers. We believe that the Department's answers to the Commission's interrogatories and production of other relevant documents deserve recognition and fair consideration, yet they are not fully discussed in the draft report.

- The assertion that a request within the Civil Rights Division for analysis from the Division's appellate section is "an extraordinary step" (draft report at 10) is incorrect. As noted in the Department's answers to the Commission's interrogatories, it is not uncommon for the appellate section to be consulted on potential trial positions.
- The lack of balance in the draft's presentation is manifested by all of the shortcomings we have identified above, and by others as well. For example, although there is a footnote stating that the "legal expertise and professionalism of Mr. Coates has been recognized" (draft report at 2, n. 2), there is no similar statement regarding other Department employees named in the report, such as Ms. King and Mr. Rosenbaum, both of whom have received numerous awards during their careers in the Department of Justice. At various times in his 32-year career in the Civil Rights Division, Mr. Rosenbaum has served as Chief of the Housing and Civil Enforcement Section, the Special Litigation Section and the Voting Section, respectively. He also has worked in the Appellate Section and what is now the Employment Litigation Section. During both Republican and Democratic Administrations, he has handled personally some of the most complicated cases in the Division and received numerous awards, including the Division's highest award for litigation, the Walter W. Barnett Award. During her tenure in the Civil Rights Division, Loretta King has not only served as Acting Assistant Attorney General, she has worked in the Employment Litigation Section, the Voting Section and as a Deputy Assistant Attorney General in the Civil Right Division's Front Office, and also has received numerous performance awards.
- Numerous smaller errors also appear in the draft. For example, the Associate Attorney General's name is repeatedly misspelled (draft report at 19, 20) and Julie Fernandes is one of four Deputy Assistant Attorneys General for Civil Rights, and thus it is incorrect to refer to her as "the" Deputy (draft report at 25).

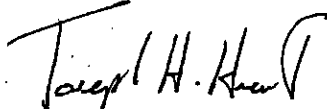
Finally, we object to the inclusion of references to Department employees who have not been involved in the litigation of *United States v. New Black Panther Party for Self-Defense*, who are named solely on the basis of claims by a former Department employee regarding which he did not purport to have any first-hand knowledge (*see, e.g.*, draft report at 23). We request that their names be removed.

Regrettably, the concerns identified above lead us to question the impartiality of this draft and whatever conclusions reached by the Commission arrived based on it. Most importantly, if the

report is released in anything like its current form, it will fail to provide a complete, objective or credible examination of the issues it addresses.

Thank you for your consideration of our concerns in this matter. We request that the Commission revise the draft in accordance with our comments and append this letter to its final report.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph H. Hunt". The signature is written in a cursive style with a large, sweeping initial "J".

Joseph H. Hunt
Director.
Federal Programs Branch
Civil Division

VIA HAND DELIVERY

September 22, 2010

The Hon. Gerald Reynolds
Chairman
United States Commission on Civil Rights
624 Ninth Street, N.W.
Washington D.C., 20425

Dear Chairman Reynolds:

This is to give you notice that I would like to attend your September 24, 2010 Commission meeting to present testimony to comply with the outstanding subpoena served on me as part of your statutory investigation. Please confirm if that date is acceptable for me to deliver my testimony.

I would like to make an extended opening statement prior to being available for questions by the Commissioners.

You can reach me at [REDACTED] if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Christopher Coates". The signature is written in black ink and is positioned above the printed name.

Christopher Coates



UNITED STATES COMMISSION ON CIVIL RIGHTS

624 NINTH STREET, NW, WASHINGTON, DC 20425
www.usccr.gov

September 21, 2010

VIA E-MAIL AND REGULAR MAIL

Joseph H. Hunt, Esq.
Director, Federal Programs Branch
Civil Division
United States Department of Justice
20 Massachusetts Avenue, NW
Washington, DC 20001

Re: United States Commission on Civil Rights Statutory Enforcement Report

Dear Mr. Hunt:

On December 8, 2009, the U.S. Commission on Civil Rights issued discovery requests to the Department relating to the New Black Panther Party (NBPP) litigation. As part of these requests, the Department was asked to identify and state the basis for any and all objections or claims of privilege and to provide specific details as to any information or documents withheld.¹

This demand was followed up by correspondence on behalf of the Commission dated March 30, April 1, April 26, and May 13, 2010. As noted in the letter of March 30, "by failing to provide any supporting context or explanation for the assertion of such privileges, the Department apparently seeks to obfuscate the basis for its refusal to provide the requested information. There is not even a pretense of a credible explanation." Despite the Commission's demands, the Department refused to detail the types of documents it claimed were privileged. By your letter of May 13, 2010, it was

¹ Instruction No. 10 of the discovery request provides, in part:

For all documents or information withheld pursuant to an objection or a claim of privilege, identify:

- A. the author's name and title or position;
- B. the recipient's name and title or position;
- C. all persons receiving copies of the document;
- D. the number of pages of the document;
- E. the date of the document;
- F. the subject matter of the document; and the basis for the claimed privilege.

Joseph H. Hunt, Esq.
September 21, 2010
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asserted: "We do not intend to provide a log of withheld materials; our confidentiality interests in attorney work product are so conventional that we do not see a basis for creating a log of these materials."

Despite the Department's assertions to the Commission, it was learned yesterday that just such an index was provided by the Department to Judicial Watch as a result of a Freedom of Information Act (FOIA) lawsuit. The log provided to Judicial Watch, known as a *Vaughn* index, provides exactly the type of information originally requested by the Commission.

The Department's statutory duty to cooperate with the Commission has no exceptions and is broader than the requirements of FOIA. However, the Commission's requests for information to federal agencies, based upon a statutory mandate of cooperation, are ultimately dependent upon the Department for enforcement.² FOIA requests, on the other hand, are ultimately reviewable by the courts. Accordingly, it is telling that the Department cynically refused to provide requested information to the Commission, but subsequently acknowledged the validity of the requests by providing much of the same information to a third party, Judicial Watch. The only difference is that potential judicial scrutiny exists with regard to a FOIA lawsuit.

It is requested that the Department immediately provide to the Commission a privilege log directly responsive to the Commission's discovery requests. It also is requested that the Department immediately provide copies of any responses it has provided to any individual, organization, or entity requesting information about the New Black Panther Party litigation, and the related decision making process, pursuant to FOIA. This request includes not only summaries and *Vaughn* indices, but any underlying documents that have been released.

Lastly, it is requested that the Department indicate, no later than September 24, 2010, whether it wishes to revise its discovery responses and the testimony provided on behalf of the Department in light of the index provided in the Judicial Watch litigation.

Sincerely,



David P. Blackwood
General Counsel

² Under the terms of 42 U.S.C. § 1975a(e)(2): "In case of contumacy or refusal to obey a subpoena, the Attorney General may in a Federal court of appropriate jurisdiction obtain an appropriate order to enforce the subpoena." This provision arguably leaves the Commission without recourse in the event, as here, the Department refuses to provide subpoenaed information.

Joseph H. Hunt, Esq.
September 21, 2010
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cc: Chairman Gerald A. Reynolds
Vice Chair Abigail Thernstrom
Commissioner Todd F. Gaziano
Commissioner Gail Heriot
Commissioner Peter N. Kirsanow
Commissioner Arlan D. Melendez
Commissioner Ashley L. Taylor, Jr.
Commissioner Michael J. Yaki
Martin Dannenfels, Staff Director

Faith Burton, Esq.



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

AUG 11 2010

The Honorable Gerald A. Reynolds
United States Commission on Civil Rights
624 Ninth Street, N.W.
Washington, D.C. 20425

Dear Chairman Reynolds:

I write in response to your letters dated July 14, July 28, and August 6, 2010, in which you raise concerns about, and request information regarding, the Civil Rights Division's policy regarding enforcement of our nation's civil rights laws. There should be no misunderstanding: the Civil Rights Division is firmly committed to the evenhanded application of the law, without regard to the race of the victims or perpetrators of unlawful behavior. Any suggestion to the contrary is simply untrue.

In testimony before the Commission, I explained in detail the circumstances surrounding the Division's successful effort in *United States v. New Black Panther Party for Self-Defense* to obtain an injunction against an individual who brought a nightstick to a Philadelphia polling place in November 2008. A copy of my written statement to the Commission is enclosed. See Statement of Thomas E. Perez before the U.S. Commission on Civil Rights (May 14, 2010). As I testified, the decision to proceed with all of the Division's original claims against the only defendant in that case who brought a weapon to a polling place and to dismiss the claims against the three other defendants reflects the kind of good faith, case-based assessment of the strengths and weaknesses of claims that the Civil Rights Division makes every day.

Our mission is to enforce all of the civil rights laws under our jurisdiction and to do so in a fair, thorough and independent manner. Since January 2009, we have successfully completed three times as many employment cases on behalf of servicemembers who were unlawfully terminated from their jobs because they were called to active duty as were brought in the preceding three years combined. We have put renewed focus on the prosecution of hate crimes, expanded enforcement of laws that protect persons with disabilities, and obtained a landmark lending discrimination settlement against insurance giant AIG. We are reinvigorating the Division's work in a wide range of areas. In so doing, we have followed the evidence where it leads and based enforcement decisions on the merits.

Our commitment to evenhanded enforcement of our civil rights laws extends to every part of the Division, and our work in the voting area is no exception. This commitment is evidenced by our ongoing work in Mississippi. There, the Division recently filed a Motion to

prevent actions by defendants Ike Brown and the Noxubee County (Mississippi) Democratic Executive Committee on the ground that the actions were motivated in part by racial animus against white voters. See United States' Memorandum Of Law In Support Of Its Motion For Additional Relief Against Defendants Ike Brown And The Noxubee County Democratic Executive Committee, *United States v. Brown et al.*, Civil Action No. 4:05-cv-33 (TSL/LRA) (S.D.Miss.) (copy enclosed). We have also undertaken to address claims that in 2005 armed agents from the Mississippi Attorney General's Office went to the homes of African Americans, many of whom were elderly, and demanded to know for whom they voted in a recent election. When we became aware of those allegations, we advised the Mississippi Attorney General's office of our concern that such intimidation not occur in the future and placed them on notice we will actively investigate any recurrence of such actions. We believe our actions in Mississippi clearly illustrate our commitment to even handed law enforcement.

Since becoming the Assistant Attorney General in October 2009, a cornerstone of my message to the entire Division, to career personnel and political appointees alike has been that we must recommit the Division to enforcing all the laws on the books that we are empowered to enforce, and that we must not pick and choose among them. This was a central part of the message in my address to the Division on October 14, 2009, which took place shortly after I arrived, in which I said that, "we must and will restore public confidence in the Division, and we can do so by enforcing the laws, all the laws, fairly and aggressively" I delivered a similar message at my installation ceremony, which included representatives from the Department and the civil rights community. Within days of my arrival, I visited every section in the Division, including the Voting Section, and emphasized the importance of a fair and independent approach to our work that involves enforcing all the laws on the books. Moreover, in testimony before both the House and Senate, in public speeches, and in meetings that I have held with more than 20 U.S. Attorney's offices and many local and national civil rights groups, I have reiterated the same message with regard to enforcing all of the laws in an fair, independent, evenhanded manner. In light of this clear message, I am certain that every Division employee should understand the mandate of equal enforcement of the law from the first day of my tenure as Assistant Attorney General.

In addition, your letter raised concerns about the Civil Rights Division's enforcement of the National Voter Registration Act of 1993 (NVRA). Our commitment to full and fair enforcement of all civil rights laws of course includes the provisions of the NVRA. Indeed, the Division currently has active matters involving a variety of allegations that implicate many different provisions of the NVRA, including investigations under Section 8 of the statute. In addition, for the first time, we have prepared and disseminated plain English guidance on how jurisdictions can comply with all provisions of the NVRA. I am confident that managers in the front office, the Voting Section and, indeed, throughout the Division, share my commitment to fair, independent, and evenhanded enforcement and will continue to communicate this message. There is no policy of selective enforcement, and our actions bear this out.

We have carefully considered your renewed request for Mr. Coates to testify before the Commission. In your letter of July 28, 2010, you state that the scope of the testimony would be limited to "non-deliberative statements or actions relating to whether there is a policy and/or culture within the Department of discriminatory enforcement of civil rights laws and whether

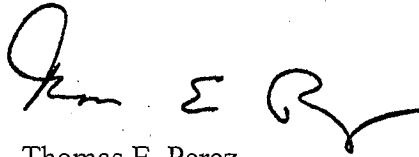
Honorable Gerald A. Reynolds

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there is a policy not to enforce Section 8 of the [NVRA.]” In light of my clear articulation of our enforcement policy to the Division’s employees and my having now confirmed that policy to the Commission both in sworn testimony and in this letter, we do not believe that a Civil Rights Division attorney who has been on detail to the United States Attorney’s Office for the District of South Carolina since mid-January 2010 is the appropriate witness to testify regarding current Division policies. We are hopeful that the information and assurances contained in this letter will address the Commission’s concerns about the Division’s enforcement policies.

Please do not hesitate to contact me if I can be of further assistance regarding this, or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom E. Perez', with a stylized flourish at the end.

Thomas E. Perez
Assistant Attorney General

Enclosures

Statement of Thomas E. Perez
Assistant Attorney General, Civil Rights Division
U.S. Department of Justice
Before the U.S. Commission on Civil Rights

May 14, 2010
9:30 a.m.

Thank you for the opportunity to testify today. The Civil Rights Division is committed to upholding the civil and constitutional rights of all individuals, particularly those who are the most vulnerable members of our society. The Division has primary responsibility for enforcing federal laws to protect voting rights.

The Department is providing this statement in accordance with its ongoing cooperation with the Commission and specifically in furtherance of our efforts to cooperate with the Commission in the preparation of its planned statutory enforcement report. The areas the Commission has chosen as the focus of its planned enforcement report – the Department's efforts to combat voter intimidation and the litigation in *United States v. New Black Panther Party for Self-Defense* – represent just a small part of the Department's work to enforce federal voting laws. The Civil Rights Division is also responsible for enforcing the many protections of the Voting Rights Act, including the non-discrimination requirements, preclearance requirements, minority language accessibility requirements, federal observer provisions, assistance protections for voters who are illiterate or have disabilities, the protections of the Uniformed and Overseas Citizens Absentee Voting Act, which ensure that members of our armed services and overseas citizens have access to the ballot, the voter registration requirements of the National Voter Registration Act, and the election administration and technology standards of the Help America Vote Act.

Protection of the right to vote is one of the Department's top priorities, and we want to be as responsive as possible to requests for information about our law enforcement activities in this area consistent with the Department's need to protect confidential information. However, as noted in the written responses to the Commission's inquiries, we are constrained by the need to protect against disclosures that would undermine well-established confidentiality interests that are integral to the discharge of our law enforcement responsibilities, particularly those related to litigation decisions. These limitations are described in the Department's January 11, 2010 response to the Commission's December 8, 2009 requests and in later correspondence with the Commission.

Set forth below is information that may be useful to you in addition to the information already provided to the Commission – including over 4,000 pages of documents – in response to the Commission's December 8, 2009 requests.

I. The Civil Rights Division's Voter Intimidation Work

The Department is strongly committed to the enforcement of laws that protect the right of citizens to vote. There are both civil and criminal federal statutes enforced by the Department that relate to voter intimidation. Enforcement responsibility within the Department of Justice for combating voter intimidation rests with both the Criminal Division and the Civil Rights Division.

As the Assistant Attorney General for the Civil Rights Division, I supervise, among other matters, the anti-voter intimidation work of the Division's Voting Section and the Criminal Section. 28 C.F.R. § 0.50. The Assistant Attorney General for the Criminal Division supervises the work conducted by the Public Integrity Section of the Criminal Division to combat voter intimidation. 28 C.F.R. § 0.55.

A. *Criminal Enforcement of Voter Intimidation Laws*

Criminal statutes that can be enforced by the Department against voter intimidation include the following: 18 U.S.C. § 594, which prohibits intimidating, threatening or coercing anyone, or attempting to do so, with the purpose of interfering with an individual's right to vote or not to vote in a federal general election; 18 U.S.C. § 609, which prohibits the use of military authority to influence the vote of a member of the Armed Forces or to require a member of the Armed Forces to march to a polling place, or attempts to do so; 18 U.S.C. § 610, which prohibits the intimidation or coercion of a federal employee's "political activity," which includes voting; 18 U.S.C. § 241, which prohibits conspiracies to, among other things, intimidate any person in the free exercise of any right or privilege secured by the Constitution or federal law, including the right to vote; 18 U.S.C. § 242, which prohibits deprivation under color of law of a right secured by the Constitution or federal law, including voting; and 18 U.S.C. § 245(b)(1)(A), which makes it illegal to use or threaten to use physical force to intimidate individuals from, among other things, voting or qualifying to vote.

In addition, Section 12 of the National Voter Registration Act (NVRA), 42 U.S.C. § 1973gg-10(1), makes it a federal crime to intimidate, threaten or coerce, or attempt to intimidate, threaten or coerce any person for: (1) registering to vote, or voting, or attempting to register or vote; (2) aiding any person in so doing; or (3) exercising any right under the NVRA. A more comprehensive overview of the federal voting and election statutes and the Department's enforcement program can be found in the "Federal Prosecution of Election Offenses Manual" issued by the Public Integrity Section of the Criminal Division.

The Civil Rights Division handles all racially motivated voting offenses, including racially motivated voter intimidation offenses. For example, recently we secured the conviction of four defendants on Staten Island who, on election night 2008, targeted African Americans because the defendants perceived that they had voted for Barack Obama. The defendants used a baton, metal pipe and even their automobile to attack their victims, causing significant injuries, which rendered one victim comatose. *United States v. Nicoletti, et al.* (E.D.N.Y.). But these criminal cases can be difficult cases to prove because under the criminal voter intimidation statutes we enforce, we must show beyond a reasonable doubt that the defendants by force or

threat of force willfully interfered with a voter because of his or her race or national origin, or other enumerated characteristic.

In threats cases, where the subject does not actually use force, we must carefully decide whether the subject's threats are legally actionable "true threats" or protected speech. The Supreme Court has held that a true threat is one in which a speaker directs a threat to another person with the intent of placing that person in fear of bodily harm or death. *Virginia v. Black*, 538 U.S. 343, 360 (2003). On the other hand, speech or expressive acts that are insulting, outrageous, hostile, or even advocate the general use of force and violence may be protected under the First Amendment. See *Madsen v. Women's Health Ctr.*, 512 U.S. 753, 774 (1994); *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

These are often difficult calls to make. One example is the recent instance we have identified that most closely resembles the facts in the 2009 Philadelphia Section 11(b) case that is a primary focus for this hearing. The Civil Rights Division received a complaint from a national civil rights organization regarding a matter in Pima, Arizona alleging that during the 2006 election, three well-known anti-immigration advocates – one of whom was wearing a gun – allegedly intimidated Latino voters at a polling place by approaching several persons, filming them, and advocating against printing voting materials in Spanish. In that instance, the Department declined to bring any action for alleged voter intimidation.

In addition to the criminal matters within the Civil Rights Division's jurisdiction, the Criminal Division handles a far broader array of election-related offenses, including some voter intimidation matters in which race is not a factor. Both the Criminal Division and the Civil Rights Division also work with the United States Attorney's Offices and the FBI field offices throughout the United States to enforce the federal voting and election statutes. Intimidation referrals are, however, a relatively rare component of the election-related criminal cases handled by the Department.

B. *Civil Enforcement of Voter Intimidation Laws*

With regard to civil enforcement, the Voting Section of the Civil Rights Division enforces Section 11(b) of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973i(b). This statute prohibits anyone, whether or not acting under color of law, from intimidating, threatening, or coercing, or attempting to intimidate, threaten, or coerce, any person for voting or attempting to vote or for aiding any person to vote or attempt to vote or for exercising any powers or duties under certain sections of the Voting Rights Act. Section 12(d) of the Voting Rights Act, 42 U.S.C. § 1973j(d), provides for the filing of a civil action by the Attorney General to secure preventive relief for a violation of such statute. In 1968, Congress repealed the criminal penalties for violations of Section 11(b) that were part of the original 1965 Voting Rights Act. Pub. Law No. 90-284, § 103, 82 Stat. 73, 75 (1968).

There have been very few cases brought under Section 11(b). Possible explanations include the limited remedies available under Section 11(b) of the Voting Rights Act and the challenging legal standard of proof. As a result, the Department can find records of only three civil actions filed under this provision since its enactment in 1965, prior to the case of *United*

States v. New Black Panther Party for Self-Defense. One of these cases settled before trial, and in both of the others, the court ruled that the Department had failed to establish a Section 11(b) claim: 1) *United States v. Harvey*, 250 F. Supp. 219 (E.D. La. 1966) (Threats of eviction and other economic penalties against black sharecroppers who had recently registered to vote found not to be form of intimidation, threat or coercion prohibited by Section 11(b)); 2) *United States v. North Carolina Republican Party*, Civil Action No. 91-161-CIV-5-F (E.D.N.C.) (Section 11(b) claim regarding pre-election mailing resolved by consent decree dated Feb. 27, 1992); 3) *United States v. Brown*, 494 F. Supp. 2d 440, 477 n. 56 (S.D. Miss. 2007) (Publication by county political party chairman of list of voters to be challenged if they attempted to vote in party primary election found not to be form of intimidation, threat or coercion prohibited by Section 11(b)). Indeed, as demonstrated in the *Brown* case, Section 11(b) cases can be extremely difficult to prove. In that case, the most recent federal district court to reject a Section 11(b) claim noted that the United States had “found no case in which plaintiffs have prevailed under this section.” *Id.*

In some cases, because voter intimidation cases are difficult to prove, the Department has declined even to bring a case. In 2005, the Civil Rights Division received a complaint that armed Mississippi state investigators had allegedly intimidated elderly minority voters during an investigation of possible vote fraud in municipal elections by visiting them in their homes and asking for whom they voted, in spite of state law protections for the secrecy of the ballot. The Division did not bring a voter intimidation case in this instance.

The Voting Section also has jurisdiction to enforce 42 U.S.C. § 1971(b), part of the Civil Rights Act of 1957, which prohibits anyone, whether or not acting under color of law, from intimidating, threatening, or coercing, or attempting to intimidate, threaten, or coerce, any person for voting or attempting to vote in a federal election. Where appropriate, the Voting Section may also consider whether it has civil jurisdiction over complaints of voter intimidation or harassment under other sections of the Voting Rights Act, such as Section 2 of the Act, 42 U.S.C. § 1973.

C. *Process for Investigating, Evaluating, and Commencing Voter Intimidation Cases*

The Department of Justice may receive allegations of possible voter intimidation from a variety of sources, including but not limited to newspaper or other media accounts, complaints from organizations or groups, citizen calls or letters, referrals from state or local officials, other federal agencies, or Members of Congress.

Within the Department, such a complaint may fall within the supervisory or consultative criminal jurisdiction of the Election Crimes Branch of the Public Integrity Section of the Criminal Division, the U.S. Attorney’s Offices, or the jurisdiction of the Criminal Section of the Civil Rights Division, or within the civil jurisdiction of the Voting Section of the Civil Rights Division. *See, e.g.*, 28 C.F.R. §§ 0.50, 0.55; U.S. Attorneys’ Manual 8-1.000, 9-4.000; Federal Prosecution of Election Offenses (7th ed. 2007).

Upon the Department’s receipt of such a complaint, the appropriate component (or components) review the allegations contained in the complaint and make a determination of whether there is jurisdiction to pursue the complaint, as well as whether to investigate the

allegations. Based upon the facts that are identified in a matter, a decision is made whether to pursue criminal or civil litigation in federal court. In each case or matter, decisions on investigation and/or litigation are based on its unique facts and the application of existing law to this set of facts. The Division continues to collect facts even after litigation in a matter is commenced and therefore the evaluation concerning claims and relief continues throughout the course of a case through the time of final disposition, and in some instances even thereafter, if necessary to enforce the terms of such disposition as set forth in an injunction or judgment.

II. The Civil Rights Division's Work in the *New Black Panther Party* Litigation

The following summary is based on information that is available to me as Assistant Attorney General for Civil Rights.

The events in this matter took place at a polling place in Philadelphia, Pennsylvania on the day of the most recent federal general election, November 4, 2008. The Department became aware of these events on Election Day and decided to conduct further inquiry, a decision in which the Civil Rights Division, the Criminal Division and the United States Attorney's Office for the Eastern District of Pennsylvania concurred. After reviewing this matter, the Civil Rights Division determined that the facts did not constitute a prosecutable violation of the federal criminal civil rights statutes. In July 2009, the United States Attorney's Office for the Eastern District of Pennsylvania declined prosecution in the matter. Our understanding is that local law enforcement officials also declined to pursue state criminal charges.

The Department did, however, initiate a civil action in federal court. On January 7, 2009, the Department filed a complaint seeking injunctive and declaratory relief under Section 11(b) of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973i(b), against four defendants: the New Black Panther Party for Self-Defense and its leader Malik Zulu Shabazz, and two individuals who appeared at the Philadelphia polling place on November 4, 2008, Minister King Samir Shabazz and Jerry Jackson. The complaint alleged that the defendants violated Section 11(b) because they attempted to engage in, and engaged in, both voter intimidation and intimidation of individuals aiding voters.

Although none of the defendants responded to the complaint, that did not absolve the Department of its legal and ethical obligations to ensure that any relief sought was consistent with the law and supported by the evidence. The entry of a default judgment is not automatic, and the Pennsylvania Bar Rules impart a clear duty of candor and honesty in any legal proceeding; those duties are only heightened in the type of ex parte hearing that occurred in this matter. See Pa. RPC 3.3(d). At the remedial stage, as with the liability stage, the Department remains obliged to ensure that the request for relief is supported by the evidence and the law. In discharging its obligations in that regard, the Department considered not only the allegations in the complaint, but also the evidence collected by the Department both before and after the filing of the complaint.

After reviewing the evidence, the Department concluded that there was insufficient evidence to establish that the Party or Malik Zulu Shabazz violated Section 11(b).

Prior to the election, the New Black Panther Party for Self-Defense made statements and posted notice that over 300 members of the New Black Panther Party for Self-Defense would be deployed at polling locations during voting on November 4, 2008, throughout the United States. To the Department's knowledge, the single polling place in Philadelphia is the only location where an incident occurred. This apparent fact is inconsistent with the notion that the Party or Malik Zulu Shabazz directed a campaign of intimidation. The Department also considered the statement posted by the Party on its website regarding the incident. The statement posted on the Party web site provided: "Specifically, in the case of Philadelphia, the New Black Panther Party wishes to express that the actions of people purported to be members do not represent the official views of the New Black Panther Party and are not connected nor in keeping with our official position as a party. The publicly expressed sentiments and actions of purported members do not speak for either the party's leadership or its membership." As of May 2009, the Department had information indicating that this statement was posted prior to the filing of the civil action. A separate statement posted on the Party website, dated January 7, 2009 (the same date that the complaint in this case was filed), reported the suspension of the Philadelphia chapter because of these activities.

At a minimum, without sufficient proof that New Black Panther Party or Malik Zulu Shabazz directed or controlled unlawful activities at the polls, or made speeches directed to immediately inciting or producing lawless action on Election Day, any attempt to bring suit against those parties based merely upon their alleged "approval" or "endorsement" of Minister King Samir Shabazz and Jackson's activities would have likely failed. See *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 927 (1982). The Department therefore decided, based on its review of applicable legal precedent and the totality of the evidence, to dismiss the claims against the New Black Panther Party and Malik Zulu Shabazz.

With regard to the alleged activities at the Philadelphia polling place by the Minister King Samir Shabazz and Jerry Jackson, the Department considered all available information, including signed statements of poll observers or poll watchers at the polling place. In addition, Philadelphia police who arrived at the polling place on Election Day to assess the situation decided to direct Minister King Samir Shabazz to leave the polling place, but allowed Jackson, a certified pollwatcher, to remain.

The Department concluded that the evidence collected established that Minister King Samir Shabazz violated Section 11(b) by his conduct at the Philadelphia polling place on Election Day. This evidence included his display of a nightstick at the polling place during voting hours, an act which supported the allegation of voter intimidation. The Department therefore decided to seek an injunction against defendant Minister King Samir Shabazz. In approving the injunction, the district court found that the United States had alleged that Minister King Samir Shabazz "stood in front of the polling location at 1221 Fairmont Street in Philadelphia, wearing a military style uniform, wielding a nightstick, and making intimidating statements and gestures to various individuals, all in violation of 42 U.S.C. § 1973i(b)," (Order of May 18, 2009, at 1), and entered judgment "in favor of the United States of America and against Minister King Samir Shabazz, enjoining Minister King Samir Shabazz from displaying a weapon within 100 feet of any open polling location in the City of Philadelphia, or from otherwise violating 42 U.S.C. § 1973i(b)." Judgment (May 18, 2009). The federal court retains jurisdiction over its enforcement until 2012.

The Department concluded that a nationwide injunction was not legally supportable in the case against Minister King Samir Shabazz. The Supreme Court has emphasized that an injunction must be “no broader than necessary to achieve its desired goals.” *Madsen v. Women's Health Ctr.*, 512 U.S. 753, 765 (1994). To that end, a reviewing court must pay “close attention to the fit between the objectives of an injunction and the restrictions it imposes on speech” in keeping with the “general rule . . . that injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.” See *ibid.* (citation omitted).

Because injunctive relief is tailored to its objectives, a focus upon the facts alleged by the Department was critical to determining the scope of the injunction that could have been obtained. The Department alleged that Minister King Samir Shabazz is a resident of Philadelphia and is the leader of the Philadelphia chapter of the NBPP. Complaint ¶ 5. The complaint alleged that on November 4, 2008, Minister King Samir Shabazz brandished a weapon and made racially threatening and insulting remarks while standing in front of the entrance of a polling place in Philadelphia. Complaint ¶¶ 8-10. The complaint further alleged that on this specific occasion Minister King Samir Shabazz pointed the weapon at individuals, tapped it in his hand and elsewhere, and made menacing and intimidating gestures, statements and movements toward individuals who were present to aid voters. Complaint ¶¶ 9-10.

The evidence was insufficient to show that Minister King Samir Shabazz had engaged or planned to engage in a nationwide pattern of such conduct as he exhibited at the polling place in Philadelphia, or that he was inclined to disregard the injunction. Cf. *United States v. Dinwiddie*, 76 F.3d 913, 929 (8th Cir. 1996) (finding the scope of a nationwide injunction in a Freedom of Access to Clinic Entrance Act (FACE) case appropriate because of a protestor’s “consistent, repetitious, and flagrant unwillingness or inability to comply” with the proscriptions of the law, his “serious intent to do bodily harm to the providers and recipients of reproductive health services,” and the possibility, if the injunction were geographically limited, that he “could easily frustrate the purpose and spirit of the permanent injunction simply by stepping over state lines and engaging in similar activity at another reproductive health facility” (quotation and citation omitted)). Absent such facts, in other FACE cases, the geographic scope of injunctions the Department has obtained has been quite narrow, generally limited to a certain number of feet from a given clinic, see *United States v. Scott*, No. 3:95cv1216 1998 U.S. Dist. LEXIS 10420 (D. Conn. June 25, 1998), or simply preventing protestors from impeding ingress and egress to a particular clinic. See *United States v. Burke*, 15 F. Supp. 2d 1090 (D. Kan. 1998); *United States v. Brock*, 2 F. Supp. 2d 1172 (E.D. Wis. 1998).

Given the facts presented, the injunction sought by the Department prohibited Minister King Samir Shabazz from displaying a weapon within 100 feet of any open polling location on any election day in the City of Philadelphia, or from otherwise violating 42 U.S.C. 1973i(b), (see Order of May 18, 2009, at 4). The Department considers this injunction tailored appropriately to the scope of the violation and the requirements of the First Amendment, and will fully enforce the injunction’s terms. Section 11(b) does not authorize other kinds of relief, such as criminal penalties, monetary damages, or other civil penalties.

The Department concluded that the allegations in the complaint against Jerry Jackson, the other defendant present at the Philadelphia polling place, did not have sufficient evidentiary support. The Department's determination was based on the totality of the evidence. In reaching this conclusion, the Department placed significant weight on the response of the law enforcement first responder to the Philadelphia polling place on Election Day. A report of the local police officer who responded to the scene, which is included in the Department's production to the Commission, indicates that the officer interviewed Mr. Jackson, confirmed that he in fact was a certified poll watcher, and concluded that his actions did not warrant his removal from the premises.

The decisions regarding the disposition of the case, both seeking an injunction as to one defendant and voluntarily dismissing three other defendants, ultimately was made by the career attorney then serving as the Acting Assistant Attorney General for the Civil Rights Division. Another career attorney who was then serving as the Acting Deputy Assistant Attorney General with responsibility for supervising the Voting Section also participated directly in the decision-making process. These two career Civil Rights Division attorneys have over 60 years of experience at the Department between them, and each worked in the Voting Section at some point during their careers. Based on the totality of the evidence and the relevant legal precedent, the Acting Assistant Attorney General made a judgment about how to proceed, choosing to seek an injunction against the only defendant who brought a weapon to the Philadelphia polling place on Election Day and to voluntarily dismiss the other three defendants.

The decision to proceed with the claims against Minister King Samir Shabazz and to dismiss the claims against the three other defendants was based on the merits and reflects the kind of good faith, case-based assessment of the strengths and weaknesses of claims that the Department makes every day.

We assure you that the Department is committed to comprehensive and vigorous enforcement of both the civil and criminal provisions of federal law that prohibit voter intimidation. We continue to work with voters, communities, and local law enforcement to ensure that every American can vote free from intimidation, coercion or threats.

Thank you for giving the Department the opportunity to present this statement.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) CIVIL ACTION NO. 4:05-cv-33 (TSL/LRA)
)
 IKE BROWN, et al.,)
)
 Defendants.)
 _____)

**UNITED STATES' MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR
ADDITIONAL RELIEF AGAINST DEFENDANTS IKE BROWN AND THE NOXUBEE
COUNTY DEMOCRATIC EXECUTIVE COMMITTEE**

A. INTRODUCTION

Plaintiff United States of America respectfully submits this Memorandum of Law in Support of its Motion for Additional Relief. As set forth in greater detail below, the United States filed this motion after Defendants Ike Brown and the Noxubee County Democratic Executive Committee ("NDEC"), adopted and made a submission to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, seeking preclearance of a motion to implement a new party loyalty standard in all federal, state, and municipal Democratic Party primaries in Noxubee County and to close those primaries accordingly ("NDEC Submission"; see Exhibit A). The party loyalty standard is embodied in a March 3, 2010 "Motion to close Democratic Primary," signed by Chairman Ike Brown plus ten other members of the NDEC. *Id.* at 3.

The Attorney General, by letter dated July 12, 2010, has rejected this attempt by Mr. Brown and the NDEC to make this purported submission seeking to implement a party loyalty standard and to close the party primary elections. The Attorney General concluded, under the

terms of this Court's Remedial Order in this case, that the Defendants are not proper officials to make such a submission, and that the only proper submitting official is the Referee-Administrator appointed by this Court. *See* Exhibit B (Letter from T. Christian Herren, Jr., Chief, Voting Section, to Wilbur O. Colom, Esq.).

By seeking to dictate the terms of electoral qualifications and by submitting these qualifications to the Attorney General for preclearance, the Defendants have violated the Remedial Order in this case in two ways. First, the Defendants have assumed electoral duties that this Court has exclusively reserved for the Referee-Administrator. Second, the evidence surrounding the Defendants' decision to implement this new party loyalty standard indicates that, like the party loyalty standard previously implemented by Defendants in Noxubee County, its genesis is one that is, at least in part, racially motivated.

Accordingly, the United States respectfully requests that the Court grant the additional relief set forth in the accompanying motion, namely, 1) enjoining the Defendants from implementing their "Motion to close Democratic Primary"; 2) expressly providing that any further efforts to seek preclearance under Section 5 of the Voting Rights Act for voting changes to be implemented in Democratic Party primary elections shall be made only by the Referee-Administrator; and 3) extending the time period covered by the Court's Remedial Order until November 20, 2013.

B. RELEVANT PROCEDURAL HISTORY

In its June 29, 2007 liability Order, this Court found that Defendants Ike Brown and the NDEC had violated Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, in Democratic Party primary elections in Noxubee County by having "administered and manipulated the political

process in ways specifically intended and designed to impair and impede participation of white voters and to dilute their votes.” *United States v. Brown*, 494 F. Supp. 2d 440, 485 (S.D. Miss. 2007). As this Court concluded,

where the proof establishes a specific racial intent by black election officials to disenfranchise white voters, Section 2 applies with ease. No one could reasonably argue that an election official's racially motivated decision to count the votes of black voters while rejecting those of white voters is discrimination that can be countenanced under any view of Section 2. In purpose and in effect, that is what has occurred in this case.

Id. at 486.

The Defendants' discriminatory actions pervaded the 2003 Democratic primary, resulting *inter alia*, in the wrongful rejection of white voters' ballots. Moreover, as Chairman of the NDEC, Mr. Brown expressly advocated taking actions which decreased the likelihood of white candidates being elected to local office, including attempting to enforce a party loyalty standard in a racially discriminatory fashion. *Id.* at 472-77.

On August 27, 2007, the Court granted the United States' request for comprehensive remedial relief, which included the appointment of a Referee-Administrator to preside over the Noxubee County Democratic Party primary and primary runoff elections through November 20, 2011. In delineating the duties of the Referee-Administrator, the Court ordered that:

In serving as the Superintendent of Elections, all electoral duties of the Chairman of the Noxubee County Democratic Executive Committee and the Noxubee County Democratic Executive Committee shall be executed by the Referee-Administrator, with advice and assistance from the Noxubee County Democratic Executive Committee as he deems appropriate. These duties, which would otherwise be undertaken by the NDEC Chairman, include, but are not limited to, the following: certification of candidates, appointment of poll officials, assignment of poll officials to the various voting precincts, distribution of regular ballots and ballot boxes containing absentee ballots, supervision of polling locations and poll officials, and certification of election results.

United States v. Brown, 2007 WL 2461965, *1 ¶ 4 (S.D. Miss.). The Court further mandated that the “defendants shall not interfere or attempt to interfere in any way with the responsibilities of the Referee-Administrator.” *Id.* at *2 ¶ 10. The Court particularly explained that, “to prevent a recurrence of past transgressions by NDEC Chairman Brown in the conduct of Democratic primary elections, the person appointed by the court must be given broad authority to act in the place and stead of Mr. Brown . . .” *Id.* at *1 n.1.

This injunctive relief, in addition to other, comprehensive relief, was ordered after the Defendants were shown, in an August 21, 2007 hearing, to have unlawfully involved themselves in the August 7, 2007 Democratic Party primary, conducted after the entry of the court’s liability opinion, notwithstanding their prior assurances to the Court that they would abstain from interfering in that election in any way. *See, e.g.*, Doc. # 225 at 3-4, and cited exhibits; *see also* Gov’t Exh’s A-E (federal observer reports) from August 21, 2007 remedial hearing.

Included in the other relief addressed in the Court’s Remedial Order was a prohibition on racially discriminatory enforcement of party loyalty requirements. *See* 2007 WL 2461965 at *5 ¶ 34. In the liability opinion, the Court had specifically addressed the threatened use of challenges based on party loyalty. 494 F. Supp. 2d at 472-77.¹ The Court considered, at length,

¹ These party loyalty challenges came about during a 2003 controversy in which Mr. Brown had threatened to challenge 174 white voters under the authority of Miss. Code Ann. § 23-15-575, which states, “No person shall be eligible to participate in any primary election unless he intends to support the nominations made in the primary in which he participates.” The Mississippi Attorney General had strongly cautioned Mr. Brown not to attempt to enforce a party loyalty standard, noting, in part, that the Department of Justice had indicated that “challenging a person’s right to vote based on his or her alleged lack of support of party nominees pursuant to Section 23-15-575 would be viewed as a change in practice that requires pre-clearance pursuant to Section 5 of the Voting Rights Act.” *Brown*, 494 F. Supp. 2d at 474 n.53, 474-75 (quoting Cole Opinion, 2003 WL 21962318 (Miss. A.G. July 21, 2003)).

the question of whether Mr. Brown's attempt to enforce a party loyalty standard "was pretext for a true purpose to discourage white voters from coming to the polls, or some combination of the two." *Id.* at 476. The Court concluded that Mr. Brown's attempt to enforce a local party loyalty standard in Noxubee County was taken, "in part because of party loyalty concerns, but also as an attempt to discourage white voters from voting . . ." *Id.* at 477.² Therefore, in its Remedial Order, the Court explicitly stated, "Defendants and their agents shall not enforce any party loyalty requirements in a racially discriminatory manner." 2007 WL 2461965 at *5 ¶ 34; *see also* *1 ¶ 1 (enjoining discrimination proscribed by the Voting Rights Act).

On appeal, the Fifth Circuit specifically upheld the findings of the liability opinion and the relief implemented in the Remedial Order. *United States v. Brown*, 561 F.3d 420 (5th Cir. 2009). With respect to the Remedial Order, the Fifth Circuit noted that "[d]espite their representations to the court and despite the court's prior liability holding, defendants recidivated. In so doing, defendants demonstrated that they could not be relied upon to voluntarily remedy their § 2 violation." *Id.* at 436.

C. CURRENT CONTROVERSY

Since the Court issued its Remedial Order, the Referee-Administrator has taken on all the duties of the Superintendent of Elections for the Noxubee County Democratic Party primaries. To the United States' knowledge, since the issuance of the Order, all of the electoral duties that

² The existence of partisan motivations did not make the racial motivations irrelevant. As the Court noted, "Racial discrimination need only be one purpose, and not even a primary purpose, of an official act in order for a violation of the Fourteenth and the Fifteenth Amendments to occur . . ." *Id.* at 475 n.54 (quoting *Velasquez v. City of Abilene, Tex.*, 725 F.2d 1017, 1022 (5th Cir.1984), and citing *Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252, 265 (1977)).

fall under the broad language of the Order have been executed by former Mississippi Supreme Court Justice Reuben Anderson – that is, until earlier this year.

Specifically, on March 3, 2010, NDEC Chairman Ike Brown and the NDEC met and adopted a “Motion to close Democratic Primary,” which provided as follows:

The Democratic Primary in Noxubee Co. at all levels Municipal, State, and Federal will be closed to any voter who either served on Republican Executive Committee, hold office as Republican or voted in any Republican Primary at any level after Feb. 1st 2008. All other voters will be eligible. Any such voter shall be ineligible for a period of (18 months) after voting in any such Primary or serving on Executive Committee.

Exhibit A at 3.

The motion was signed by Ike Brown and ten other members of the NDEC. *Id.* at 3. By letter dated May 12, 2010, NDEC Chairman Ike Brown and the NDEC, through counsel, made a submission to the Attorney General purporting to seek preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, to enforce Miss. Code Ann. § 23-15-575 “within the county to further party loyalty . . .” Exhibit A at 1-2. The Attorney General received the submission on May 13, 2010. Neither the cover letter for the submission, nor the motion itself, makes any reference to *United States v. Brown*, the Court’s orders in this case, or the Referee-Administrator. There is no indication, from the NDEC motion, the NDEC submission, or the docket of this Court, that the Defendants apprised the Court or the Referee-Administrator of these developments. On July 12, 2010, the Attorney General responded by letter to counsel for the Defendants, rejecting the purported submission, concluding, “the Referee-Administrator, and not the Noxubee County Democratic Executive Committee, is the only proper submitting official under Section 5 for any proposed voting change in Democratic Party primary elections in

Noxubee County during the term of the Remedial Order. Accordingly, it would be inappropriate for the Attorney General to make a determination concerning your submission.” Exhibit B.

On June 17, 2010, a story entitled “Dem chief seeks DOJ approval to banish GOP voters” appeared in *The Beacon*, the local newspaper for Noxubee County. See Exhibit C (Scott Boyd Declaration and Attachment A thereto). The article, written by reporter Scott Boyd, reported that Mr. Brown and the NDEC had submitted, under Section 5 of the Voting Rights Act, the aforementioned “Motion to close Democratic Primary.” *Id.* Mr. Boyd did not report on the “Motion to close Democratic Primary” when it first was adopted in March of 2010, because neither Mr. Brown, nor anyone on the NDEC, informed Mr. Boyd of the meeting. *Id.* ¶ 7.

Mr. Brown approached Mr. Boyd after the publication of the story and expressed irritation that the story had publicly revealed the NDEC’s plan to implement a new party loyalty standard. *Id.* ¶ 4. During the course of his discussion with Mr. Brown, Mr. Boyd questioned Mr. Brown’s motives for implementing the party loyalty standard, and asked whether Noxubee County Justice Court Judge Dirk Dickson, a Democrat who is black, would be prohibited from voting in the Democratic primary. *Id.* ¶¶ 3, 5. Mr. Boyd knew that the party loyalty plan would exclude voters who had voted in prior Republican primaries; and he also knew that Judge Dickson had voted in the August 7, 2007 Republican primary. *Id.* ¶¶ 2, 3. Upon being asked by Mr. Boyd whether Judge Dickson would face a challenge, Mr. Brown explained, “That’s why we picked the date.” *Id.* ¶ 6. Mr. Boyd understood this to mean that the Defendants had chosen February 1, 2008 as the cutoff date in order to avoid excluding Judge Dickson under the new party loyalty standard, since Judge Dickson had voted in the August 7, 2007 Republican primary. *Id.*

D. REQUESTED RELIEF

Based on the foregoing reasons, the United States respectfully requests that the Court amend its August 27, 2007 Order to grant additional relief to 1) enjoin the Defendants from implementing or enforcing their "Motion to close Democratic Primary," 2) provide that any further efforts to seek preclearance under Section 5 of the Voting Rights Act for voting changes to be implemented in Democratic Party primary elections shall be made only by the Referee-Administrator; and 3) extend the time period covered by the Court's Remedial Order until November 20, 2013.

1. Enjoining the "Motion to close Democratic Primary"

The United States moves the Court to enjoin the Defendants from moving forward with the proposed "Motion to close Democratic Primary," because it constitutes a violation of this Court's Order. In formulating this new party loyalty standard, the Defendants have ignored the authority of this Court and the Referee-Administrator.

According to this Court's Remedial Order, "*all electoral duties* of the Chairman of the Noxubee County Democratic Executive Committee and the Noxubee County Democratic Executive Committee shall be executed by the Referee-Administrator . . ." 2007 WL 2461965, *1 ¶ 4 (S.D. Miss.) (emphasis added). Therefore, to the degree that state law or state party rules deem it appropriate for the NDEC to make changes to voter requirements and qualifications, this is one of the "electoral duties" which now is under the sole authority of the Referee-Administrator. By making this decision, and thereafter submitting this proposed change to the Attorney General, the Defendants have usurped the authority of the Referee-Administrator, who is the only official authorized to make such changes until the termination of the Remedial Order.

Based on the Defendants' demonstrated malfeasance in the past, as found by this Court, there is every reason to believe that, unless expressly banned from acting to the contrary, the Defendants will continue to move forward with their unlawful attempt to enforce this change.

The "Motion to close Democratic Primary" is, moreover, an attempt to enforce a party loyalty standard through racially disparate means, again in violation of the Court's Order. The Court has directed that "Defendants and their agents shall not enforce any party loyalty requirements in a racially discriminatory manner." 2007 WL 2461965 at *5, ¶ 34. This directive was necessitated by Defendant Ike Brown's numerous, well-documented attempts to disenfranchise white voters through the enforcement of a party loyalty standard. 494 F. Supp. 2d 440, 472-77 (United States' Proposed Findings at pp. 34-40).

The current effort by the Defendants is a part of the same pattern of behavior described by the Court in its liability opinion, in which Mr. Brown was seen to combine partisan motives with underlying racial motives. In the liability opinion, the Court noted that the list of 174 voters Mr. Brown threatened to challenge on party loyalty grounds included only white voters, despite the presence of black voters who met the terms of his party loyalty standard. *Brown*, 494 F. Supp. 2d at 476. These facts established that Mr. Brown's actions were motivated in part by racial concerns.

In the present situation, the facts show that, as Mr. Brown explained to Mr. Boyd, the February 1, 2008 cut-off date for his new loyalty standard was chosen in order to ensure that it would not unfavorably impact a black Democrat, Noxubee County Justice Court Judge Dirk Dickson, who voted in the 2007 Republican primary. These facts again suggest that Mr. Brown is motivated, at least in part, by racial concerns. This conclusion is bolstered by Mr. Brown's

prior history of using a party loyalty standard to reduce white voter participation in Noxubee County Democratic Party primaries, while at the same time not applying a party loyalty standard to similarly situated black voters. Mr. Brown's interest in executing a party loyalty campaign in this way is similar to his 2003 attempt to enforce a party loyalty standard. In 2003, Mr. Brown personally knew that a black Democrat, Shuqualak Mayor Velma Jenkins, publicly supported a Republican candidate, yet he did not include her in the list of 174 white voters whom he threatened to challenge on party loyalty grounds. (Trial Tr. 2475-76.) Indeed, after Mr. Brown learned that Mayor Jenkins was supporting Republican Congressman Chip Pickering, he did not withdraw his support for her for Mayor of Shuqualak. *Id.*

The United States therefore respectfully requests that the Court enjoin the Defendants from making any attempt to enforce the provisions of their "Motion to close Democratic Primary."³

2. *Providing That All Efforts to Seek Section 5 Preclearance for Voting Changes to Be Implemented in Democratic Party Primary Elections in Noxubee County must Be Made by the Referee-Administrator*

Under Section 5 of the Voting Rights Act, all changes affecting voting in covered jurisdictions must be precleared by the Attorney General or the District Court for the District of Columbia. 42 U.S.C. § 1973c. Noxubee County is a political subdivision of the State of Mississippi, which is subject to Section 5. 28 C.F.R. Part 51 Appendix. Submissions under Section 5 of the Voting Rights Act may only be made by the "appropriate official of the submitting authority . . ." 28 C.F.R. 51.23(a). Again, according to this Court's Remedial Order,

³ Additionally, because Defendants' "Motion to close Democratic Primary" is subject to Section 5 of the Voting Rights Act, and has not received preclearance under Section 5, it is legally unenforceable. *Clark v. Roemer*, 500 U.S. 646 (1991).

“*all electoral duties* of the Chairman of the Noxubee County Democratic Executive Committee and the Noxubee County Democratic Executive Committee shall be executed by the Referee-Administrator . . .” 2007 WL 2461965, *1 ¶ 4 (S.D. Miss.) (emphasis added).

Hence, the United States respectfully requests that this Court order that any efforts to seek preclearance under Section 5 for voting changes to be implemented in Democratic Party primary elections in Noxubee County during the term of this Court’s Remedial Order must be made only by the Referee-Administrator, rather than by Defendants.

3. *Extending the Time Period Covered by the Remedial Order*

The United States also moves the Court to extend the term of the Remedial Order until November 20, 2013, two years past the original expiration date. The Defendants’ actions necessitating the instant motion constitute a violation of the orders of this Court.

Notwithstanding the Court’s clear liability ruling, in which the Defendants’ past attempts to enforce a party loyalty standard were determined to encompass a racially discriminatory motive; and notwithstanding the Court’s detailed Remedial Order, in which Justice Reuben Anderson was appointed Referee-Administrator, with sweeping electoral authority in Democratic Primary elections, the Defendants met and crafted a motion that again would implement a party loyalty standard, to all appearances without the knowledge or approval of the Referee-Administrator.

When the fact was discovered by a diligent reporter, Mr. Brown’s first response was to rebuke that reporter for disclosing the new effort to implement a party loyalty requirement, while essentially admitting, in the same conversation, that the rules had been structured to aid Judge Dickson.

The United States is concerned that, a year and a half before the expiration of the Court's Order, the Defendants already are seeking to circumvent it by bypassing the Referee-Administrator and returning to the same type of practices that led to the filing of this case in the first place. It seems apparent that Defendants will again "recidivate," in the language of the Fifth Circuit, and return to old practices. An extension of the Court's Order is necessary to protect the voting rights of the citizens of Noxubee County. An extension also will remind the Defendants of the seriousness of their obligations under the Order, and assist them in developing a pattern of compliance that will last beyond the expiration of the Order.

E. CONCLUSION

The Defendants have done more here than commit a mere oversight in usurping the authority of the Referee-Administrator by enacting and submitting their "Motion to close Democratic Primary" to the Attorney General. In attempting to bypass both the Referee-Administrator and the Court to implement a new party loyalty standard, one with a long history in this case that has been accompanied by racially discriminatory motives, the Defendants have again ignored this Court's orders. For the foregoing reasons, the United States therefore moves the Court to 1) enjoin the Defendants from implementing or enforcing their "Motion to close Democratic Primary"; 2) provide that any further efforts to seek preclearance under Section 5 of the Voting Rights Act for voting changes to be implemented in Democratic Party primary elections shall be made only by the Referee-Administrator; and 3) extend the time period covered by the Court's Remedial Order until November 20, 2013.

The United States believes that this motion can be decided upon the record, but the United States is prepared to appear should the Court desire to hold a hearing on this motion.

Respectfully Submitted,

DON BURKHALTER
Acting United States Attorney
Southern District of Mississippi

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

/s/ Joshua L. Rogers

T. CHRISTIAN HERREN, JR.
ROBERT POPPER
JOSHUA L. ROGERS
Attorneys, Voting Section
Civil Rights Division
U.S. Department of Justice
Room 7255 - NWB
950 Pennsylvania Ave. NW
Washington, D.C. 20530
joshua.rogers@usdoj.gov
Tel: (202) 514-8201
Fax: (202) 307-3961

Date: July 13, 2010

CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2010, I served a true and correct copy of the foregoing via the Court's ECF filing system to the following counsel of record:

Wilbur O. Colom, Esq.
Edward L. Pleasants III, Esq.
Colom Law Firm, LLC
200 6th Street, North, Suite 102
Columbus, Mississippi 39701

Ellis Turnage, Esq.
Post Office Box 216
108 North Pearman Avenue
Cleveland, Mississippi 38732

Christopher D. Hemphill, Esq.
Dunn, Webb and Hemphill, P.A.
214 5th Street South
Columbus, Mississippi 39701

/s/ Joshua L. Rogers

Joshua L. Rogers
Voting Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-8201



UNITED STATES COMMISSION ON CIVIL RIGHTS

624 NINTH STREET, NW, WASHINGTON, DC 20425
www.usccr.gov

August 6, 2010

The Honorable Eric H. Holder, Jr., Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Re: New Black Panther Party/Department of Justice Investigation

Dear Attorney General Holder:

This letter is a follow-up to the letters sent by the U.S. Commission on Civil Rights to Assistant Attorney General Thomas Perez dated July 14, 2010, and to you dated July 28, 2010, relating to the Commission's investigation of the New Black Panther Party ("NBPP") litigation, the Department's enforcement of voter intimidation laws and the testimony of Christopher Coates thereon. The letter to Mr. Perez requested a response by July 21, 2010, but as of this date we have yet to receive a reply.

Out of respect to the statutory obligation of the Commission to issue a report on our investigation, it is important that the Department of Justice reply as to whether Mr. Coates will be produced for testimony at the Commission's August 13, 2010 hearing by no later than August 11, 2010, so that the Commission may adequately prepare for the hearing. Even with the testimony of Mr. Coates on August 13, 2010, it is expected that the Commission's report will be delayed by nearly two months, due in large part to the Department's refusal to provide information and testimony in a timely fashion, and to fully cooperate.

To reiterate the proposal made in the Commission's letter to you dated July 28, 2010, without waiving its rights to examine Department personnel in the future as to the decision making process in the NBPP litigation, the Commission will agree to limit Mr. Coates' initial questioning to whether there is a policy and/or culture within the Department of discriminatory enforcement of civil rights laws and whether there is a policy not to enforce Section 8 of the National Voter Registration Act ("NVRA").

Given that the subject matter of Mr. Coates' anticipated testimony will not be based upon any matters that the Department claims are precluded by any cognizable privileges, and given that the Department is commanded by federal statute to "comply fully" with requests made pursuant to the Commission's jurisdiction, there is no sound basis upon which Mr. Coates' testimony on these topics may be withheld. Consequently, in the event Mr. Coates is not produced, the Commission

The Honorable Eric H. Holder, Jr., Attorney General

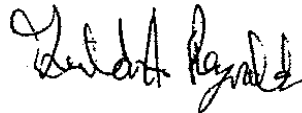
August 6, 2010

Page 2

may reasonably infer that his testimony would corroborate that of J. Christian Adams before the Commission on July 6, 2010, that, inter alia, the Department is hostile to the race neutral enforcement of voting rights laws and that the Department refuses to enforce Section 8 of the NVRA.

At minimum, a demonstration of good faith to an independent federal agency requires that the Department either agree to produce Mr. Coates pursuant to our compromise proposal or provide an explanation as to why it will not do so. As set forth above, it is requested that the Department respond to this request no later than August 11, 2010.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald A. Reynolds". The signature is written in a cursive, somewhat stylized font.

Chairman Gerald A. Reynolds

cc: Vice Chair Abigail Thernstrom
Commissioner Todd F. Gaziano
Commissioner Gail Heriot
Commission Peter N. Kirsanow
Commissioner Arlan B. Melendez
Commissioner Ashley L. Taylor, Jr.
Commissioner Michael J. Yaki
Martin Dannelfelser, Staff Director
Assistant Attorney General Thomas Perez
Joseph H. Hunt



**UNITED STATES
COMMISSION ON
CIVIL RIGHTS**

624 Ninth Street, N.W.
Washington, D.C. 20425

July 28, 2010

VIA HAND DELIVERY

The Honorable Eric Holder
Attorney General
United States Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Re: Letter of July 14, 2010 from Chairman Gerald Reynolds to Assistant Attorney
General Thomas Perez

Dear Attorney General Holder:

On July 14, 2010, I sent a letter to Assistant Attorney General Thomas Perez relating to the Commission's ongoing investigation of the New Black Panther Party litigation, as well as the Department's enforcement of voter intimidation laws. At its meeting of July 16, the Commission (by a majority vote) endorsed and ratified that letter.

That letter requested that the Department indicate whether it would release Christopher Coates, the former head of the Voting Section, to testify on matters raised by J. Christian Adams in his testimony before the Commission. Although the letter requested a response by July 21, as of this late date we have yet to receive a reply.

As you know from previous correspondence, the Commission does not agree with the Department's position that it can legitimately preclude Mr. Coates from testifying with regard to the decision making process behind the New Black Panther Party litigation. That aside, the Department's interest in confidential deliberations (or any other purported privilege) does not apply to several additional matters raised by Mr. Adams in his testimony before the Commission. For instance, as indicated in my letter of July 14, Mr. Adams testified that there is hostility within the Civil Rights Division to the race neutral enforcement of civil rights protections, and that such hostility may be supported by statements of current political appointees in the Division. By way of example, his testimony indicated that career employees refused to work on the Ike Brown litigation (in which the court found that the voting rights of white and black voters had been violated by a black official) and, most importantly, that specific instructions were given to Mr. Coates from Deputy Assistant Attorney General Julie Fernandes to the effect that "cases are not going to be brought against black defendants for the benefit of white victims; that if somebody wanted to bring these cases it was up to the U.S. Attorney, but the Civil Rights Division wasn't going to be bringing it." (Adams Tr. at 61).

The above allegations, together with other alleged comments by Ms. Fernandes relating to the intended non-enforcement of Section 8 of the National Voter Registration Act, do not involve policy or legal “deliberations” or any other matter protected by any privilege and deserve to be investigated and either shown to be true or to be disproven.

To that end, during its July 16 meeting, the Commission voted to make the following proposal: Without waiving its rights to examine Department personnel in the future as to the decision making process in the New Black Panther Party litigation, the Commission will agree to limit Mr. Coates’s (initial) questioning to non-deliberative statements or actions relating to whether there is a policy and/or culture within the Department of discriminatory enforcement of civil rights laws and whether there is a policy not to enforce Section 8 of the National Voter Registration Act.

Your immediate attention to this proposal is requested. Please contact the Commission’s General Counsel, David Blackwood, as to when a response to my July 14 letter will be forthcoming. Thank you for your prompt attention to this matter.

Sincerely,



Gerald A. Reynolds
CHAIRMAN

cc: Vice Chair Abigail Thernstrom
Commissioner Todd F. Gaziano
Commissioner Gail Heriot
Commissioner Peter N. Kirsanow
Commissioner Arlan D. Melendez
Commissioner Ashley L. Taylor, Jr.
Commissioner Michael J. Yaki
Assistant Attorney General Thomas Perez
Joseph H. Hunt



July 14, 2010

VIA E-MAIL AND HAND DELIVERY

Thomas Perez, Esq.
Assistant Attorney General
Civil Rights Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Assistant Attorney General Perez:

On July 6, 2010, the U.S. Commission on Civil Rights heard testimony from former career Department attorney J. Christian Adams. This testimony raised serious concerns as to whether the Civil Rights Division's enforcement policies are being pursued in a race-neutral fashion and further calls into question the Department's decision to change course in the New Black Panther Party litigation. By testifying, Mr. Adams fulfilled his obligation to comply with the Commission's lawful subpoena. Regrettably, in the face of the Department's intransigence regarding the Commission's investigation and its unwillingness to enforce the Commission's lawful and long-standing subpoena despite the Department's obvious conflict of interest, Mr. Adams was forced to resign before he could comply with the Commission's subpoena for his testimony.

On May 14, 2010, you testified before the Commission regarding the New Black Panther Party litigation and enforcement of voting rights by the Department. During that hearing, you were asked whether you would investigate charges that supervising attorneys or political appointees in your Division made statements indicating that the Administration should not or would not bring voting rights cases against blacks or other minorities because of their race. May 14, 2010 USCCR Hearing Trans. at 37, 63-64. You stated that if the Commission had such a statement it should "bring such a statement to [the Department's] attention." *Id.* at 64. Based on your representation and in light of the information set forth below, the Department should review Mr. Adams' testimony and undertake an investigation to determine whether his allegations are accurate. The sworn testimony also demonstrates the Commission's need to obtain the same information and pursue its investigation to its logical conclusion.

Mr. Adams' testimony raises grave questions regarding whether managers and other political and career attorneys in the Civil Rights Division believe in the "color-blind" enforcement of civil rights laws, specifically, whether they should be enforced against all Americans equally and whether those protections apply with equal force to citizens of all races. For example, Mr. Adams relayed a conversation he had with members of Voting Section management who indicated to him that one of your senior political deputies—Deputy Assistant Attorney General Julie Fernandes— informed them that the Voting Section is "in the business of doing traditional civil rights work," that "cases are not going to be brought against black defendants [for] the benefit of white victims," and "that if somebody wanted to bring these cases, it was up to the U.S. Attorney, but the Civil Rights

Thomas Perez, Esq.
July 14, 2010

Division wasn't going to be bringing [them]." Testimony of Mr. Adams, July 6, 2010 USCCR Hearing Trans. at 61-63.

Additionally, Mr. Adams testified that at a Department meeting which he and other members of the Voting Section attended, Ms. Fernandes announced that Section 8 of the National Voter Registration Act (the federal "Motor Voter" law) would no longer be enforced.¹ "We have no interest in enforcing this provision of the law. It has nothing to do with increasing turnout, and we are just not going to do it," she is alleged to have stated. *See id.* at 63-64. The Voting Section of the Civil Rights Division is the primary federal entity charged with enforcing the Motor Voter law. If Mr. Adams' testimony is to be believed, a senior official in the one federal division responsible for enforcing the Motor Voter law announced a policy of non-enforcement with respect to a lawfully-adopted Congressional statute.

Mr. Adams's testimony then chronicled instances depicting a culture of pervasive hostility to the equal enforcement of civil rights protections in the Civil Rights Division beyond the comments attributed to Ms. Fernandes. These examples are contained in the attached unedited transcript, which we are providing at this time because of the serious nature of the allegations raised. They include, but are not limited to, career attorneys allegedly refusing to work on the voting rights case involving Ike Brown in Noxubee County, Mississippi, because Mr. Brown—who was ultimately convicted of voting rights violations—was black; others expressed the opinion that voting rights laws should be selectively enforced so as to only protect minorities. There are also alleged incidents of retaliation against Mr. Coates and other staff who worked on cases involving black defendants.

In addition to raising concerns of widespread hostility at the Division to the equal application of civil rights laws, Mr. Adams's testimony also raises troubling questions concerning the rationale offered for the Department's near-total dismissal of the New Black Panther Party litigation. In his testimony before the Commission, Mr. Adams painted a disturbing picture in which (i) beginning in January 2009, Mr. Coates's authority was substantially subverted by Mr. Rosenbaum; (ii) an outside interest group purportedly was aware that the Panther case was to be dismissed before such possibility was raised with the trial team; (iii) the responsible acting Deputy Assistant Attorney General making the decision to dismiss the charges as to three of the defendants (Mr. Rosenbaum) admitted that his decision was reached without any review of the supporting factual memoranda and research compiled by the trial team; and (iv) after the dismissal of the case over Mr. Coates' objection, his authority over the Voting Section was effectively stripped. In each instance, the allegations raise the question of whether the facts and the law actually controlled the decision making in the New Black Panther Party matter, or whether other factors were at play. They also cast doubt on whether voting rights laws are applied in a race-neutral fashion at the Division. The alleged unequal administration of justice by the Division on the basis of race falls squarely within this Commission's mandate to investigate.

¹ Section 8 requires state election officials to periodically update their voter rolls—for example, by removing deceased persons and felons from the rolls and updating the information of those who have changed addresses or moved permanently out of the jurisdiction—to ensure their accuracy. Such measures contribute to the orderly conduct of elections and lessen the opportunity for vote fraud.

Thomas Perez, Esq.
July 14, 2010

Given the extraordinary testimony of Mr. Adams, we request that the Department reconsider its unwillingness to allow Mr. Coates to testify before the Commission. Mr. Coates' testimony is vital to our investigation because he is in the best position to corroborate, deny, or provide additional information regarding the matters described by Mr. Adams. As far back as November 2009, the Commission served a subpoena on Mr. Coates, who in his capacity as former Chief of the Voting Section and member of the New Black Panther Party trial team, appears to be a primary witness on the matters addressed by our investigation. In fact, the Department has previously allowed Mr. Coates to appear before the Commission in June 2008 regarding the Department's enforcement of laws against voter intimidation and voter fraud. We renew our request that the Department cooperate with the Commission's lawful subpoena and make Mr. Coates available to testify. Please contact our General Counsel, David Blackwood, as to Mr. Coates' availability by July 21, 2010.

It is with great regret that I must alert you to evidence of the possible unequal administration of justice in the Civil Rights Division. However, the Commission is charged under 42 U.S.C. §1975a(a)(2) with pursuing such claims. It is a statutory responsibility the agency does not undertake lightly. I sincerely hope you will pursue and investigate these charges and provide the Commission with the witnesses it needs to complete its important work.

Sincerely,



Gerald A. Reynolds
CHAIRMAN

cc: Vice Chair Abigail Thernstrom
Commissioner Todd F. Gaziano
Commissioner Gail Heriot
Commissioner Peter N. Kirsanow
Commissioner Arlan D. Melendez
Commissioner Ashley L. Taylor, Jr.
Commissioner Michael J. Yaki
Joseph H. Hunt, Esq.



U.S. Department of Justice

Civil Division

Joseph H. Hunt
Director

Washington, D.C. 20530
Tel: (202) 514-1259
Fax: (202) 616-0222

June 30, 2010

VIA ELECTRONIC MAIL AND FIRST-CLASS U.S. MAIL

Mr. David P. Blackwood
General Counsel
United States Commission On Civil Rights
624 Ninth Street, N.W.
Washington, D.C. 20425

Re: United States Commission on Civil Rights'
Planned Statutory Enforcement Report

Dear Mr. Blackwood:

I write in response to your letters of June 15 and June 30, 2010. The Department of Justice has re-examined the accuracy of the Supplemental Response to Interrogatory No. 12 submitted to the United States Commission on Civil Rights on April 16, 2010. Based on Department records and the recollections of employees in the Civil Rights Division, we have determined that the prior response remains accurate and therefore requires no amendment.

Sincerely,

A handwritten signature in black ink that reads "Joseph H. Hunt". The signature is written in a cursive style with a large, sweeping initial "J".

Joseph H. Hunt
Director
Federal Programs Branch
Civil Division



UNITED STATES COMMISSION ON CIVIL RIGHTS

624 NINTH STREET, NW, WASHINGTON, DC 20425
www.usccr.gov

June 30, 2010

VIA FAX (202-616-0222) AND E-MAIL AND REGULAR MAIL

Joseph H. Hunt, Esq.
Director, Federal Programs Branch
Civil Division
United States Department of Justice
20 Massachusetts Avenue, NW
Washington, DC 20001

Re: United States Commission on Civil Rights Statutory Enforcement Report

Dear Mr. Hunt:

Reference is made to my letter to you of June 15, 2010 with regard to the above-noted matter.

It is requested that you please indicate when the Department will be providing a response to the letter, and whether, as requested, the Department has questioned Laura Coates as to whether she discussed any aspect of the New Black Panther litigation with Kristen Clarke of the NAACP Legal Defense Fund. As you are aware, this inquiry was part of the initial discovery requests directed to the Department.

Thank you for your anticipated cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "David Blackwood", written over a horizontal line.

David Blackwood
General Counsel

cc: Chairman Gerald A. Reynolds
Vice Chair Abigail Thernstrom
Commissioner Todd F. Gaziano
Commissioner Gail Heriot
Commissioner Peter N. Kirsanow
Commissioner Arlan D. Melendez

Joseph H. Hunt, Esq.
June 30, 2010
Page 2

cc: Commissioner Ashley L. Taylor, Jr.
contd. Commissioner Michael J. Yaki
Martin Dannenfelser, Staff Director

Faith Burton, Esq.
Special Counsel
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001



UNITED STATES COMMISSION ON CIVIL RIGHTS

624 NINTH STREET, NW, WASHINGTON, DC 20425
www.usccr.gov

June 15, 2010

VIA E-MAIL AND REGULAR MAIL

Joseph H. Hunt, Esq.
Director, Federal Programs Branch
Civil Division
United States Department of Justice
20 Massachusetts Avenue, NW
Washington, DC 20001

Re: United States Commission on Civil Rights Statutory Enforcement Report

Dear Mr. Hunt:

As you may recall, as part of its discovery requests directed to the Department of Justice, the U.S. Commission on Civil Rights sought information with regard to any contacts by the Department with outside third parties, including specifically Kristen Clarke of the NAACP Legal Defense Fund, relating to the New Black Panther Party (NBPP) litigation. See Interrogatory No. 12 (December 8, 2009).

In response, the Department indicated that it had “identified no communication, oral or otherwise, with Kristen Clarke or the NAACP Legal Defense Fund relating to the litigation prior to the May 18, 2009 court judgment enjoining Minister King Samir Shabazz and dismissing the three other defendants.”

In a recent article in *The Weekly Standard* magazine,¹ it is represented that Voting Section attorney Laura Coates had a conversation with Kristen Clarke in which the NBPP litigation was discussed. Specifically, the article in question states:

An attorney for the NAACP, Kristen Clarke, has admitted that she spoke to department attorneys about the case and shared the complaint with others. (In a deposition she also said that a department lawyer sent her news clippings of the case.) She spoke to a voting section attorney Laura Coates (no relation to Chris Coates) about the case at a Justice Department function. Clarke asked Coates, who she assumed was sympathetic, when

¹ Jennifer Rubin, *Friends in High Places*, WEEKLY STANDARD (June 21, 2010), <http://www.weeklystandard.com/articles/friends-high-places>.

Joseph H. Hunt, Esq.
June 15, 2010
Page 2

the Panther case was going to be dismissed. The comment suggested that the NAACP had been pushing for such an outcome, and Coates reported the conversation to her superiors.

Given the above, it is requested that the Department review the accuracy of its prior discovery response regarding this topic. Specifically, it is requested that the Department determine whether Laura Coates had a conversation with Ms. Clarke, the date thereof, the content of the conversation, and whether, as represented in the above article, the conversation was reported to Ms. Coates' superiors. This request includes any and all documentary evidence reflecting any such communications.

Given that the Commission's inquiries to the Department have been pending since December 2009, it is requested that you please expedite a response to the above inquiry. Inasmuch as any Department communications with Ms. Clarke and/or the NAACP Legal Defense Fund do not present any issue of privilege, there is no basis for delay.

Please do not hesitate to contact me should you have any questions.

Sincerely,



David P. Blackwood
General Counsel

cc: Chairman Gerald A. Reynolds
Vice Chair Abigail Thernstrom
Commissioner Todd F. Gaziano
Commissioner Gail Heriot
Commissioner Peter N. Kirsanow
Commissioner Arlan D. Melendez
Commissioner Ashley L. Taylor, Jr.
Commissioner Michael J. Yaki
Martin Dannenfelser, Staff Director

Faith Burton, Esq.
Special Counsel
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001



UNITED STATES COMMISSION ON CIVIL RIGHTS

624 NINTH STREET, NW, WASHINGTON, DC 20425
www.usccr.gov

May 13, 2010

VIA E-MAIL AND REGULAR MAIL

Faith Burton, Esq.
Special Counsel
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Jacqueline Coleman Snead, Esq.
Senior Trial Counsel
Federal Programs Branch
United States Department of Justice
20 Massachusetts Avenue, NW
Washington, DC 20001

Re: Outstanding Discovery Issues

Dear Ms. Burton and Ms. Snead:

Thank you for agreeing to meet yesterday to discuss outstanding discovery issues with regard to the Commission's enforcement report on the New Black Panther Party litigation and enforcement of 11(b) of the Voting Rights Act. The purpose of this letter is to summarize our discussions.

As discussed, the Commission's demands and objections relating to outstanding discovery issues are set out in detail in the correspondence between the parties, as well as the instructions relating to the initial discovery requests themselves. As you might recall, the original discovery requests of December 8, 2009 were accompanied with an offer to meet to discuss any outstanding discovery issues, a meeting that was not held until yesterday.

As to our discussions, this is to confirm that we have received the unredacted Declarations prepared with regard to the New Black Panther Party litigation. The Department has asked that these Declarations not be published by the Commission until we have received permission of the Declarants. We request that the Department move expeditiously on this matter and reserve the right to contact the Declarants directly, some of whom have already indicated they have no objections.

Faith Burton, Esq.
Jacqueline Coleman Snead, Esq.
May 13, 2010
Page 2

Second, this is to confirm that you have provided a revised disk containing copies of those documents which were provided by the Department to the Commission on April 16, 2010. Previously, the Department had raised concerns over the privacy interests of various low-level Department personnel identified in e-mail traffic and such. It is my understanding that the revised disk is identical to the one previously provided, with the exception that these low-level personnel have had their names redacted, and that the Department is no longer asking that the material not be published.

Third, this is to confirm your representation that there has been no formal assertion of executive privilege with regard to any of the items sought by the Commission pursuant to its discovery requests. As discussed, this matter needs to be clarified. In its response to the Commission's discovery requests, the Department claimed deliberative process privilege with regard to the materials sought. As recognized by the courts, the deliberative process privilege is a subset of executive privilege and "does not shield documents that simply state or explain a decision the government has already made or protect the material that is purely factual, unless the material is so inextricably intertwined with the deliberative sections of documents that its disclosure would inevitably reveal the government's deliberations." *See In re Sealed Case*, 326 U.S. App. D.C. 276, 284, 121 F.3d 729, 737 (1997).

As discussed, it is difficult to see how the Department can raise the deliberative process privilege if it has not formally invoked executive privilege as required by Supreme Court authority and followed the requirements for its assertion. As suggested, it is requested that the Department provide a written statement as to its position relating to whether either or both executive privilege and/or deliberative process privilege are being asserted in this matter and that it provide said statement before Mr. Perez appears before the Commission.

The above confusion is compounded by the fact that the Department did not honor the Commission's instruction relating to the assertions of privilege. In this regard, the complete terms of instruction number 10 of the Commission's discovery requests is set forth below.

State the basis for any objection to responding to any discovery request, together with any legal authorities or precedents upon which DOJ relies to support said objection. In the event that the Department objects to only part of a discovery request, the Department is required to furnish all information requested by the discovery request that is not included within the partial objection.

If any claim of privilege is raised relating to any document or information request, identify with specificity the privilege asserted, any legal authorities relied upon, and indicate whether any privilege so asserted can be addressed by agreements of confidentiality between the parties. If any

Faith Burton, Esq.
Jacqueline Coleman Snead, Esq.
May 13, 2010
Page 3

claim of executive privilege is raised, identify the highest official within the Department connected with the specific document or information, and indicate whether the President of the United States has specifically exercised said privilege.

In addition, for all documents or information withheld pursuant to an objection or a claim of privilege, identify:

- A. the author's name and title or position;
- B. the recipient's name and title or position;
- C. all persons receiving copies of the document;
- D. the number of pages of the document;
- E. the date of the document;
- F. the subject matter of the document; and the basis for the claimed privilege.

It is again requested that the Department specify each and every assertion of privilege in conformance with the above instruction and provide the required privilege log. In the absence of such response, the Department's statutory duty to comply fully with the Commission's request must be honored.

As indicated, we would especially request that the Department expedite the release of witness statements by the 12 individuals identified in the Appendix to the Commission's letter of May 9, 2010. While you have indicated that such statements might contain observations of attorneys or otherwise alleged privileged information, we are requesting that a review of these statements be made as soon as possible and that the Department take steps to provide the information, whether in redacted form or not.


At the same time, it is also requested that the Department expedite its response to the inquiry of whether other instances of voter intimidation have been received with regard to the New Black Panther Party. It is the Commission's belief that such information, to the extent that it exists, would supply valuable context to the investigation of the Philadelphia incident.

Finally, you indicated that the Department is working on a full response to the Commission's letter of May 9, 2010. In doing so, it is again requested that the Department provide a full explanation as to whether a special counsel will be appointed and, if not, why not. Where, as here, the parties have substantive differences as to the types of information that are relevant and protected, the appointment of a Special Counsel would serve the interests of both parties in resolving any disputes.

Faith Burton, Esq.
Jacqueline Coleman Snead, Esq.
May 13, 2010
Page 4

As indicated above, this letter is not meant to be an exclusive list of all items and issues that exist relating to the Commission's discovery requests. Nonetheless, it is hoped that this correspondence will help expedite the resolution of the current discovery disputes between the parties. Please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Blackwood', written in a cursive style.

David P. Blackwood
General Counsel

cc: Chairman Gerald A. Reynolds
Vice Chair Abigail Thernstrom
Commissioner Todd F. Gaziano
Commissioner Gail Heriot
Commissioner Peter N. Kirsanow
Commissioner Arlan D. Melendez
Commissioner Ashley L. Taylor, Jr.
Commissioner Michael J. Yaki
Martin Dannenfelser, Staff Director



U.S. Department of Justice

Civil Division

Joseph H. Hunt
Director

Washington, D.C. 20530
Telephone:
(202) 514-1259
Fax: (202) 616-0222

May 13, 2010

VIA FACSIMILE AND U.S. MAIL

Chairman Gerald Reynolds
United States Commission on Civil Rights
624 Ninth Street, NW
Washington, D.C. 20425

Re: United States Commission on Civil Rights'
Planned Statutory Enforcement Report

Dear Mr. Reynolds:

I have been asked to respond to your letter to the Attorney General dated May 9, 2010, and am also herein addressing issues raised in correspondence from the Commission's General Counsel, including his letter of May 13, 2010 to Department staff with respect to the above-referenced matter. At the outset, please know that the Department has accommodated the Commission's interests in additional information consistent with our institutional needs, including the need to protect individual privacy interests and attorney work product. As you probably know, Department staff has had several discussions and a meeting on May 12, 2010 with the Commission's General Counsel since the Department's April 16, 2010 completion of its response to the Commission's requests for testimony, documents, and other information. In our recent communications and in yesterday's meeting, the Department has addressed a number of the issues raised in your letter, including Assistant Attorney General Thomas E. Perez's availability, the provision of any additional Department witnesses, and the nature of the information not provided to the Commission.

As I think you know, the Department has designated Assistant Attorney General for Civil Rights Thomas E. Perez as the only Department witness to testify on its behalf before the Commission. As agreed between the Commission and the Department, Mr. Perez will testify tomorrow from 9:30 a.m. to 11:00 a.m. Mr. Perez will testify regarding issues that the Commission has indicated are at the core of its inquiry -- the reasons for the United States' dismissal of certain claims and request for relief in *United States v. New Black Panther Party for*

Self-Defense, and the Department's enforcement of voting rights laws, particularly those prohibiting voter intimidation. In addition, Mr. Perez is prepared to respond to the additional subjects enumerated in your letter, except to the extent they seek information concerning internal deliberations or other confidential matters; as we previously have advised, Mr. Perez is not at liberty to discuss such matters.

With respect to your questions about the Commission's document requests, the Department already has addressed a number of the issues raised in your letter. The Department previously produced to the Commission incident reports and reports of third parties concerning the events in question (at Bates No. range DOJ 002246 through DOJ 002276). The Department also has responded to Document Request Nos. 4, 5, and 7 by virtue of responding to Document Request Nos. 3 and 20, which seek similar information. At yesterday's meeting, the Department provided unredacted copies of executed declarations that were not filed in court, which Commission staff has agreed not to publish until we have informed the declarants of their provision to you. The Department also reproduced documents previously provided in response to Document Request Nos. 12, 14, 29, and 32 in a form that can be published on the Commission's website consistent with our mutual interest in protecting individual privacy.

In responding to the Commission's requests for documents, the Department carefully reviewed the information yielded by its search for responsive information and, where possible, produced partially redacted documents in an effort to provide the Commission with as much information as possible consistent with the Department's protection of its confidentiality interests. As we have explained in our various communications, the Department has withheld information that is quintessential attorney work product, such as emails about strategy, assessments of the law and the evidence, and other routine litigation-related deliberations, or information that implicates individual privacy interests.¹ Certain of the Commission's requests seek only information that constitutes attorney work product, specifically, Interrogatory Nos. 2, 5, 8, 10, 11, 21, 42, 44, and 45, Document Request Nos. 9, 10, 11, 13, 15, 16, 17, 18, 19,² 25, 26, and 39, and items 4 through 22 under the heading "Documents Known or Believed to Exist" in the Appendix to your letter. We do not intend to provide a log of withheld materials; our confidentiality interests in attorney work product are so conventional that we do not see a basis for creating a log of these materials.

Finally, we do not believe that the Commission's subpoenas and requests override the well-established confidentiality interests in these types of materials that are integral to the Department's discharge of its law-enforcement responsibilities. Thus, as we do in responding to congressional committees conducting oversight, we have sought to provide information to

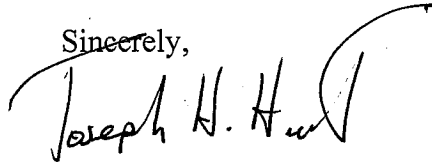
¹ As we explained by letter dated April 16, 2010, the Department also redacted material from documents that was unrelated to the subjects of the Commission's inquiry and therefore was deemed not responsive to any request.

² This Document Request also seeks information protected from disclosure by the law-enforcement privilege.

accommodate the Commission's needs to the fullest extent consistent with our need to protect the confidentiality of the work product of our attorneys. The President has not asserted executive privilege, nor do we believe that the President is required to assert executive privilege for the Department to take appropriate steps to protect law-enforcement deliberative confidentiality interests in this context. For these same reasons, we do not believe it is appropriate to appoint a special counsel.

We hope that this information is helpful to the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph H. Hunt". The signature is written in a cursive style with a large, sweeping flourish at the end.

Joseph H. Hunt
Director
Federal Programs Branch

cc: David P. Blackwood



UNITED STATES
COMMISSION ON
CIVIL RIGHTS

624 Ninth Street, N.W.
Washington, D.C. 20425

May 9, 2010

The Honorable Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Attorney General Holder:

This letter addresses many unfulfilled discovery requests relating to the U.S. Commission on Civil Rights' ("Commission") investigation of the implications of the U.S. Department of Justice's ("Department") actions in the New Black Panther Party ("NBPP") litigation. It also raises several important questions regarding the proffered testimony of Assistant Attorney General Thomas Perez before the Commission, all of which require satisfactory resolution with sufficient time before the Commission's scheduled May 14 hearing to ensure that Mr. Perez's appearance will be worthwhile. To avoid another delay, we would appreciate a meaningful response to this letter by noon on Tuesday, May 11.

The Commission has been patient during its now eleven-month-long investigation. Despite its statutory duty to cooperate fully with the Commission's inquiry, the Department has repeatedly delayed the production of critical documents and information. When it has provided information, the Department appears to have done so only to maintain the appearance of cooperation and has timed its production of voluminous, but largely non-responsive documents to prevent adequate review by the Commission before critical junctures in the Commission's scheduled proceedings. It has further refused outright to provide answers and documents to some of the Commission's most critical questions and requests, and has refused to permit its employees with substantive knowledge of this case to cooperate with the Commission's subpoenas. Most recently, it has essentially ignored our General Counsel's request for a meeting with Department representatives regarding unresolved discovery disputes, despite the Department's earlier agreement to schedule such a meeting. Nevertheless, in good faith and despite the fact that it is out of turn, the Commission has been willing to accept the Department's proffer of Mr. Perez's testimony.

While it appreciates that the Department has made Mr. Perez available, the Commission needs answers and/or assurances with respect to the following in advance of the Assistant Attorney General's testimony so as to adequately prepare:

(1) *Is Mr. Perez available to testify for a longer or additional period of time?* The Department has indicated that Mr. Perez may only be free to testify for 90 minutes on May 14. This is unlikely to be sufficient for his oral statement and for eight commissioners to adequately

question him. If Mr. Perez cannot reserve three hours to testify on May 14, the Commission could probably reschedule his appearance on or around its next scheduled in-person meeting date of June 11. Alternatively, Mr. Perez could appear on May 14 and on or around the date of the Commission's next in-person meeting. If none of those options is possible for Mr. Perez, we request that the Department substitute the Associate Attorney General, who supervised the Civil Rights Division during the time period critical to the decisions in this case and was informed of and approved the litigation decisions at issue, at either the May 14 hearing or on or around the Commission's June 11 meeting date.

(2) *Will the Department commit to providing other witnesses to the Commission within a reasonable period of time, and if so, whom will it permit to provide testimony?* The Department needs to confirm that Mr. Perez will not be the only Department employee or official permitted to provide testimony to the Commission. The Assistant Attorney General was not with the Department during the conduct of the NBPP litigation and his direct knowledge of the case is therefore limited. However, there are other officials with far more direct knowledge of the actions taken in the NBPP litigation and others with experience investigating and litigating other voter intimidation incidents. For example, according to the Department's Response to Interrogatory No. 4 and Supplemental Interrogatory Response Nos. 1 and 6, Associate Attorney General Thomas Perrelli supervised the Civil Rights Division during the time when the decisions were made to dismiss three defendants and file for a narrow injunction against the fourth in this case. The responses also show that Mr. Perrelli was informed of the decisions when they were being made and may have briefed others like you on the Civil Rights Division's decision. Senior, career litigators in the Voting Section could also answer important questions about the facts in the NBPP litigation (even if the Department instructs them not to discuss internal deliberations) as well as key questions regarding prior (and now closed) investigations, which evidence is sought by the Commission.

(3) *Has President Obama or you formally invoked executive privilege to prevent the disclosure of information to the Commission?* The Department continues to object to answering questions and providing documents on vague "deliberative process" grounds, but that is insufficient to override DOJ's statutory duty to comply "fully" with the Commission's requests unless the President's constitutional executive privilege has been properly invoked, and even then, the privilege is not absolute.¹ The Supreme Court has stated plainly that executive privilege must be invoked personally by the President or a department head.² The Commission is entitled to know whether executive privilege actually has been invoked, by whom, and what the process will be to discuss selective waiver for various answers and documents.

(4) *Will the Department appoint a special counsel to enforce the Commission's subpoenas for the appearance of Department witnesses?* The Commission is examining the manner in which the Department handled the New Black Panther Party litigation. In furtherance of this examination, the Commission has asked the Department to enforce subpoenas that have been issued to Department employees. The Department has refused to do so. We believe the

¹ *United States v. Nixon*, 418 U.S. 683, 706 (1974).

² See *United States v. Reynolds*, 345 U.S. 1, 7-8 (1953). Executive privilege "is not to be lightly invoked. There must be formal claim of privilege, lodged by the head of the department which has control over the matter, after actual personal consideration by that officer." *Id.* (citations omitted).

Department is in an untenable position regarding such enforcement. Yet we have received no response to our request for the appointment of a special counsel with the authority to litigate on behalf of the Commission to seek enforcement of Commission subpoenas. We renew our request for the appointment of a special counsel with no interest in the outcome of the case. In the alternative, the Department should explain why it does not believe that there is a conflict sufficient to warrant the appointment of a special counsel

(5) Finally, will Mr. Perez come to the Commission's hearing prepared to testify knowledgeably about the above issues, as well as the following?

- If executive privilege has been invoked, the process to consider waiver of alleged privileges for information and documents that are central to the Commission's investigation and do not seriously implicate Department interests.
- All Department officials involved in the decision (regardless of the deliberations or the deliberative process details) to dismiss aspects of the NBPP lawsuit and their degree of knowledge of the facts that gave rise to the lawsuit.
- The purpose and scope of the OPR investigation, what actions or incidents prompted it, when it will be completed, and whether it is primarily investigating the original filing decision or the decision to dismiss.
- The scope and applicability of section 11(b) of VRA and 18 U.S.C. § 245(b), as well as the remedies available under these statutes.
- Past reports and investigations of voter intimidation.
- Other examples of cases (voting rights or otherwise) in which the Department abandoned all or most of its claims not in the course of ongoing and contested litigation, but after default by defendants and an entry of that default pursuant to the Federal Rules of Civil Procedure.
- The specific First Amendment issues implicated by defendants' appearance or conduct that the Department has asserted justified its dismissal against three defendants and its pursuit of a narrow injunction binding the fourth.
- The relevance of one of the defendant's credentials as an official poll watcher to the decision to dismiss the case against him.

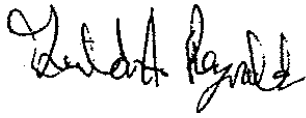
In addition to the issues discussed above, an appendix to this letter is attached which lists outstanding discovery disputes. The Department has offered to meet with representatives of the Commission to discuss and resolve these disputes. To reduce the need for additional hearings, such meeting must occur as early as practicable next week, but not later than Wednesday, May 12. Documents provided to the Commission as a result of this meeting would have to be delivered to the Commission by close of business on Wednesday, May 12, to provide any chance for even cursory review before the May 14 hearing.

Finally, we would appreciate answers in writing to the above by noon on Tuesday, May 11, for the Commission to evaluate whether Mr. Perez's testimony can reasonably be expected to

advance its investigation, which it has undertaken pursuant to its statutory authority to, among other things, assess the Department's enforcement of the Voting Rights Act.

Thank you for your attention to these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald A. Reynolds". The signature is written in a cursive, flowing style.

Gerald A. Reynolds
CHAIRMAN

Attachment

Appendix

Outstanding Discovery Issues in the New Black Panther Party (NBPP) Voter Intimidation Investigation

GENERAL DISCOVERY ISSUES

1. DOJ has refused to permit subpoenaed employees to provide testimony.
2. DOJ has not answered whether it will appoint a special counsel to seek to enforce the Commission's subpoenas against the Department.¹
3. DOJ has failed to say whether it has invoked executive privilege, who has invoked it, and as to which document or issue it has been invoked.²
4. With regard to documents withheld, DOJ has failed to specify the privilege being invoked to withhold the document.³
5. DOJ has not provided a privilege log for documents withheld.⁴
6. Redacted declarations, incident reports, and other documents.
7. Although Assistant Attorney General Thomas Perez has been offered to testify, "he is not at liberty to discuss internal deliberations."⁵
8. DOJ has said it "is constrained by the need to protect against disclosures that would harm its deliberative processes **or that otherwise would undermine its ability to carry out its mission.**"⁶
9. DOJ says it "has provided documents responsive to the Commission's requests . . . through the date of the court's May 18, 2009 order entering judgment To the extent that any documents after this date provide additional information that is **material** to the Department's decision to obtain relief against [Minister King Samir Shabazz] and to dismiss claims against the other three defendants, we have provided those documents as well. We have not included documents that post-date the May 18, 2009 ruling resolving the litigation and that do not provide additional information **material** to the Commission's examination of decisions in that litigation."⁷

DOCUMENTS KNOWN OR BELIEVED TO EXIST

1. Incident reports with regard to the events in question
2. Any reports of other instances of voter intimidation by the NBPP during the 2008 election
3. Any reports received from third parties with regard to the activities, practices, or actions of the NBPP during the 2008 election

Documents Referred to in the memo from Christopher Coates et al. to Grace Chung Becker (Dec. 22, 2008)

Witness statements (not signed Declarations) for the following:

4. Mike Mauro

¹ See Letter from David Blackwood to Joseph Hunt of March 30, 2010.

² See Instruction No. 10, Interrogatories and Document Requests (Dec. 8, 2009); Letter from Blackwood to Hunt of Dec. 8, 2010.

³ See Instruction No. 10, Interrogatories and Document Requests (Dec. 8, 2009).

⁴ See Letter from Blackwood to Hunt of March 30, 2010; Letter from Gerald Reynolds to Eric Holder of April 1, 2010.

⁵ See Letter from Hunt to Blackwood of April 16, 2010.

⁶ See Letter from Joseph Hunt to Gerald Reynolds of Jan. 11, 2010 (emphasis added).

⁷ Letter from Joseph Hunt to David Blackwood of April 16, 2010 (emphasis added).

5. Chris Hill
6. Steve Morse
7. Police Officer Richard Alexander
8. Joe DeFelice
9. John Giordano
10. Wayne Byman
11. Joe Fischetti
12. Larry Counts
13. Angela Counts
14. Harry Lewis
15. Malik Zulu Shabazz⁸

16. Draft Notice Letter to defendants
17. Draft Consent Decree

Documents Referred to in Appellate Section memo (email from Diana Flynn to Steven Rosenbaum of May 13, 2009)

18. Email from Voting Section to Civil Rights Division sent on or about May 1, 2009
19. Memo from Coates et al. to Loretta King (May 6, 2009) (submitted to Commission by Rep. Wolf)
20. Draft Motion for Default Judgment (dated April 30, 2009)
21. Draft Memorandum of Law in Support of Motion for Default Judgment (dated April 30, 2009)
22. Draft Proposed Order (dated May 6, 2009)

UNFULFILLED REQUESTS FOR PRODUCTION OF DOCUMENTS

Document Request Nos. 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 25, 26, 27, 38, 39, 48, and 49

UNANSWERED INTERROGATORIES

Interrogatory Nos. 2, 5, 8, 10, 11, 14, 19, 20, 21, 30, 33, 37, 39, 40, 42, 43, 44, 45, and 46

⁸ See also Memo from Coates et al. to Loretta King at 4 (May 6, 2009).



UNITED STATES COMMISSION ON CIVIL RIGHTS

624 NINTH STREET, NW, WASHINGTON, DC 20425
www.usccr.gov

April 26, 2010

VIA E-MAIL, REGULAR MAIL, AND FAX (202-616-0222)

Joseph H. Hunt, Esq.
Director, Federal Programs Branch
Civil Division
United States Department of Justice
20 Massachusetts Avenue, NW
Washington, DC 20001

Re: Request for Meeting

Dear Mr. Hunt:

Reference is made to your letter of April 16, 2010 regarding discovery-related issues.

In your letter, you indicate that the Department is “willing to meet with the Commission if it has questions about the Department’s [discovery] responses.” Please be informed that Commission staff wishes to schedule such a meeting as soon as possible, and it is requested that you please contact the undersigned for that purpose.

Without limitation, at any such meeting the Department should be prepared to address the following:

1. The Department has failed to provide witness statements of those individuals who were present at the polling place on Fairmount Street on Election Day 2008. While the Department has provided redacted statements taken by the Federal Bureau of Investigation, similar statements taken by Department staff have not been provided.
2. As indicated in prior correspondence, the Department has yet to supply specific assertions of privilege to specific discovery requests. This needs to be addressed.
3. In your letter, it was left ambiguous as to whether the Commission is free to publish the supplemental documents that were provided on that date. As you are aware, the Commission generally makes available to the public documents received pursuant to its investigations. In your letter, however, the Department requests that the Commission take steps to protect the identity of private individuals or lower-level Department personnel. While the Commission

Joseph H. Hunt, Esq.
April 26, 2010
Page 2

is willing to consider this request, it is unclear exactly what the Department is referring to. Guidance would be appreciated.

We look forward to meeting with you or any other appropriate official with regard to the above, as well as other outstanding discovery issues. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'David P. Blackwood', with a stylized flourish at the end.

David P. Blackwood
General Counsel

cc: Chairman Gerald A. Reynolds
Vice Chair Abigail Thernstrom
Commissioner Todd F. Gaziano
Commissioner Gail Heriot
Commissioner Peter N. Kirsanow
Commissioner Arlan D. Melendez
Commissioner Ashley L. Taylor, Jr.
Commissioner Michael J. Yaki
Martin Dannenfelser, Staff Director

David Blackwood

From: Goldberg, Arthur (CIV) [Arthur.Goldberg@usdoj.gov]
Sent: Friday, April 16, 2010 5:41 PM
To: David Blackwood
Subject: Letter responding to request for testimony

Mr. Blackwood:

Immediately below is the text of a letter from Jody Hunt regarding the Commission's request for testimony from the Department of Justice. We are sending this to you in email format because we are having computer problems this afternoon and wanted to be sure you received this today. A hard copy of this letter is being sent via first class mail as well.

Arthur R. Goldberg

Assistant Director

Federal Programs Branch

Civil Division

U.S. Department of Justice

202 514-4783

Dear Mr. Blackwood:

This letter responds to the March 30, 2010 request of the United States Commission on Civil Rights for the Department of Justice to identify a witness to testify at a hearing related to the Commission's planned statutory enforcement report for Fiscal Year 2010. This also responds to your earlier requests for testimony from two career Department employees, Christopher Coates, a Civil Rights Division attorney currently on detail to the United States Attorney's Office for the District of South Carolina, and J. Christian Adams, a trial attorney in the Voting Section of the Civil Rights Division.¹ 1/[The Commission's initial request sought information regarding specific subjects. Your March 30, 2010 letter modified that request to seek testimony regarding the "internal deliberations of the Department relating to the *New Black Panther Party* litigation." This letter responds to all of these requests for testimony from Department witnesses.]

As Department staff explained in your telephone conversations yesterday, we have been working to identify a Department witness for the Commission's hearing and are prepared to make available Assistant Attorney General for Civil Rights Thomas E. Perez. The Commission's March 30, 2010 letter requested testimony from Department employees regarding "the internal deliberations of the Department relating to the *New Black Panther Party* litigation," but our understanding from your conversations yesterday with Department staff is that the Commission's core focus is the decision to dismiss certain claims from that case. While Mr. Perez would testify on that decision and the factors that informed it, he is not at liberty to discuss internal deliberations. Based on the conversation with you yesterday, we understand that the Commission is amenable to having the Assistant Attorney General appear on a separate panel from other witnesses, as is customary for testimony from Assistant Attorneys General, and to work with us to accommodate his schedule on May 14.

The Department carefully considered the request for testimony from Messrs. Coates and Adams pursuant to 28 C.F.R. §§16.21-16.29 and in accordance with the Department's effort to cooperate with the Commission, but will not authorize these employees to testify before the Commission. As we explained, the Department has a longstanding institutional need to protect against disclosures of internal recommendations and deliberations of Department employees, particularly those related to prosecutorial decisions. Such disclosures would have a chilling effect on the open exchange of ideas, advice, and analyses that is essential to the decisionmaking process. It is critical that Department attorneys, particularly career line attorneys, be free to express their opinions and fulfill their responsibilities without fear that they will be subjected to individual examination by either Congress or federal agencies. In addition, we note that to the extent the Commission seeks factual information, that information is being provided through the extensive documents provided to the Commission, the interrogatory responses and supplementary interrogatory responses, and the testimony that will be offered by Mr. Perez. Neither Mr. Coates nor Mr. Adams made the decisions that the Commission wishes to examine. The Assistant Attorney General brings to bear the information of the Civil Rights Division as a whole, and therefore is in a better position to provide the information the Commission seeks.

We are confident that the testimony of the Assistant Attorney General and our responses to the Commission's requests for documents and information should satisfy the Commission's inquiry consistent with our institutional interests.

As discussed during your telephone conversations with Department staff yesterday, Assistant Attorney General Perez is available to testify May 14, 2010, pursuant to the mutually acceptable timing and format arrangements discussed. We appreciate the Commission's patience while the Department has undertaken consideration of the Commission's requests.

Sincerely,

Joseph H. Hunt

Director

Federal Programs Branch

Civil Division



U.S. Department of Justice

Civil Division

Washington, D.C. 20530

April 16, 2010

VIA HAND-DELIVERY AND ELECTRONIC MAIL

Mr. David P. Blackwood
General Counsel
United States Commission On Civil Rights
624 Ninth Street, N.W.
Washington, DC 20425

Re: United States Commission on Civil Rights'
Planned Statutory Enforcement Report

Dear Mr. Blackwood:

I am writing to supplement the responses of the Department of Justice ("Department") to the December 8, 2009 requests of the United States Commission on Civil Rights ("Commission") and also to respond to your letter of March 30, 2010 and Chairman Reynolds' letter to the Attorney General of April 1, 2010.

At the outset, please be assured that the Department has consistently sought to respond to the Commission's requests in a good faith and cooperative manner, and has devoted considerable resources in identifying documents and information responsive to the Commission's extensive requests, some of which seek information spanning several decades. The Department's responses to the Commission's interrogatories and requests are based on our review of the relevant documents, and have been prepared in consultation with the career officials in the Civil Rights Division who made the decision in *United States v. New Black Panther Party for Self-Defense*, Civ. Action No. 09-cv-0065 ("Philadelphia Section 11(b) case"), to pursue an injunction against the only defendant in the case alleged to have brought a weapon to the polls and to dismiss voluntarily the other defendants. In addition, we have solicited information from offices outside the Civil Rights Division, including the Federal Bureau of Investigation, the United States Attorney's Office for the Eastern District of Pennsylvania, the Office of the Inspector General, the Office of Professional Responsibility, the Office of Legislative Affairs, the Office of Public Affairs, and other senior management offices of the Department.

At the Commission's request, the Department previously provided over 2,000 pages of documents, which we now supplement with still additional documents and interrogatory responses enclosed herewith. These materials set forth, among other things:

- facts relevant to the Department's litigation of the Philadelphia Section 11(b) case;
- information gathered by the Federal Bureau of Investigation concerning the events that gave rise to the Department's Philadelphia Section 11(b) case;
- other information concerning the reasons for the Department's decision to obtain an injunction against one defendant, and to dismiss claims against three other defendants, in the Philadelphia Section 11(b) case;
- information about other cases in which the Department has asserted claims under Section 11(b) of the Voting Rights Act;
- a detailed description of the Department's authority and procedures for investigating and prosecuting violations of voting rights laws; and
- specific examples of complaints received from the public regarding potential voting rights violations.

The Department is herewith providing additional documents and information consistent with the need to protect confidential and privileged information. The enclosed supplemental documents and information are responsive to Document Request Nos. 3, 12, 14, 20, 23, 24, 29, 30, 32, 33, 40, 44, 50, and Interrogatory Nos. 1, 4, 6, 7, 12, 15, 16, 17, 18, 22, 23, 24, 34, 38, 41.

The Department has endeavored to be responsive to the Commission's inquiries consistent with the Department's institutional interests in protecting against disclosure of internal deliberations. To this end, we have provided documents responsive to the Commission's requests that pertain to the Philadelphia Section 11(b) case through the date of the court's May 18, 2009 order entering judgment against Minister King Samir Shabazz and resolving the case. To the extent that any documents after this date provide additional information that is material to the Department's decision to obtain relief against Minister King Samir Shabazz and to dismiss claims against the other three defendants, we have provided those documents as well. We have not included documents that post-date the May 18, 2009 ruling resolving the litigation and that do not provide additional information material to the Commission's examination of decisions in that litigation.

To provide the Commission with as much information as possible, consistent with the need to protect against disclosures that would harm the Department's deliberative processes (particularly those related to prosecutorial decisions), we have provided certain documents in redacted form. Still other documents have been redacted if they discuss matters unrelated to the

subjects of the Commission's inquiry and therefore are deemed not responsive to any request. To the extent that any documents identify private individuals or lower-level Department personnel, we request that the Commission protect their identity and maintain the confidentiality of all such documents (as you expressed a willingness to do in your March 30, 2010 letter). In addition, the Department has identified approximately 850 pages of photographic and other images that the trial lawyers collected from various sources (including the Internet) over the course of the Philadelphia Section 11(b) case. Because some of the images are graphic, or depict particular individuals, including minors, whose identities are not known to the Department, the Department will make these materials available to the Commission for viewing at our offices upon request rather than by further distribution.

Finally, the Department remains willing to meet with the Commission if it has questions about the Department's responses. We had explained that such a meeting would be most productive after the Commission had received and reviewed our initial responses to its requests, which we provided on January 11, 2010. At that time, we also asked the Commission to inform us after reviewing those responses whether it still wished to meet, and we were unaware that the Commission remained interested in scheduling a meeting until your most recent letter of March 30, 2010.

We trust that the information provided herewith will be of further assistance to the Commission. The Department is responding in a separate letter to the Commission's request for hearing testimony. The Department appreciates your patience while we completed our search for information responsive to the Commission's various requests.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph H. Hunt / JAH". The signature is written in a cursive, slightly slanted style.

Joseph H. Hunt
Director
Federal Programs Branch
Civil Division

Enclosures

**SUPPLEMENTAL INTERROGATORY RESPONSES
OF THE DEPARTMENT OF JUSTICE**

Subject to the General Objections and the limitations discussed in the Department's written correspondence with the Commission on January 11, February 26, and April 14, 2010, the Department hereby supplements its interrogatory responses provided to the United States Commission on Civil Rights on January 11, 2010:

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 1: The Department's litigation team attorneys in *United States v. New Black Panther Party for Self-Defense*, Civil Action No. 2:09-cv-0065, were Christopher Coates, then-Chief of the Voting Section of the Civil Rights Division, and attorneys Robert Popper, Spencer Fisher, and J. Christian Adams. Decision-making authority over the litigation was exercised by the litigation team, as well as then-Acting Assistant Attorney General Grace Chung Becker, then-Principal Deputy Assistant Attorney General Lisa Krigsten, then-Acting Assistant Attorney General Loretta King, and then-Acting Deputy Assistant Attorney General Steven H. Rosenbaum.² Then-Associate Attorney General Kevin O'Connor, Associate Attorney General Thomas J. Perrelli, and their respective staffs supervised the Civil Rights Division during the relevant time period. *See* 28 C.F.R. § 0.19.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 4: Although none of the defendants responded to the complaint, that did not absolve the Department of its obligation to ensure that any relief sought was consistent with the law and supported by the evidence. The entry of a default judgment is not automatic, and the defendant's failure to respond does not eliminate the plaintiff's obligation to ensure that it has a valid case based on the facts and law. *See, e.g.*, Pa. Rules of Prof'l Conduct 3.3(d). At the remedial stage, as with the liability stage, the

² Ms. Becker, Ms. Krigsten, Mr. O'Connor and his staff, and Mr. Perrelli and his staff were political appointees at the time. The other named individuals are career employees.

Department remains obliged to ensure that the request for relief is supported by the evidence and the law. In discharging its obligations in that regard, the Civil Rights Division considered not only the allegations in the complaint, but also the evidence collected both before and after the filing of the complaint.

The complaint alleged that the Party "made statements and posted notice that over 300 members of the New Black Panther Party for Self-Defense would be deployed at polling locations during voting on November 4, 2008, throughout the United States." Compl. ¶ 12. Notably, the complaint did not allege that those statements or the notice called for any Party member to display weapons at polling locations or do anything that would violate Section 11(b). Nor was there any allegation in the complaint that Malik Zulu Shabazz made any such statement in advance of the election. The complaint did allege that the Party and Malik Zulu Shabazz "managed" and "directed" "the behavior, actions and statements of Defendants Samir Shabazz and [Jerry] Jackson at [the Philadelphia polling place], alleged in this Complaint." Compl. ¶ 12. The Division concluded, however, that the evidence in its possession did not support this allegation.

The complaint also alleged that the Party and Malik Zulu Shabazz endorsed the alleged activities at the Philadelphia polling place after the election. Even assuming that a post-event endorsement is sufficient, as a matter of law, to impose Section 11(b) liability, the Division found the evidence on this allegation to be insufficient to meet its burden of proof.

The Division considered, for example, the statements made by Malik Zulu Shabazz in a television interview on November 7, 2008. The Division also considered that the Party posted the following statement dated November 4, 2008 on its web site: "Specifically, in the case of

Philadelphia, the New Black Panther Party wishes to express that the actions of people purported to be members do not represent the official views of the New Black Panther Party and are not connected nor in keeping with our official position as a party. The publicly expressed sentiments and actions of purported members do not speak for either the party's leadership or its membership." As of May 2009, the Division had information indicating that this statement was posted prior to the filing of the civil action. A separate statement posted on the Party website, dated January 7, 2009 (the same date that the complaint was filed), reported the suspension of the Philadelphia chapter because of these activities.

With regard to the alleged activities at the Philadelphia polling place, the Division considered all available information, including signed statements of poll observers or poll watchers at the polling place. The Division considered a video, posted on YouTube, shot on Election Day by an individual who described himself as being a concerned citizen from the University of Pennsylvania, showing individuals entering and leaving the polling place without having their access impeded or obstructed by either Jerry Jackson or Minister King Samir Shabazz.

The Division concluded that the evidence collected supported the allegations in the complaint against Minister King Samir Shabazz. This evidence included his display of a nightstick at the polling place during voting hours.

The Division concluded that the evidence against Jerry Jackson, the other defendant present at the Philadelphia polling place, did not warrant seeking an injunction against him. Philadelphia police came to the polling place, assessed the situation and decided to direct Minister King Samir Shabazz to leave the polling place and allow Jackson, who was a certified

poll watcher, to stay outside the polling place.

In sum, based on the information available in May 2009, the Department decided to seek an injunction against defendant Minister King Samir Shabazz, who is the only individual known to the Department to have brought a weapon to a polling place in Philadelphia, Pennsylvania during voting hours on November 4, 2008. The Department decided to voluntarily dismiss the Section 11(b) claims against the three other defendants based on its review of the totality of the evidence and the applicable legal precedent. Political considerations played no role in that decision.

The district court found that the United States had alleged that Minister King Samir Shabazz “stood in front of the polling location at 1221 Fairmont Street in Philadelphia, wearing a military style uniform, wielding a nightstick, and making intimidating statements and gestures to various individuals, all in violation of 42 U.S.C. § 1973i(b),” (Order of May 18, 2009 at 1), and entered judgment “in favor of the United States of America and against Minister King Samir Shabazz, enjoining Minister King Samir Shabazz from displaying a weapon within 100 feet of any open polling location in the City of Philadelphia, or from otherwise violating 42 U.S.C. § 1973i(b).” Judgment (May 18, 2009). The federal court retains jurisdiction over its enforcement until 2012. The Department considers this injunction tailored appropriately to the scope of the violation and the requirements of the First Amendment, and will fully enforce the injunction's terms. Section 11(b) does not authorize other kinds of relief, such as criminal penalties, monetary damages, or other civil penalties.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 6: The Department has identified the following with respect to communications with the Attorney General before the May 18, 2009 order in the case: The Attorney General was made generally aware by the then-Acting Assistant Attorney General for Civil Rights and the Associate's staff that the Civil Rights Division was considering the appropriate actions to take in the *New Black Panther Party* litigation. The Associate Attorney General likely provided a brief update to the Attorney General on the timetable for the Civil Rights Division's decision. The Attorney General did not make the decisions regarding any aspect of the *New Black Panther Party* litigation, including which claims to pursue or the scope of relief to seek.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 7: Although primary responsibility for the litigation resided with the Voting Section of the Civil Rights Division, individuals from the Appellate Section of the Civil Rights Division also were consulted. In addition, the Criminal Section of the Civil Rights Division was consulted about the underlying facts and the decision not to pursue federal criminal charges. *See also* Supplemental Response to Interrogatory No. 1, *supra*.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 12: The Department has identified no communication, oral or otherwise, with Kristen Clarke of the NAACP Legal Defense Fund relating to this litigation prior to the May 18, 2009 court judgment enjoining Minister King Samir Shabazz and dismissing the three other defendants.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 15: On January 7, 2009, the day that the Civil Rights Division filed its complaint against the four defendants, the Department's press office notified the Executive Office of the President about a press release it

issued on the filing in the case. A copy of that communication is being produced in response to Document Request No. 32. The Department has identified no other communication relating to this litigation with the Executive Office of the President prior to the May 18, 2009 court judgment enjoining Minister King Samir Shabazz and dismissing the three other defendants. The Department is aware of no information that might suggest that the Executive Office of the President had a role in any litigation decision in this case.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 16: The Department supplements its response to this Interrogatory by reference to the documents produced in response to Document Request No. 33. The Department has identified no other communications relating to this litigation with any Member of Congress prior to the May 18, 2009 court judgment enjoining Minister King Samir Shabazz and dismissing the three other defendants. The Department is aware of no information that might suggest that any Member of Congress had a role in any litigation decision in this case.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 17: The Department has identified the following communication with Michael Coard: On March 13, 2009, Department attorney J. Christian Adams contacted Michael Coard, whom he understood represented Defendant Jerry Jackson. Mr. Coard indicated to Mr. Adams that he had agreed to represent Mr. Jackson but needed “to get some homicide cases out of the way.” Dkt. No. 12-2 in *United States v. New Black Panther Party for Self-Defense*, Case No. 2:09-cv-00065-SD (E.D. Pa.) (Declaration in Support of Request to Enter Default of Jerry Jackson). Mr. Adams informed Mr. Coard that his client had not responded to the complaint in *United States v. New Black Panther Party for Self-Defense*, and that the United States was considering seeking entry of a

default judgment. *Id.*

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 18: The decision regarding the disposition of the *New Black Panther Party* case, both seeking an injunction as to one defendant and voluntarily dismissing three other defendants, ultimately was made by the career attorney then serving as the Acting Assistant Attorney General for the Civil Rights Division. Another career attorney who was then serving as the Acting Deputy Assistant Attorney General with responsibility for supervising the Voting Section, also participated directly in the decision-making process. These two career Civil Rights Division attorneys have over 60 years of experience at the Department between them, and each worked in the Voting Section at some point during their careers.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 22: The Department supplements its response of January 11, 2010 by reference to documents produced herewith in response to Document Request Nos. 3, 20, and 23.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 23: The Department supplements its response of January 11, 2010 by reference to documents produced herewith in response to Document Request Nos. 3.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 24: *See* Supplemental Response to Interrogatory No. 4, *supra*.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 34: The then-Acting Deputy Assistant Attorney General for Civil Rights advised the trial lawyers on the *United States v. New Black Panther Party for Self-Defense* matter that a ministerial filing did not require approval by the Front Office. After being so advised, the trial lawyers filed the preliminary filing

of default with the clerk's office in April 2009 without seeking such approval.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 38: The Associate Attorney General supervises the Civil Rights Division. *See* Supplemental Response to Interrogatory No. 1, *supra*. As is customary with complex or potentially controversial issues, the then-Acting Assistant Attorney General for Civil Rights advised the Associate Attorney General that she was making a case-based assessment of how to proceed in this case, engaged in discussions about how to proceed with the Associate Attorney General's staff, and informed the Associate's office of her decision before it was implemented. We have not identified any communication between the then-Acting Assistant Attorney General for Civil Rights and the then-Deputy Attorney General about the *New Black Panther Party* case prior to the May 18, 2009 court judgement.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 41: *See* Supplemental Response to Interrogatory No. 18, *supra*.



UNITED STATES COMMISSION ON CIVIL RIGHTS

624 NINTH STREET, NW, WASHINGTON, DC 20425
www.usccr.gov

April 19, 2010

VIA E-MAIL, REGULAR MAIL, AND FAX (202-616-0222)

Joseph H. Hunt, Esq.
Director, Federal Programs Branch
Civil Division
United States Department of Justice
20 Massachusetts Avenue, NW
Washington, DC 20001

Dear Mr. Hunt:

Reference is made to your e-mail communication of April 16, 2010 regarding testimony by DOJ officials before the U.S. Commission on Civil Rights.

Please be informed that the Commission welcomes the offer of testimony by Thomas E. Perez, the Assistant Attorney General for Civil Rights, to occur on May 14, 2010.

Please have a representative contact the undersigned with regard to the timing of Mr. Perez's availability. As discussed among the parties, it is agreed that Mr. Perez will appear on a separate panel from other witnesses, and that we will work to accommodate his schedule.

At the same time, it should be understood that, while Mr. Perez may decline to answer various questions relating to the New Black Panther Party litigation, this in no way limits the questioning by Commissioners.

Lastly, while it is acknowledged that the Department has decided not to authorize Mr. Coates and Mr. Adams to testify before the Commission, the agreement to hear testimony from Mr. Perez does not constitute a waiver as to the Commission's ongoing interest in hearing the testimony of Mr. Coates, Mr. Adams, and possibly other relevant Department officials.

Sincerely,

A handwritten signature in black ink, appearing to read "David P. Blackwood", written in a cursive style.

David P. Blackwood
General Counsel

Joseph H. Hunt, Esq.
April 19, 2010
Page 2

cc: Chairman Gerald A. Reynolds
Vice Chair Abigail Thernstrom
Commissioner Todd F. Gaziano
Commissioner Gail Heriot
Commissioner Peter N. Kirsanow
Commissioner Arlan D. Melendez
Commissioner Ashley L. Taylor, Jr.
Commissioner Michael J. Yaki
Martin Dannenfelser, Staff Director



UNITED STATES COMMISSION ON CIVIL RIGHTS

624 NINTH STREET, NW, WASHINGTON, DC 20425

www.usccr.gov

April 1, 2010

The Honorable Eric Holder
Attorney General
U.S. Department of Justice
Washington, DC 20530

Dear Attorney General Holder:

I write concerning the U.S. Commission on Civil Rights' nine-month old investigation into the circumstances surrounding *United States v. New Black Panther Party for Self-Defense*, Civ. No. 09-0065 SD (E.D. Pa.) ("NBPP"), the Department of Justice's ("Department") decision to dismiss the case against all but one defendant, and its decision-making in similar, past voter intimidation cases.¹ While it has made an effort to appear to be cooperating with the Commission, the Department has repeatedly refused to provide the Commission with basic information regarding the NBPP case, which is contrary to its statutory obligation to cooperate with the Commission,² and its recent assurances to the Senate Judiciary Committee.³ Accordingly, I would appreciate a direct response from you by April 12, 2010, stating whether the Department will cooperate with this investigation, as is required by law. If it is your intention that the Department cooperate, please direct your subordinates to do so and release the employees the Commission has called to testify.

By now, many of the underlying facts of the NBPP case are well known. On May 15, 2009, the Department made the unusual decision to dismiss a voter intimidation lawsuit against three defendants and to obtain a narrow injunction against the fourth. Two defendants were captured on video blocking access to the polls, harassing voters and poll workers, and using racial epithets. One of the defendants brandished a night stick. They wore paramilitary uniforms bearing the insignia of the New Black Panther Party, an organization that has been branded a black-supremacist organization. Bartle Bull, a veteran of the civil rights movement, called it

¹ At a public meeting on September 11, 2009, the Commission voted to make its review of the implications of the NBPP matter the subject of its annual enforcement report. Five commissioners voted in favor, and Commissioners Thornstrom, Melendez, and Yaki were not present for the vote.

² Since its founding in 1957, the Commission has taken seriously its special charge to investigate efforts to interfere with the right of citizens to vote and to report to the President, Congress and the public the federal agencies' effectiveness in enforcing civil rights laws such as the Voting Rights Act, among others. *See* 42 U.S.C. § 1975a. Recognizing the importance of the Commission's charge, Congress statutorily mandated that "All Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties." *Id.* § 1975b(e).

³ *See* Attorney General's Answers to Questions for the Record Posed by the Senate Judiciary Committee (March 22, 2010), Response to Question 81d(ii)-(iv) ("The Department seeks to be as responsive as possible. . .to requests from the U.S. Commission on Civil Rights.").

“the most blatant form of voter intimidation I have encountered in my life in political campaigns in many states, even going back to the work I did in Mississippi in the 1960s.” Bull Aff. ¶ 6.

The defendants never answered the complaint and the Department could have moved for a default judgment, which career lawyers responsible for the case in both the Voting and Appellate Sections, reportedly recommended. Instead, the Department overruled its career attorneys by voluntarily dismissing the charges against all of the defendants except the one who had brandished a nightstick. The Department then sought an injunction against this defendant that orders him to refrain from displaying a weapon within 100 feet of polling places, in Philadelphia only, until November 2012.

In the Commission’s earliest correspondence, and at various times thereafter, it noted the dangerous precedent the Department appears to have established by the manner in which it exercised its discretion in this case. Our concern is that by its actions, the Department—the entity charged with the even-handed and vigorous safeguarding of Americans’ voting rights—appears to have failed to prosecute this case in a robust manner. In so doing, it appears to have provided hate groups of every ilk a precedent that will assist them in avoiding liability for voter intimidation. It appears further that the Department is comfortable with this precedent and is willing to apply the same standard going forward. The Department’s full cooperation is necessary to understand its actions.

Two months ago the Commission asked the Department whether it would permit certain of its employees with knowledge of the case to testify at a Commission hearing on the matter. Thus far, the Commission has not received a response to this request. In addition, the Department has failed to provide responsive or satisfactory answers to the Commission’s interrogatories and document requests submitted to the Department in early December 2009—almost four months ago. Instead, the bulk of the documents that the Department has provided thus far are publicly available and do not relate to the core issue of why the Department drastically changed the scope and nature of the relief it sought in the NBPP litigation.

The Department appears to have decided to treat the Commission’s request almost as if it were made pursuant to the Freedom of Information Act rather than the Commission’s enabling statute, and has persisted in withholding critical information despite its stated commitment to transparency. Rather than disclose the requested documents, the Department has asserted vague and generalized privileges that have no application in this context, such as the attorney-client and attorney-work product privileges. The Department has further contended that it “is constrained by the need to protect against disclosures . . . that otherwise would undermine its ability to carry out its mission . . . ,”⁴ an amorphous privilege that would seemingly justify the Department’s precluding any review of its decision making under any circumstances. Moreover, the Department has rebuffed each offer made by the Commission to meet to discuss and resolve these disputes.

As a result, the actual basis for the Department’s continued refusal to cooperate with the Commission remains unclear. For example, has the President invoked executive privilege over

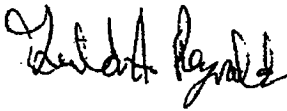
⁴ Letter from Joseph H. Hunt to Gerald A. Reynolds (Jan. 11, 2010).

the materials that the Commission is seeking? If that is the case, the President or the Attorney General must so state.

To date, the Department has communicated with the Commission through its designee in the Federal Programs Branch, Mr. Hunt, and you will find attached to this letter recent correspondence from Commission General Counsel David Blackwood to Mr. Hunt. However, a critical juncture in this investigation has been reached that now requires your direct response. As you know, the ultimate enforcement of Commission subpoenas rests with you as the Attorney General. The Department's continued refusal to provide the requested information will lead to a conflict of interest whereby the target of a subpoena (the Department) can evade its statutory obligation to the Commission by refusing to respond to or enforce the Commission's subpoena. At this point, you are the only official at the Department that can prevent that untenable circumstance from occurring. Similarly, your permission is likely required to release Department employees to testify at the Commission's hearing, scheduled for April 23, 2010. Accordingly, please inform the Commission by April 12, 2010, whether you will cooperate with its investigation and whether you will release Department employees to testify so that we may plan our hearing accordingly.

Thank you for your attention to these matters. I am eager to resolve the current impasses and sincerely hope that you can assist the Commission in forging a mutually acceptable solution.

Respectfully submitted,



Gerald A. Reynolds
CHAIRMAN

Attachment



UNITED STATES COMMISSION ON CIVIL RIGHTS

624 NINTH STREET, NW, WASHINGTON, DC 20425

www.usccr.gov

March 30, 2010

VIA FAX (202-616-0222) AND E-MAIL AND REGULAR MAIL

Joseph H. Hunt, Esq.
Director, Federal Programs Branch
Civil Division
United States Department of Justice
20 Massachusetts Avenue, NW
Washington, DC 20001

Dear Mr. Hunt:

This letter is in reply to the responses of the Department of Justice (“the Department”) to the discovery requests propounded by the U.S. Commission on Civil Rights (“the Commission”) regarding the circumstances surrounding the New Black Panther Party litigation as well as related voting rights concerns.

The Commission first sent a letter to the Department on June 16, 2009, seeking information regarding the Department’s decision to dismiss most of the charges filed against the defendants in the New Black Panther Party lawsuit. The Commission subsequently sent letters on August 10 and September 30 seeking similar information. The Department provided little information in response to these letters. Accordingly, the Commission was compelled to issue a subpoena to the Department on December 8, 2009. The discovery requests accompanying the subpoena sought information not only with regard to the New Black Panther Party lawsuit, but also with regard to historical efforts by the Department to enforce protections against voter intimidation.

Unfortunately, as of this date, the Department has provided little of substance relating to the New Black Panther Party litigation. Although the Department consistently asserts that it is cooperating with the Commission, this appears to be more a matter of public relations than fact. For example, while the Department notes that it has produced approximately 2,000 pages of documents, these records were overwhelmingly addressed to historical matters. None of the records related to the issue of why the Department drastically changed the scope and nature of the relief it sought with regard to the New Black Panther Party litigation. Indeed, the only documents produced relating to said investigation were the pleadings and related correspondence. To say the least, this failure is not in keeping with the statutory mandate that the Department “fully cooperate with the Commission to the end that it may effectively carry out its functions and duties.” 42 U.S.C. § 1975b(e).

Joseph H. Hunt, Esq.
March 30, 2010
Page 2

As you are aware, the Commission initiated its investigation after the Department dismissed claims against all but one defendant in the New Black Panther Party litigation. This step was taken despite the fact that a default had been entered and none of the defendants had even raised a defense to the lawsuit. On its own, the dismissal of these claims raised serious issues.¹ These concerns increased when subsequent press reports indicated that senior career officials of both the Voting Rights and Appellate sections, who had urged that the matter proceed to a default judgment, had been overruled by political appointees. No explanation for this decision making has been provided, despite the fact that the Commission's initial inquiry was made in June of 2009.²

Since the Commission began its investigation, the Department has engaged in an unprecedented campaign to preclude the Commission from investigating a matter of civil rights enforcement squarely within the Commission's statutory mission. Instead, the Department has consistently sought to obstruct and delay the Commission's investigation.

- The Department prevented subpoenaed officials from appearing for their depositions. During the pendency of this investigation, one of these witnesses was transferred to South Carolina, outside the scope of the Commission's subpoena power for its scheduled hearing.
- The Department has refused the Commission's repeated requests that it indicate whether it will release Department personnel to testify with regard to the New Black Panther Party litigation. There have been five separate requests made to the Department since January 29, 2010, with no result. Yet, as late as March 12, 2010, the Department still contends that it "continues to evaluate the Commission's requests ..."
- When the Commission requested that Department personnel meet with Commission staff to discuss potential discovery concerns, so as to avoid delays over possible claims of privilege, the Department rebuffed this effort and no such meeting has taken place.

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Joseph H. Hunt, Esq.
March 30, 2010
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- Having rejected the opportunity to meet, the Department refused to provide any substantive response to the Commission's discovery requests relating to the New Black Panther Party litigation.

As the above demonstrates, the claims by the Department that it is working in good faith with the Commission ring hollow. This is best demonstrated by the Department's disregard of the Commission's instructions relating to its discovery requests, as well as the types and nature of the privileges raised by the Department in its response.

In this regard, the Department completely ignored Commission instruction number 10 regarding any privileges that might be asserted by the Department. Said instruction required, in part, that:

If any claim of privilege is raised relating to any document or information request, [the Department must] identify with specificity the privilege asserted, any legal authorities relied upon, and indicate whether any privilege so asserted can be addressed by agreement of confidentiality between the parties. If any claim of executive privilege is raised, identify the highest official within the Department connected with the specific document or information, and indicate whether the President of the United States has specifically exercised said privilege.

Rather than complying with this requirement, the Department instead raised a series of "general objections" that were so broad and vague as to be meaningless. These "general objections" encompassed a laundry list of objections, including the Privacy Act, the attorney-client privilege, the attorney-work product privilege, the deliberative process privilege, as well as any "other recognized privilege."

By failing to provide any supporting context or explanation for the assertion of such privileges, the Department apparently seeks to obfuscate the basis for its refusal to provide the requested information. There is not even a pretense of a credible explanation.³

³ The failure to provide such information is particularly curious given the Department's past practices in providing similar information to congressional committees over the years.

[I]n the last 85 years Congress has consistently sought and obtained deliberative prosecutorial memoranda, and the testimony of line attorneys, FBI field agents and other subordinate agency employees regarding the conduct of open and closed cases in the course of innumerable investigations of Department of Justice activities. These investigations have encompassed virtually every component of the DOJ, and all officials, and employees, from the Attorney General down to subordinate level personnel.

Even more brazen is the assertion, contained in the cover letter accompanying the Department's response, that the "Department is constrained by the need to protect against disclosures ... that otherwise would undermine its ability to carry out its mission ..." This assertion appears to have been made out of whole cloth and seemingly attempts to create a self-defining privilege that justifies the Department in preventing any review of its decision making. Ironically, the assertion of such a broad and all-encompassing privilege undermines the ability of the U.S. Commission on Civil Rights to carry out its mission.⁴

Even a quick survey of the Department's failure to provide information reflects objections for which no privilege exists.

- The Department refused to identify the personnel, and even the sections, that worked on the case.⁵
- The Department refused to provide incident reports with regard to the events giving rise to the case.⁶
- The Department refused to identify reports of other instances of voter intimidation by members of the New Black Panther Party, if any, during the 2008 election.⁷
- The Department refused to describe reports received from third parties with regard to the activities, practices, or actions of the New Black Panther Party.⁸
- The Department refused to provide any video evidence obtained by the Department during the course of its investigation.⁹
- In response to Interrogatories 2, 5, 18, and 24, and Document Requests 8, 14, and 38, the Department claimed that the phrase "reduce the relief sought" (referring to

CRS Report for Congress, Congressional Investigations of the Department of Justice, 1920-2007: History, Law, and Practice, p. 2 (Oct. 3, 2007). As the CRS notes, "[a]n inquiring committee need only show that the information sought is within the broad subject matter of its authorized jurisdiction, is in aid of a legitimate legislative function, and is pertinent to the area of concern."
Id.

⁴ The blanket assertions of privilege, and the failure to provide specific answers to discovery requests, seem to reflect an unfortunate pattern by the Department. As you are aware, the U.S. District Court for the District of Kansas recently sanctioned the Department for the failure to provide adequate responses to discovery, including raising improper objections and overly broad assertions of privilege. *See United States of America v. Sturdevant*, Civil Action 07-2233-KHV-DJW (Order of December 30, 2009).

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Joseph H. Hunt, Esq.
March 30, 2010
Page 5

the New Black Panther litigation) is “vague, ambiguous, and subject to different interpretations” even though, on their face, the pleadings in the case reflect that the Department reduced the relief sought against the defendants.¹⁰

The above list is by no means exhaustive. However, even this partial list illustrates a willful pattern of attempting to use alleged privileges to mask a pattern of non-cooperation.

The Department’s alleged privileges are particularly disturbing in light of existing Department policy with regard to the enforcement of administrative subpoenas. In a report prepared by the Department, it is noted that:

The Supreme Court has construed administrative subpoena authorities broadly and has consistently allowed expansion of the scope of administrative investigative authorities, including subpoena authorities, in recognition of the principle that overbearing limitations of these authorities would leave administrative entities unable to execute their respective statutory responsibilities.¹¹

In the present case, the U.S. Commission on Civil Rights has been granted the authority to investigate federal agencies on issues of civil rights enforcement. Those refusing to assist the Commission in its mission bear a heavy burden to justify such failure.

¹⁰ The complaint sought the following relief:

Permanently enjoins Defendants, their agents and successors in office, and all persons acting in concert with them, from deploying athwart the entrance to polling locations either with weapons or in the uniform of the Defendant New Black Panther Party, or both, and from otherwise engaging in coercing, threatening, or intimidating, behavior at polling locations during elections. (Complaint, *United States of America v. New Black Panther Party for Self Defense et al*, entered January 8, 2009)

Subsequently, the Department limited its claim to a single defendant and sought substantially reduced injunctive relief:

Defendant Minister King Shabazz is enjoined from displaying a weapon within 100 feet of any open polling location on any election day in Philadelphia, Pennsylvania, or from otherwise engaging in coercing, threatening or intimidating behavior in violation of Section 11(b) of the Voting Rights Act ...

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Joseph H. Hunt, Esq.
March 30, 2010
Page 6

Although the Department's existing discovery responses fall short of even a minimum level of cooperation, the Commission requests the following actions to resolve the existing impasse.

1. Currently, the ultimate enforcement of Commission subpoenas rests with the Attorney General. 42 U.S.C. § 1975a(e)(2). Where, as here, the Department refuses to cooperate with a Commission subpoena, the Department is placed in the untenable position of seeking an enforcement action against itself and an inherent conflict of interest arises. Given this conflict, the Department is requested to appoint a special counsel, or other neutral party acceptable to both parties, to seek enforcement.
2. No later than April 16, 2010, appropriate Department officials should meet with Commission staff to delineate the alleged applicability and scope of any privileges raised by the Department. At a minimum, the Department, prior to said meeting, should provide the Commission with a privilege log providing legal justification for its assertion of privilege relating to specific documents and information, as was required pursuant to the Commission's instruction number 10 contained in the original discovery requests. If claims of executive privilege are being asserted, the official asserting said privilege must be identified.
3. The Commission is scheduled to hold a hearing on April 23 to hear testimony on both the events of Election Day as well as the Department's handling of the New Black Panther Party litigation. It is requested that the Department identify and designate a witness to appear at said hearing for the purposes of testifying with regard to the internal deliberations of the Department relating to the New Black Panther Party litigation. In addition, the Department is requested to release those Department officials currently under subpoena to testify with regard to same. In the event that the Department refuses to provide a witness on this topic, and/or allow the subpoenaed witnesses to testify, it is requested that the Department detail, in writing, the reasons for its refusal to do so.

Thank you for your attention to these matters.

Sincerely,



David P. Blackwood
General Counsel



March 30, 2010

VIA FAX (202-616-0222) AND E-MAIL AND REGULAR MAIL

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Thank you for your attention to these matters.

Sincerely,



David P. Blackwood
General Counsel



UNITED STATES COMMISSION ON CIVIL RIGHTS
OFFICE OF THE GENERAL COUNSEL

FACSIMILE TRANSMITTAL SHEET

TO: JOSEPH H. HUNT, ESQ.

FROM: DAVID P. BLACKWOOD

COMPANY: DOJ

SENDER'S DIRECT LINE: 202-376-7622

FAX NUMBER: 202-616-0222

DATE: MARCH 30, 2010

PHONE NUMBER: 202-514-1259

TOTAL NO. OF PAGES,
INCLUDING COVER: 7

RE: NEW BLACK PANTHER PARTY

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U. S. Department of Justice

Civil Division

Washington, D.C. 20530

Joseph H. Hunt
Director

Telephone
(202) 514-1259
Fax: (202) 616-0222

March 12, 2010

VIA ELECTRONIC MAIL AND FIRST-CLASS U.S. MAIL

Mr. David P. Blackwood
General Counsel
United States Commission On Civil Rights
624 Ninth Street, N.W.
Washington, D.C. 20425

Re: United States Commission on Civil Rights'
Planned Statutory Enforcement Report

Dear Mr. Blackwood:

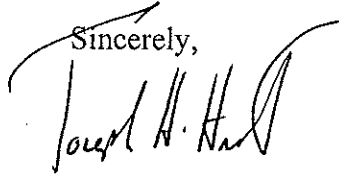
By letter dated February 26, 2010, I advised you that the Department of Justice ("Department") was not prepared to respond to the request of the United States Commission on Civil Rights ("Commission") for hearing testimony from Department employees [REDACTED] and [REDACTED]. I explained that the Commission's request requires thoughtful consideration of how to strike the appropriate balance between the Department's desire to cooperate with the Commission and the protection of the Department's confidentiality interests, but that the Department is sensitive to the Commission's timetable, and therefore would provide a response as soon as possible. You subsequently requested the Department's response on or before March 12, 2010 even though the Commission hearing was rescheduled for April 23, 2010.

We are not in a position to meet this timetable for the response, although the Department has expended and continues to expend substantial resources responding to the Commission's requests for documents, interrogatory answers, and testimony. For example, Department personnel across various Department components have expended numerous hours searching for and reviewing records to determine what may be responsive to the document requests directed at the Department on December 8, 2009. That effort did not cease when the Department provided the Commission with responses to interrogatories and nearly 2000 pages of documents on January 11, 2010. The Department's supplemental production of documents on February 26, 2010 resulted from an ongoing evaluation of whether the Department could provide further information to the Commission while protecting the Department's confidentiality interests. And that effort remains underway today.

The Department continues to evaluate the Commission's requests, including with respect to the provision of testimony. As you know, when the Commission originally requested testimony for the hearing, initially scheduled for February 12, 2010, you asked that the Department respond only one week before that date. The hearing was subsequently rescheduled for April 23, 2010, which is still six weeks from now. There should be sufficient time between now and the date of the hearing for the Department to provide further supplementation of its response to the Commission's requests for documents and interrogatories, if any, and to convey its decision concerning the provision of testimony. The Department remains sensitive to the Commission's desire to proceed with its inquiry, and thus is moving forward in a manner that will permit it to provide further supplementation and to respond to your request for testimony in advance of the Commission's April 23, 2010 hearing.

We appreciate your continued patience as we proceed in an effort to accommodate the legitimate interests of both the Commission and the Department.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph H. Hunt". The signature is written in a cursive style with a large, sweeping initial "J" and a long horizontal stroke extending to the right.

Joseph H. Hunt
Director
Federal Programs Branch
Civil Division



U.S. Department of Justice

Civil Division

February 26, 2010

Washington, D.C. 20530

Telephone:

(202) 514-1259

Fax: (202) 616-0222

VIA E-MAIL AND FED EX

Mr. David P. Blackwood
General Counsel
United States Commission On Civil Rights
624 Ninth Street, N.W.
Washington, D.C. 20425

Re: United States Commission on Civil Rights'
Planned Statutory Enforcement Report

Dear Mr. Blackwood:

I am writing to update you on the status of the Department of Justice's ("Department") consideration of the United States Commission on Civil Rights' ("Commission") requests for information, including hearing testimony, regarding the Department's enforcement of federal laws against voter intimidation.

As you know, the Department regards the protection of the right to vote as one of its top priorities. The Department therefore has strived to be as responsive as possible to the Commission's requests related to its planned statutory enforcement report on enforcement of Section 11(b) of the Voting Rights Act. Unlike past Commission investigations related to the Department's enforcement of civil rights laws, the current investigation is largely focused on the single prosecution captioned *United States v. New Black Panther Party for Self Defense*, Civil Action No. 2:09-cv-0065 (E.D. Pa.). The Department is constrained by the need to protect against disclosures that would harm the deliberative processes behind the enforcement decisions in that action.

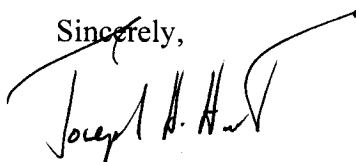
The Commission's requests concerning this matter therefore have required thoughtful consideration of how the Department can continue its practice of voluntary cooperation with the Commission consistent with the confidentiality interests that the Department routinely protects. The Department's effort to strike the appropriate balance here has required time for that consideration, and although the Department is not yet in a position to respond to the requests for hearing testimony, the Department has determined that it has additional information it can

provide. When the Department responded to the Commission's requests by providing documents and interrogatory responses on January 11, 2010, I advised that the Department might later supplement its response to the extent it had any additional responsive non-confidential information. To that end, in its ongoing evaluation of the Commission's requests, the Department has determined that it can provide additional documents responsive to the Commission's Document Request Nos. 1, 33, and 44. Those documents are provided on the enclosed CD.

Please know that the Department is sensitive to the Commission's desire to proceed with its inquiry, including the rescheduling of the postponed February 12, 2010 hearing. I will provide you with the Department's decision regarding whether to authorize the requested hearing testimony as soon as possible. For the reasons explained herein, however, neither the Department nor the Commission would be well served by a premature decision.

We hope that the enclosed information and this status update are helpful to the Commission. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph H. Hunt". The signature is written in a cursive style with a long, sweeping horizontal line extending to the right.

Joseph H. Hunt
Director
Civil Division
Federal Programs Branch

Enclosure



UNITED STATES
COMMISSION ON
CIVIL RIGHTS

624 Ninth Street, N.W.
Washington, D.C. 20425

February 4, 2010

Mr. Gregory G. Katsas
Jones Day
51 Louisiana Avenue, N.W.
Washington, DC 20001-2113

Dear Mr. Katsas:

I write to you in your capacity as a former Department of Justice (DOJ) official to request your participation in a hearing of the U.S. Commission on Civil Rights (Commission) on February 12, 2010. The hearing will take place at the Commission's headquarters at 624 Ninth Street, NW, Washington, DC 20425. It relates to our review of the implications of DOJ's actions in *United States v. New Black Panther Party for Self-Defense*, particularly for future enforcement of Section 11(b) of the Voting Rights Act. The Commission began its inquiry into this matter in June 2009. In September, we voted to expand our investigation of DOJ's enforcement actions and to issue a report to the President and Congress with our factual findings and recommendations for further action. This letter outlines the matters we hope you can cover in your testimony.

The basic facts of the New Black Panther Party (NBPP) case may be found in the original complaint, which lists the allegations of voter intimidation against four defendants, and the narrow injunction entered against one defendant after the Department declined to take a default judgment against all defendants. As you may be aware, the Commission's organic statute requires the Department to "fully cooperate with the Commission to the end that it may effectively carry out its functions and duties." 42 U.S.C. § 1975b(e). To date, however, the DOJ has failed to provide any information with regard to the role different components within the administration had in the decision to file the initial civil action. It has similarly failed to provide any information with regard to the administration's decision to dismiss the suit against several defendants. Documents have identified some individuals within the Civil Rights Division (including the respective Acting Assistant Attorneys General for the Civil Rights Division) who were involved in the initial and subsequent decisions in the case. Press accounts have suggested that the current Associate Attorney General also was involved in relevant decisions related to this case within the DOJ and possibly with regard to communications with officials in the White House.

We remain hopeful that the administration will reconsider its generalized assertions of privilege and that it will eventually cooperate fully in this investigation, but for now, we assume such claims would be asserted against both current and former officials involved in the deliberations in the NBPP case. Yet, it is also important for us to understand: (1) how DOJ decisions normally are reached in similar matters, particularly a decision to reverse course and dismiss claims against some defendants, and (2) whether White House personnel normally would have been consulted. Your insights on these matters would be greatly appreciated given your

experience serving as Acting Associate Attorney General, Principal Deputy Associate Attorney General, Assistant Attorney General for the Civil Division, and other positions in the Department.

Specifically, we would like you to present testimony on the following matters:

(1) Based on your experience, would the Office of Associate Attorney General normally be consulted in the decision to file a Section 11(b) lawsuit similar to the one filed against the NBPP defendants, and if so, what role would the Office typically have played?

(2) Assuming the Office of Associate Attorney General was consulted in the filing of a lawsuit of this type, what procedures, standards, and other considerations normally would be used to determine whether to approve the filing of such a Section 11(b) action?

(3) In aid of our fact finding mission, the Commission will hear testimony from fact witnesses who observed the actions that are the subject of the NBPP complaint at the hearing on February 12. Assuming the allegations in the initial complaint are true, however, do they present strong legal grounds to file the NBPP action and seek injunctive relief against all defendants?

(4) Assuming the allegations in the initial complaint are true, do you think there are other strong reasons *not* to file the NBPP action?

(5) Once a case like the NBPP matter was filed, would the Office of Associate Attorney General normally be consulted before DOJ reversed course and refused to take a default judgment against several defendants, and if so, what role would the Office typically play?

(6) Assuming the allegations in the complaint are true, do you think there are serious First Amendment concerns with seeking discovery and maintaining the litigation against all defendants?

(7) Assuming the allegations in the complaint are true, do you think the suit should have been dropped against three defendants, and do you think the Department should have obtained a broader injunction against Minister King Samir Shabazz than the one sought?

(8) Under DOJ policies regarding contacts between the Department and the White House in place while you were at the Department, which Attorney General Holder pledged to keep in place, is it likely that the Associate Attorney General or other DOJ officials would have discussed with White House staff whether to reverse course in a suit like the NBPP matter?

(9) Pursuant to such established DOJ policies, which DOJ and White House personnel would normally have been involved in discussions (assuming they existed) on whether to reverse course in a lawsuit like the NBPP case? How would those communications normally have been conducted?

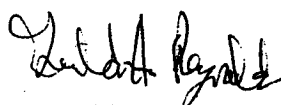
(10) Assuming that DOJ officials had contacts with White House Counsel staff on litigation of this nature, would it be unusual for officials in the White House Counsel's Office to

consult others within the White House on such matters, e.g., the White House Chief of Staff or the President?

We also invite you to submit testimony addressing any other matters that you think would be useful to the Commission's investigation. Written testimony is normally due seven days prior to the hearing date. If you cannot meet that deadline given the late request, please submit your written testimony as soon as possible before the February 12 hearing date.

Thank you in advance for your willingness to testify. Please contact me or the Commission's General Counsel, David Blackwood, at dblackwood@usccr.gov or (202) 376-7622, should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald Reynolds". The signature is written in a cursive style with a large initial "G".

Gerald Reynolds
Chairman



UNITED STATES COMMISSION ON CIVIL RIGHTS

624 NINTH STREET, NW, WASHINGTON, DC 20425

www.usccr.gov

January 29, 2010

VIA FAX (202-616-0222) AND E-MAIL AND REGULAR MAIL

Joseph H. Hunt, Esq.
Director, Federal Programs Branch
Civil Division
United States Department of Justice
20 Massachusetts Avenue, NW
Washington, DC 20001

Dear Mr. Hunt:

As you may be aware, on February 12, 2010, the Commission will be holding a hearing with regard to the New Black Panther Party litigation and the decision-making at the Department of Justice regarding same.

Up to this point, the Department has precluded the Commission from deposing Christopher Coates and J. Christian Adams, Department personnel who worked on the case.

It is requested that the Department reconsider its position and that Mr. Coates and Mr. Adams be allowed to testify before the Commission on February 12, 2010. In the event that permission is denied, however, it is requested that the Department detail its reasons for precluding such testimony.

It is requested that you please respond to this request no later than February 5, 2010. Thank you for your anticipated cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "David Blackwood", written over a horizontal line.

David Blackwood
General Counsel

cc: Chairman Gerald A. Reynolds
Vice Chair Abigail Thernstrom
Commissioner Todd F. Gaziano
Commissioner Gail Heriot
Commissioner Peter N. Kirsanow
Commissioner Arlan D. Melendez
Commissioner Ashley L. Taylor, Jr.
Commissioner Michael J. Yaki
Martin Dannenfelser, Staff Director



UNITED STATES
COMMISSION ON
CIVIL RIGHTS

624 Ninth Street, N.W.
Washington, D.C. 20425

January 22, 2010

The Honorable Frank R. Wolf
U.S. House of Representatives
241 Cannon House Office Bldg.
Washington, DC 20525-4610

Dear Representative Wolf:

I am in receipt of your letter dated January 20, 2010. Thank you for your generous offer to participate in the U.S. Commission on Civil Rights' upcoming hearing on the Department of Justice's dismissal of voter intimidation charges in *U.S. v. New Black Panther Party*, which is scheduled for February 12, 2010.

We appreciate your willingness to share your insights with us at the scheduled hearing. We would certainly benefit greatly from the participation of Members like you who have taken such an interest and leadership role in the matters we are investigating.

Thank you for your interest in assisting us in our investigation. We will be in contact with your office with additional details regarding the hearing as they become available.

Respectfully,

A handwritten signature in black ink, appearing to read "Gerald A. Reynolds".

Gerald A. Reynolds
Chairman

cc: The Honorable John Conyers, Chairman, House Judiciary Committee
The Honorable Lamar Smith, Ranking Member, House Judiciary Committee



U.S. Department of Justice

Civil Division

Washington, D.C. 20530
Telephone:
(202) 514-1259

January 11, 2010

Via Email and FedEx

Mr. Gerald A. Reynolds, Chairman
United States Commission On Civil Rights
624 Ninth Street, N.W.
Washington, D.C. 20425

Re: United States Commission on Civil Rights'
Planned Statutory Enforcement Report

Dear Chairman Reynolds:

With this letter and enclosures, the Department of Justice ("Department") is responding to the December 8, 2009, request of the United States Commission on Civil Rights ("Commission") for information regarding the Department's enforcement of federal laws against voter intimidation. The Department is doing so in accordance with its ongoing practice of voluntary cooperation with the Commission.

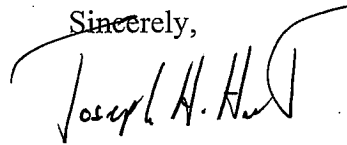
Protection of the right to vote is one of the Department's top priorities, and the Department wishes to be as responsive as possible to requests for information about its law enforcement activities in this area. In that regard, the Commission's requests have necessitated extensive searches of the Department's records, which are ongoing. Please note that the Department is constrained by the need to protect against disclosures that would harm its deliberative processes or that otherwise would undermine its ability to carry out its mission, and therefore is responding to the extent that it can do so without disclosure of attorney work product or other privileged information. The Department continues to evaluate whether it can provide further responses consistent with the need to protect privileged information and may supplement this response at a later date.

In light of the Commission's particular interest in an action brought by the Department under Section 11(b) of the Voting Rights Act, *United States v. New Black Panther Party for Self Defense*, Civil Action No. 2:09-cv-0065 (E.D. Pa.), and some confusion about its resolution, we wish to clarify the facts regarding the pending injunction in the litigation. In that case, the Department obtained an injunction against Minister King Samir Shabazz, who is the only individual known to the Department to have brought a weapon to a polling place in Philadelphia,

Pennsylvania during voting hours on Election Day 2008. The court order obtained by the Department enjoins this defendant from engaging in such activity as well as any other activity that violates the anti-intimidation provision of the Voting Rights Act. That provision, Section 11(b), does not authorize criminal penalties or any other kinds of relief beyond an injunction. The injunction remains in effect until 2012, and the Department intends to fully enforce the injunction's terms.

We hope that the enclosed information is helpful. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph H. Hunt". The signature is written in a cursive style with a large, sweeping flourish at the end.

Joseph H. Hunt
Director
Federal Programs Branch

Enclosures

cc: David P. Blackwood, General Counsel

Date: January 11, 2010

To: U.S. Commission on Civil Rights
David P. Blackwood, General Counsel

From: United States Department of Justice

Subject: U.S. Commission on Civil Rights' Statutory Enforcement Report on the Implications of DOJ's Actions in the New Black Panther Party Litigation for Enforcement of Section 11(b) of the Voting Rights Act

RESPONSE OF THE DEPARTMENT OF JUSTICE

Without waiving any applicable privileges or objections, the Department of Justice ("the Department") pursuant to 42 U.S.C. § 1975b(e) hereby responds to the interrogatories and document requests propounded by the United States Commission on Civil Rights ("the Commission") in connection with the above-referenced report.

GENERAL OBJECTIONS

1. The Department objects to each and every Interrogatory and Document Request to the extent they seek information the disclosure of which would violate a statute, regulation, or Executive Order.
2. The Department objects to each and every Interrogatory and Document Request to the extent they seek information protected from disclosure by the Privacy Act.
3. The Department objects to each and every Interrogatory and Document Request to the extent they seek information protected by the attorney-client, attorney-work product, deliberative process, law enforcement, or other recognized privilege.
4. The Department objects to each and every Interrogatory and Document Request to the extent they seek disclosure of work product contained in the litigation file for *United States v. New Black Panther Party for Self Defense*, Civil Action No. 2:09-cv-0065 (E.D. Pa.).
5. The Department objects to each and every Interrogatory and Document Request that seeks information prepared by or for the Department's Office of Professional Responsibility, to the extent such information is privileged or Privacy Act protected.
6. The Department objects to each and every Interrogatory and Document Request to the extent they seek information not reasonably related to or in furtherance of the Commission's

exercise of its statutory authority set forth in 42 U.S.C. § 1975a.

7. The Department objects to each and every Interrogatory and Document Request to the extent they impose burdens inconsistent with or in addition to those required by 42 U.S.C. § 1975b(e).

Notwithstanding the General Objections, each of which is incorporated by reference as if set forth fully in each Response below, and using December 8, 2009 (the date of the Commission's request) as the date by which to search for and provide information, the Department states as follows, reserving the right to supplement or later amend its response:

INTERROGATORY NO. 1:

Identify all DOJ personnel who have worked on the New Black Panther Party litigation. This request includes, but is not limited to: (i) those DOJ personnel who interviewed witnesses in Philadelphia on election day; (ii) all DOJ personnel directly assigned to said litigation; (iii) those individuals who exercised decision-making authority relating to same; and (iv) all individuals in the appellate section who reviewed any aspect of said litigation. For each individual identified, indicate whether said person is a career or political employee.

RESPONSE:

See General Objections.

INTERROGATORY NO. 2:

Identify and describe in detail the decision-making process within DOJ relating to the New Black Panther Party litigation. This request includes, but is not limited to, the decision-making processes that: (i) led to the initial filing of said litigation; (ii) the decision to seek a default; (iii) the decision to delay seeking a default judgment; (iv) the decision to seek review by the appellate section; (v) the decision to review the relief sought in the original complaint; and

(vi) the decision to dismiss certain defendants and to reduce the relief sought against the remaining defendant.

RESPONSE:

In addition to the General Objections, the Department specifically objects to this Interrogatory on grounds that the phrase “reduce the relief sought” is vague, ambiguous, and subject to different interpretations.

INTERROGATORY NO. 3:

Describe the process for investigating and evaluating voter intimidation cases within the Department, including the determination of whether to pursue litigation. If this process was not followed to any extent with regard to the New Black Panther Party litigation, identify and describe the manner in which the process was not followed.

RESPONSE:

The Department of Justice may receive allegations of possible voter intimidation from a variety of sources, including but not limited to, newspaper or other media accounts, complaints from organizations or groups, citizen calls or letters, referrals from state or local officials, referrals from other federal agencies, or Congressional inquiries. Within the Department, such a complaint may fall within the criminal jurisdiction of the Election Crimes Branch of the Public Integrity Section of the Criminal Division or the Criminal Section of the Civil Rights Division, or within the civil jurisdiction of the Voting Section of the Civil Rights Division. Upon receipt of such a complaint by the Department, in most cases each of these components will review the allegations contained in the complaint and make a determination of whether it has jurisdiction to pursue the complaint, as well as whether to investigate the allegations. A determination to investigate is based on a review of the facts as well as a decision whether to allocate limited Department resources to such an investigation. In some cases, the Department may decide to pursue the complaint from both a criminal and civil perspective. However, in such a case, care will be taken on the civil side to ensure that the criminal investigation and potential litigation is

not compromised in any manner. If a decision to investigate is made, Department personnel conduct the necessary investigation. Following such investigation, a decision is made whether to pursue criminal or civil litigation in federal court as appropriate. In each case or matter, decisions on investigation and/or prosecution are made based on its unique facts and the application of existing law to this set of facts.

INTERROGATORY NO. 4:

With regard to the New Black Panther Party litigation, identify and describe in detail: a) the factors involved in the initial charging decision; b) the factors involved in the decision not to pursue a default judgment against three of the initial four defendants; and c) the factors involved in the decision to limit the preventative relief sought against Minister King Samir Shabazz (a/k/a Maurice Heath) to a Philadelphia-based injunction.

RESPONSE:

In *United States v. New Black Panther Party for Self Defense*, Civil Action No. 2:09-cv-0065 (E.D. Pa.), the United States obtained an injunction against Defendant Minister King Samir Shabazz, who held a nightstick in front of a polling place in Philadelphia, Pennsylvania during voting hours. The court order obtained by the Department enjoins this defendant from engaging in such activity, as well as any other activity that violates the anti-intimidation provision of the Voting Rights Act. Section 11(b) does not authorize other kinds of relief, such as monetary damages or civil penalties. The injunction remains in effect until 2012, and the Department will fully enforce its terms. To our knowledge, this defendant is the only person who brought a weapon to the Philadelphia polling place on Election Day.

Career supervising attorneys who have over 60 years of experience at the Department between them decided not to seek relief against three other defendants after a thorough review of the facts and applicable legal precedent. The Department implemented that decision. Political considerations had no role in that decision and reports that political appointees interfered with the advice of career attorneys are false.

Consistent with the Department's practice, the attorney serving as Acting Assistant Attorney General for Civil Rights informed Department supervisors of the Division's decisions related to the case. The Department supervisors did not overrule that attorney.

Although none of the defendants responded to the complaint, that did not absolve the government of its obligation to ensure that any relief sought is consistent with the facts and the law and supported by the evidence. The entry of a default judgment is not automatic, and the defendant's failure to respond does not eliminate the plaintiff's obligation to ensure that it has a valid case based on the facts and law. The Federal Rules of Civil Procedure incorporate a strong policy of resolving disputes on the merits. Following that policy, the Court of Appeals for the Third Circuit has explained that it does not favor entry of defaults or default judgments. *United States v. \$55,518.05 in U.S. Currency*, 728 F.2d 192, 194 (3d Cir. 1984). Instead, the appellate court prefers that "cases be disposed of on the merits whenever practicable." *Hritz v. Woma Corp.*, 732 F.2d 1178, 1181 (3d Cir. 1984). Moreover, even if a court granted a default judgment on liability, the court still would need to decide whether the evidence supported entering an injunction.

INTERROGATORY NO. 5:

Identify all communications, whether oral or written, within the Department relating to the New Black Panther Party litigation. This request includes, but is not limited to, communications concerning (i) the initial decision to file the complaint; (ii) the merits of said litigation; (iii) the decision to seek a default; (iv) the decision to delay seeking a default judgment; (v) the decision to seek review by the appellate section; (vi) the decision to review the relief sought in the original complaint; and (vii) the decision to dismiss certain defendants and to reduce the relief sought against the remaining defendant.

RESPONSE:

In addition to the General Objections, the Department specifically objects to this Interrogatory on grounds that the phrase "reduce the relief sought" is vague, ambiguous, and

subject to different interpretations.

INTERROGATORY NO. 6:

Identify and describe in detail any communications by anyone in the Department with the Attorney General of the United States with regard to the New Black Panther Party litigation.

RESPONSE:

See General Objections.

INTERROGATORY NO. 7:

Identify each and every section within the Department of Justice that reviewed or worked on any portion of the New Black Panther Party litigation. For each such section, describe the work or analysis performed.

RESPONSE:

See General Objections.

INTERROGATORY NO. 8:

Identify and describe in detail all documents provided to the appellate section as part of its review of the New Black Panther Party litigation.

RESPONSE:

See General Objections.

INTERROGATORY NO. 9:

Identify all other voter intimidation cases that have been reviewed by the appellate section prior to trial or the entry of a default judgment.

RESPONSE:

As a routine matter, the Appellate Section of the Department is consulted by the litigating sections of the Civil Rights Division on issues that arise during the course of a litigation. The Department does not generally maintain or compile records of such consultations and cannot identify each and every consultation that has occurred according to either the type of case or the stage in the case when the consultation took place.

INTERROGATORY NO. 10:

Identify and describe in detail any First Amendment concerns raised by the appellate section with regard to the New Black Panther Party litigation.

RESPONSE:

See General Objections.

INTERROGATORY NO. 11:

Identify and describe in detail whether the appellate section, in reviewing the New Black Panther Party litigation, raised any distinction between one who intimidates voters as a poll watcher and one who intimidates voters, but is not a poll watcher.

RESPONSE:

See General Objections.

INTERROGATORY NO. 12:

Identify and describe in detail all communications, whether oral or written, by or between the Department and any outside third parties with regard to the New Black Panther Party litigation. This request includes, but is not limited to, all communications with Kristen Clarke of the NAACP Legal Defense Fund.

RESPONSE:

In addition to the General Objections, the Department specifically objects to this Interrogatory on grounds of burdensomeness because the Department is unable to describe every communication with a third party related to the New Black Panther Party litigation. As a general practice, the Department makes every effort to respond to any contact from a third party about voter-intimidation or other Civil Rights concerns. Elected officials, the press, NGOs, and members of the public all have had contact with the Department about that case. The Department responds to this Interrogatory by reference to the documents produced in response to Document Request Nos. 29 and 33, *infra*.

The Department's search to date has not yielded any information related to a communication with Kristen Clarke.

INTERROGATORY NO. 13:

Describe in detail the purpose of DOJ contacts with outside third parties with regard to the New Black Panther Party litigation as well as the authority used to justify such contacts.

RESPONSE:

In addition to the General Objections, the Department specifically objects to this Interrogatory on grounds of burdensomeness because the Department is unable to describe the purpose of every contact with a third party related to the New Black Panther Party litigation. The Department has had such contacts with elected officials, the press, and the public for the purpose of being responsive to inquiries from these parties. Other contacts have been for the purpose of investigating the claims in *United States v. New Black Panther Party for Self Defense*, Civil Action No. 2:09-cv-0065 (E.D. Pa.).

INTERROGATORY NO. 14:

Identify and describe in detail all other instances in which DOJ has consulted with outside third parties with regard to voter intimidation cases.

RESPONSE:

In addition to the General Objections, the Department specifically objects to this Interrogatory on grounds that the term "consulted" is undefined and ambiguous and that the Interrogatory is burdensome. On many occasions, the Department has communicated in some fashion with third parties regarding voter intimidation cases. The Department is unable to describe with particularity each such instance.

INTERROGATORY NO. 15:

Identify all communications, whether oral or written, by or between the Department and any member of the Executive Office of the President and/or the White House with regard to the New Black Panther Party litigation.

RESPONSE:

See General Objections.

INTERROGATORY NO. 16:

Identify all communications, whether oral or written, by or between the Department and any member of Congress with regard to the New Black Panther Party litigation.

RESPONSE:

The Department responds in part to this Interrogatory by reference to the documents produced in response to Document Request No. 33, *infra*.

INTERROGATORY NO. 17:

Identify and describe in detail all communications by or between the Department and any of the following individuals: (i) Michael Coard; (ii) Malik Zulu Shabazz; (iii) Minister King Samir Shabazz (a/k/a Maurice Heath); and (iv) Jerry Jackson.

RESPONSE:

The Department responds to this Interrogatory by reference to the documents produced in response to Document Request Nos. 35-37, *infra*. The Department's search to date has not identified any communications with Michael Coard.

INTERROGATORY NO. 18:

Identify and describe in detail all facts upon which you rely to support your contention that the decision to dismiss certain defendants and reduce the relief sought in the New Black Panther Party litigation was made by career employees at the Department including, but not limited to, the identity of the career employee(s) you contend made said decision.

RESPONSE:

In addition to the General Objections, the Department specifically objects to this Interrogatory on grounds that the phrase "reduce the relief sought" is vague, ambiguous, and subject to different interpretations. *See* Response to Interrogatory No. 4, *supra*.

INTERROGATORY NO. 19:

For the period from January 1, 2009, identify all investigations conducted by the Department with regard to the NBPP, and/or any related individuals or entity.

RESPONSE:

See General Objections.

INTERROGATORY NO. 20:

Identify and describe in detail any reports received by the Department as to other alleged incidents of voter intimidation (and/or other voting-related improprieties) by members of the NBPP during the 2008 election.

RESPONSE:

See General Objections.

INTERROGATORY NO. 21:

Describe in detail all interviews conducted by you, or on your behalf, with any witnesses relating to the actions of the NBPP in Philadelphia during the 2008 presidential election.

RESPONSE:

See General Objections.

INTERROGATORY NO. 22:

Describe in detail the investigation conducted by you, or on your behalf, relating to the actions of the NBPP in Philadelphia during the 2008 presidential election.

RESPONSE:

See General Objections.

INTERROGATORY NO. 23:

Describe in detail any reports, summaries of events or descriptions received by you from any third party with regard to the activities, practices and/or actions of the NBPP and/or the individuals named as defendants in the New Black Panther Party litigation.

RESPONSE:

See General Objections.

INTERROGATORY NO. 24:

Identify and describe in detail all additional facts learned by you, subsequent to the filing of the complaint in the New Black Panther Party litigation, that influenced the Department's decision to drop three of the defendants as parties and to reduce the relief sought.

RESPONSE:

In addition to the General Objections, the Department specifically objects to this Interrogatory on grounds that the phrases "reduce the relief sought" and "additional facts" are vague, ambiguous, and subject to different interpretations. *See also* Response to Interrogatory No. 4, *supra*.

INTERROGATORY NO. 25:

Identify and describe in detail any and all federal statutes, rules, regulations, and/or policies the Department enforces that in any way relate to voter intimidation.

RESPONSE:

The Department is strongly committed to the enforcement of laws aimed at protecting the right of citizens to vote. There are both civil and criminal federal statutes enforced by the Department that relate to voter intimidation. Criminal statutes that can be enforced by the Department against voter intimidation include the following: 18 U.S.C. § 594, which prohibits intimidating, threatening or coercing anyone, or attempting to do so, with the purpose of interfering with an individual's right to vote or not to vote in a federal general election; 18 U.S.C. § 609, which prohibits the use of military authority to influence the vote of a member of the Armed Forces or to require a member of the Armed Forces to march to a polling place, or attempts to do so; 18 U.S.C. § 610, which prohibits the intimidation or coercion of a federal employee's "political activity," which includes voting; 18 U.S.C. § 241, which prohibits conspiracies to, among other things, intimidate any person in the free exercise of any right or

privilege secured by the Constitution or federal law, including the right to vote; 18 U.S.C. § 242, which prohibits deprivation under color of law of a right secured by the Constitution or federal law, including voting; and 18 U.S.C. § 245(b)(1)(A), which makes it illegal to use or threaten to use physical force to intimidate individuals from, among other things, voting or qualifying to vote. In addition, Section 12 of the National Voter Registration Act (NVRA), 42 U.S.C. § 1973gg-10(1), makes it a federal crime to intimidate, threaten or coerce, or attempt to intimidate, threaten or coerce any person for: (1) registering to vote, or voting, or attempting to register or vote; (2) aiding any person in so doing; or (3) exercising any right under the NVRA. *See* 28 C.F.R. §§ 0.50, 0.55.

With regard to civil law enforcement, the Voting Section of the Civil Rights Division enforces Section 11(b) of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973i(b). This statute prohibits anyone, whether or not acting under color of law, from intimidating, threatening, or coercing, or attempting to intimidate, threaten, or coerce, any person for voting or attempting to vote or for aiding any person to vote or attempt to vote or for exercising any powers or duties under certain sections of the Voting Rights Act. Section 12(d) of the Voting Rights Act, 42 U.S.C. § 1973j(d), provides for the filing of a civil action by the Attorney General to secure preventive relief for a violation of such statute. The Voting Section also has jurisdiction to enforce 42 U.S.C. § 1971(b), part of the Civil Rights Act of 1957, which prohibits anyone, whether or not acting under color of law, from intimidating, threatening, or coercing, or attempting to intimidate, threaten, or coerce, any person for voting or attempting to vote in a federal election. Where appropriate, the Voting Section may also consider whether it has civil jurisdiction over complaints of voter intimidation or harassment under other sections of the Voting Rights Act, such as the protections of Section 2, 42 U.S.C. § 1973.

INTERROGATORY NO. 26:

For the period from January 1, 1995 through the present, identify all staff currently devoted full- or part-time to investigating and/or litigating voter intimidation matters.

RESPONSE:

During the specified period of time, the Department is not aware of any staff who have been devoted full-time solely to investigation and/or litigation of voter intimidation matters. However, during that period, the attorney staff of the Voting Section of the Civil Rights Division has been assigned as necessary to investigate and, as appropriate, litigate voter intimidation matters. Likewise, during the specified period of time, the attorney staff of the Public Integrity Section of the Criminal Division and the Criminal Section of the Civil Rights Division has been assigned as necessary to investigate and, as appropriate, litigate voter intimidation matters. In addition, where appropriate, agents of the Federal Bureau of Investigation may be assigned to investigate voter intimidation matters.

INTERROGATORY NO. 27:

Since the inception of the Voting Rights Act, describe the procedures and/or mechanisms in place within the Department to receive, investigate, and resolve complaints regarding voter intimidation. How have these mechanisms evolved over time and what procedures are currently in place?

RESPONSE:

In addition to the General Objections, the Department specifically objects to this Interrogatory on grounds of burdensomeness and materiality because this Interrogatory requests information dating back to 1965. These mechanisms have remained basically the same over time and have not substantially evolved. *See* Response to Interrogatory No. 3, *supra*.

INTERROGATORY NO. 28:

Describe the Voting Section's ICM system used to track investigative matters and cases. If any additional or more recent telephone, electronic, or other tracking systems are used, describe those systems.

RESPONSE:

The Department responds to this Interrogatory by referring the Commission to the September 30, 2009 GAO Report to Congress: *DOJ's Civil Rights Division: Opportunities Exist to Improve Its Case Management System and Better Meet Its reporting Needs* (GAO-09-938R), which can be found at the following link: <http://www.gao.gov/new.items/d09938r.pdf>

At various points in time, the Voting Section has used various other informal methods for compiling or tracking cases and matters.

INTERROGATORY NO. 29:

Since the inception of the Voting Rights Act, identify by year the number of voter intimidation complaints (i) received, (ii) investigated, and/or (iii) litigated by the Department, as well as the outcomes of same.

RESPONSE:

In addition to the General Objections, the Department specifically objects to this Interrogatory on grounds of burdensomeness and materiality insofar as it seeks information dating back to 1965. The Voting Section does not appear to have maintained or compiled generally or consistently overall data about intimidation complaints received and investigated.

To its knowledge, the Department has filed four civil lawsuits alleging voter intimidation under Section 11(b) of the Voting Rights Act: 1) *United States v. Harvey*, C.A. No. 3323 (E.D. La.) - Section 11(b) claim denied, 250 F. Supp. 219 (E.D. La. 1966); 2) *United States v. North Carolina Republican Party, et al.*, C.A. No. 91-161-CIV-5-F (E.D.N.C.) - resolved by Consent Decree 2/27/1992; 3) *United States v. Brown* - Section 11(b) claim rejected, 494 F. Supp. 2d 440, 477 n. 56 (S.D. Miss. 2007); 4) *United States v. New Black Panther Party, et al.*, C.A. No. 09-cv-

0065-SD (E.D. Pa.) - notice of voluntary dismissal as to three defendants entered 5/15/09 and default judgment granting injunctive relief as to one defendant entered 5/18/2009. The Department also responds by enclosing documents related to the above-referenced actions.

The vast majority of all voting rights related criminal investigations are assigned to, and handled by, the Criminal Division of the Department of Justice. However, a small percentage of voting related offenses are principally assigned to the Civil Rights Division to conduct, handle, or supervise. Records of complaints historically reviewed by the Criminal Section may not be complete since computerized coding is relatively recent. However, a due and diligent search of paper records was conducted and the following information is responsive to the question:

Year	
1972	1 complaint received, reviewed/investigated, and closed.
1975	1 complaint received, reviewed/investigated, and closed.
1981	1 complaint received, reviewed/investigated, and ultimately prosecuted resulting in conviction.
1986	1 complaint received, reviewed/investigated, and ultimately prosecuted resulting in dismissal by the court at the close of the government's case-in-chief.
1990	3 complaints received, reviewed/investigated, and closed
1991	2 complaints received, reviewed/investigated, and closed.
1992	3 complaints received, reviewed/investigated, and closed.
1993	4 complaints received, reviewed/investigated, and closed plus one complaint with an unidentified date which most likely stems from 1993 and which was reviewed/investigated, and closed.
1994	2 complaints received, reviewed/investigated, and closed.
1998	1 complaint received, reviewed/investigated, and closed.
1999	2 complaints received, reviewed/investigated, 1 closed and 1 ultimately prosecuted resulting in dismissal by the court at the close of the government's case-in-chief.
2000	3 complaints received, reviewed/investigated, closed.
2001	1 complaint received, reviewed/investigated, and closed.
2002	1 complaint received, reviewed/investigated, and closed.

2003	1 complaint received, reviewed/investigated, and closed.
2006	7 complaints received, reviewed/investigated, and 5 closed, 1 prosecution pending, 1 investigation pending.
2007	1 complaint received, reviewed/investigated, and closed.
2008	48 complaints received, reviewed/investigated, 42 closed, 1 prosecuted resulting in convictions, 1 prosecution pending, 4 investigations pending.

INTERROGATORY NO. 30:

For each complaint listed in response to Interrogatory 29, describe: (i) the facts alleged; (ii) DOJ's investigatory actions; (iii) the basis of decision to pursue (or not) formal investigation; (iv) the basis to initiate litigation (or not); and (v) the basis for pursuit of ultimate resolution obtained.

RESPONSE:

In addition to the General Objections, the Department specifically objects to this Interrogatory on grounds of burdensomeness and materiality insofar as it seeks information dating back to 1965. The Department responds to this Interrogatory by reference to the produced documents related to the following actions identified in the Response to Interrogatory No. 29: (1) *United States v. Harvey*; (2) *United States v. North Carolina Republican Party, et al.*; (3) *United States v. Brown*; and (4) *United States v. New Black Panther Party, et al.* See also Response to Interrogatory No. 29, *supra*.

INTERROGATORY NO. 31:

Of those complaints listed in Interrogatory 29, how many have been investigated and/or litigated under 42 U.S.C. § 1973i(b), either solely or in conjunction with another statute or constitutional provision? Identify same.

RESPONSE:

In addition to the General Objections, the Department specifically objects to this Interrogatory on grounds of burdensomeness and materiality insofar as it seeks information

dating back to 1965. As to the following actions identified in the Response to Interrogatory No. 29, the Department responds: (1) *United States v. Harvey*; 42 U.S.C. § 1973i(b) claim in conjunction with claim under 42 U.S.C. § 1971(b); (2) *United States v. North Carolina Republican Party, et al.*, 42 U.S.C. § 1973i(b) claim in conjunction with claim under 42 U.S.C. § 1971(b); (3) *United States v. Brown*, 42 U.S.C. § 1973i(b) claim in conjunction with claim under Section 2 of the Voting Rights Act, 42 U.S.C. § 1973; and (4) *United States v. New Black Panther Party, et al.*, 42 U.S.C. § 1973i(b) claim. *See also* Response to Interrogatory No. 29.

INTERROGATORY NO. 32:

Explain the Voting Section's understanding of the elements and standards of a § 1973i(b) case.

RESPONSE:

The Department responds to this Interrogatory by reference to the court filings prepared by the Department in the following litigation identified in the Response to Interrogatory No. 29: (1) *United States v. Harvey*; (2) *United States v. North Carolina Republican Party, et al.*; (3) *United States v. Brown*; and (4) *United States v. New Black Panther Party, et al.*

INTERROGATORY NO. 33:

In a newspaper article in The Washington Times dated July 30, 2009, it is stated:

Associate Attorney General Thomas J. Perrelli, the No. 3 official in the Obama Justice Department, was consulted and ultimately approved the decision in May to reverse course and drop a civil complaint accusing three members of the New Black Panther Party of intimidating voters in Philadelphia during November's election...

Do you acknowledge that the aforesaid characterization is accurate? If you do not acknowledge that said characterization is accurate, describe all facts upon which you rely to support your contention.

RESPONSE:

In addition to the General Objections, the Department specifically objects to this Interrogatory on grounds that the term "aforesaid characterization" is ambiguous and potentially

subject to different interpretations. *See* Response to Interrogatory No. 4, *supra*.

INTERROGATORY NO. 34:

In The Weekly Standard magazine dated August 10, 2009, it is contended that:

In April [2009], a preliminary filing of default was filed by Justice lawyers with the court clerk. No concern or objection was raised within Justice. This decision was approved by both the Acting Assistant Attorney General for Civil Rights, Loretta King, and Steve Rosenbaum, previously Acting Deputy Assistant Attorney General for Civil Rights and recently returned to his post as Section Chief for Housing.

Do you acknowledge the characterization that both Loretta King and Steve Rosenbaum approved the filing of a request for default in the New Black Panther Party litigation is accurate? If you do not agree that the aforesaid characterization is accurate, state all facts upon which you rely to support your contention.

RESPONSE:

In addition to the General Objections, the Department specifically objects to this Interrogatory on grounds that the aforesaid characterization is ambiguous and potentially subject to different interpretations. *See* Response to Interrogatory No. 4, *supra*.

INTERROGATORY NO. 35:

Identify and describe in detail the basis for referring issues relating to the New Black Panther Party litigation to DOJ's Office of Professional Responsibility (OPR), including, but not limited to, an identification and description of any suspected acts of prosecutorial misbehavior or ethical breach which you believe require investigation. If there is an alternative basis for investigation by OPR, please identify and describe same.

RESPONSE:

Members of Congress requested that this matter be referred to the Department's Inspector General, who referred it to the Department's Office of Professional Responsibility, and that office initiated an investigation.

INTERROGATORY NO. 36:

Identify and describe in detail the alleged jurisdictional basis for the Department's Office of Professional Responsibility to review the decision-making process relating to the New Black Panther Party litigation.

RESPONSE:

The Office of Professional Responsibility ("OPR") is responsible for investigating allegations of misconduct involving Department attorneys that relate to the exercise of their authority to investigate, litigate, or provide legal advice, as well as allegations of misconduct by law enforcement personnel when such allegations are related to allegations of attorney misconduct within the jurisdiction of OPR. *See* 28 C.F.R. § 0.39.

INTERROGATORY NO. 37:

Identify and describe in detail any other instances in which DOJ argued that existence of an OPR investigation was a sufficient basis to cease Department cooperation with an inquiry and/or investigation by members of Congress and/or a federal investigatory agency such as the U.S. Commission on Civil Rights. Provide citations to all authorities upon which the Department relies to support its position.

RESPONSE:

In addition to the General Objections, the Department objects to this Interrogatory on grounds that its premise is incorrect. The Department is cooperating with all inquiries into this matter.

INTERROGATORY NO. 38:

Do you acknowledge that Assistant Attorney General for Civil Rights Loretta King discussed the New Black Panther Party litigation with Deputy Attorney General David W. Ogden and Associate Attorney General Thomas J. Perrelli? If so, describe in detail said communications.

RESPONSE:

See Response to Interrogatory No. 4, *supra*.

INTERROGATORY NO. 39:

In a letter dated July 24, 2009 to Gerald A. Reynolds, the Chairman of the United States Commission on Civil Rights, DOJ official Portia L. Roberson indicated:

We believe this injunction [in the Black Panther Party litigation] is tailored appropriately to the scope of the violation and the requirements of the First Amendment.

Please identify and describe in detail the First Amendment concerns arising out of the New Black Panther Party litigation including, but not limited to, whether such concerns related to (i) verbal comments made by the NBPP defendants; (ii) the weapon(s) carried by the same; (iii) the uniforms worn by said individuals; and/or (iv) a combination of any of the aforesaid. Cite all authorities upon which you rely to support your concerns.

RESPONSE:

The Department endeavors to ensure that all of the relief it proposes in litigation accords with the First Amendment as well as other provisions of the U.S. Constitution.

INTERROGATORY NO. 40:

Identify and describe in detail any other voter intimidation cases in which concerns were raised within the Department about the First Amendment rights of those believed to have intimidated voters.

RESPONSE:

See Response to Interrogatory No. 39, *supra*.

INTERROGATORY NO. 41:

In a letter dated July 24, 2009 to Gerald A. Reynolds, the Chairman of the United States Commission on Civil Rights, DOJ official Portia L. Roberson stated:

The decision was made after a careful and thorough review of the matter by the Acting Assistant Attorney General for Civil Rights, a career employee with nearly 30 years experience in the Department, including nearly 15 years as the career Deputy Assistant Attorney General for Civil Rights.

With regard to said statement, is it the position of the Department of Justice that the Acting Assistant Attorney General for Civil Rights was the ultimate decision maker with regard to New Black Panther Party litigation? If not, please identify any and all additional officials, as well as their role in said litigation.

RESPONSE:

See Response to Interrogatory No. 4, *supra*.

INTERROGATORY NO. 42:

Identify and describe in detail in what way, if any, Jerry Jackson's status as a poll watcher affected the Department's decision to dismiss him as a defendant in the New Black Panther Party litigation, including, but not limited to, whether status as a poll watcher excuses potential or alleged acts of voter intimidation.

RESPONSE:

See General Objections.

INTERROGATORY NO. 43:

Identify each witness interviewed by the Department relating to the incident that occurred on election day, 2008, in Philadelphia involving the NBPP.

RESPONSE:

See General Objections.

INTERROGATORY NO. 44:

Identify all career employees in the Civil Rights Division who recommended the ultimate relief sought in the New Black Panther Party litigation.

RESPONSE:

See General Objections.

INTERROGATORY NO. 45:

Identify all career employees in the Civil Rights Division who objected to the ultimate relief sought in the New Black Panther Party litigation.

RESPONSE:

See General Objections.

INTERROGATORY NO. 46:

Identify all persons not otherwise identified in your own answers to the above discovery requests who have personal knowledge of the circumstances surrounding (i) the election day activities of the NBPP; (ii) the Department's investigation of same; (iii) the New Black Panther Party litigation; (iv) the Department's decision-making process relating to said litigation; and/or (v) the resulting OPR investigation.

RESPONSE:

See General Objections.

INTERROGATORY NO. 47:

With respect to the November 2008 elections, it was reported that a major party congressional candidate in Orange County mailed a letter to 24,000 registered Latino voters that may have been designed to intimidate them from voting. The letter, written in Spanish, falsely stated that immigrants may not vote, and that the letter also declared "there is no benefit in voting." MALDEF asked DOJ to investigate.

With regard to said incident:

- (a) What division of DOJ, if any, received the complaints about these alleged acts of voter intimidation?
- (b) Was Section 11b, 42 U.S.C. § 1973i(b) considered as a potential legal strategy to pursue?
- (c) What action, if any did DOJ take in these actions?

RESPONSE:

The Department responds to this Interrogatory by reference to enclosed documents. *See also* Response to Document Request No. 44, *infra*.

INTERROGATORY NO. 48:

With respect to the November 2008 elections, it was reported that in Tucson alleged anti-migrant activists wore dark clothing with a badge-like emblem and carried a handgun in a holster. In addition, the men involved attempted to ask Latino voters questions, write down their personal information, and videotaped them and their license plates as they went to cast their vote. A man named Russell Dove, a local anti-migrant activist, acknowledged his participation in the effort to intimidate Latino voters.

With regard to said incident:

- (a) What division of DOJ, if any, received the complaints about these alleged acts of voter intimidation?
- (b) Was Section 11b, 42 U.S.C. § 1973i(b) considered as a potential legal strategy to pursue?
- (c) What action, if any, did DOJ take in these actions?

RESPONSE:

The Department responds to this Interrogatory by reference to enclosed documents. *See also* Response to Document Request No. 44, *infra*.

INTERROGATORY NO. 49

With respect to the November 2008 elections, in Grand Coteau, Louisiana, in a racially heated mayoral election, a five-foot cross was erected outside the town hall, and lit on fire, on November 3, 2006. This was staged on public property, and many African Americans felt the cross-burning was a tool to intimidate minority voters from freely exercising their right to vote.

With regard to said incident:

- (a) What division of DOJ, if any, received the complaints about these alleged acts of voter intimidation?
- (b) Was Section 11b, 42 U.S.C. § 1973i(b) considered as a potential legal strategy to pursue?

(c) What action, if any, did DOJ take in these actions?

RESPONSE:

The Department responds to this Interrogatory by reference to enclosed documents. *See also* Response to Document Request No. 44, *infra*.

DOCUMENT REQUEST NO. 1:

Since the inception of the Voting Rights Act, all materials used to train Agency staff on voter intimidation issues.

RESPONSE:

In addition to the General Objections, the Department specifically objects to this Document Request on grounds of burdensomeness and materiality insofar as it seeks information dating back to 1965. The Department encloses responsive documents yielded by its search to date.

DOCUMENT REQUEST NO. 2:

Since the inception of the Voting Rights Act, all documents and/or print-outs from tracking systems or other databases identifying and detailing the progress of complaints, investigations, and/or litigation involving voter intimidation.

RESPONSE:

In addition to the General Objections, the Department specifically objects to this Document Request on grounds of burdensomeness and materiality insofar as it seeks information dating back to 1965. The Department refers the Commission to the documents produced in response to Document Request No. 44, *infra*.

DOCUMENT REQUEST NO. 3:

Any and all documents describing the facts of the New Black Panther Party litigation.

RESPONSE:

The Department encloses responsive documents yielded by its search to date. *See also* Response to Document Request No. 50, *infra*.

DOCUMENT REQUEST NO. 4:

Any and all documents providing incident reports or witness statements with regard to the circumstances which gave rise to the New Black Panther Party litigation.

RESPONSE:

See General Objections.

DOCUMENT REQUEST NO. 5:

All documents evidencing any investigation conducted by the Department, or on its behalf, relating to the actions of the NBPP in Philadelphia during the 2008 presidential election.

RESPONSE:

See General Objections.

DOCUMENT REQUEST NO. 6:

All documents evidencing any reports of alleged voting intimidation (or other voting-related improprieties) by members of the NBPP, other than those that gave rise to the New Black Panther Party litigation.

RESPONSE:

See General Objections.

DOCUMENT REQUEST NO. 7:

All documents evidencing any reports or summaries of events or descriptions received by you from any third party with regard to the activities, practices and/or actions of the NBPP generally, and/or those named as defendants in the New Black Panther Party litigation.

RESPONSE:

See General Objections.

DOCUMENT REQUEST NO. 8:

All documents evidencing any additional facts learned by you, subsequent to the filing of the complaint in the New Black Panther Party litigation, that influenced the Department's decision to drop three of the defendants as parties and to reduce the relief sought.

RESPONSE:

In addition to the General Objections, the Department specifically objects to this Document Request on grounds that the phrase "reduce the relief sought" is vague, ambiguous,

and subject to different interpretations.

DOCUMENT REQUEST NO. 9:

Any and all documents evidencing communications by or between any member of the Voting Rights Section and Loretta King relating to the NBPP and/or the New Black Panther Party litigation.

RESPONSE:

See General Objections.

DOCUMENT REQUEST NO. 10:

Any and all documents evidencing communications by or between any member of the Civil Rights Division and David W. Ogden relating to the NBPP and/or the New Black Panther Party litigation.

RESPONSE:

See General Objections.

DOCUMENT REQUEST NO. 11:

Any and all documents evidencing communications by or between any member of the Civil Rights Division and Thomas J. Perrelli relating to the NBPP and/or the New Black Panther Party litigation.

RESPONSE:

See General Objections.

DOCUMENT REQUEST NO. 12:

Any and all documents evidencing communications by anyone within the Department with the Attorney General of the United States with regard to the New Black Panther Party litigation.

RESPONSE:

See General Objections.

DOCUMENT REQUEST NO. 13:

Any and all internal memoranda evaluating potential charges in the New Black Panther Party litigation.

RESPONSE:

See General Objections.

DOCUMENT REQUEST NO. 14:

Any and all internal memoranda or other documents evidencing the decision (or potential decision) to dismiss any defendants, or reduce the relief sought, against any defendant in the New Black Panther Party litigation.

RESPONSE:

In addition to the General Objections, the Department objects to this Document Request on grounds that the Document Request is burdensome and that the phrase “reduce the relief sought” is vague, ambiguous, and subject to different interpretations.

DOCUMENT REQUEST NO. 15:

All documents evidencing the original investigative memo (a/k/a the “J Memo”) relating to the New Black Panther Party litigation.

RESPONSE:

See General Objections.

DOCUMENT REQUEST NO. 16:

All documents evidencing communication by or between any member of the Civil Rights Division and the appellate section relating to the New Black Panther Party litigation.

RESPONSE:

See General Objections.

DOCUMENT REQUEST NO. 17:

All documents evidencing any review by the appellate section of any aspect of the New Black Panther Party litigation.

RESPONSE:

See General Objections.

DOCUMENT REQUEST NO. 18:

All documents evidencing any other voter intimidation cases that have been reviewed by the appellate section prior to trial or the entry of a default judgment.

RESPONSE:

See General Objections; *see also* Response to Interrogatory No. 9, *supra*.

DOCUMENT REQUEST NO. 19:

All documents submitted to DOJ's Office of Professional Responsibility as part of the investigation relating to the New Black Panther Party litigation.

RESPONSE:

See General Objections.

DOCUMENT REQUEST NO. 20:

All documents evidencing any research or investigation by DOJ with regard to the New Black Panther Party and/or its affiliates.

RESPONSE:

See General Objections.

DOCUMENT REQUEST NO. 21:

A copy of the DOJ publication "Federal Prosecution of Election Offenses."

RESPONSE:

The Department encloses a copy of the Department of Justice publication *Federal Prosecution of Election Offenses*, which is also available at the website address:

<http://www.justice.gov/criminal/pin/docs/electbook-rvs0807.pdf>.

DOCUMENT REQUEST NO. 22:

All documents evidencing your contention, as set forth in the letter of July 24, 2009 from Portia L. Roberson to Gerald A. Reynolds, Chairman of the United States Commission on Civil

Rights, that “Jerry Jackson...was a resident of the apartment building where the polling place was located...”

RESPONSE:

The Department no longer contends that Jerry Jackson was a resident of the building where the prohibited activities occurred. The Department subsequently corrected the statement referenced in this Document Request. *See* Letter to Honorable Jeff Sessions from Ronald Weich (Sept. 9, 2009) produced in response to Document Request No. 33, *infra*.

DOCUMENT REQUEST NO. 23:

All documents relating to your investigation of the circumstances which gave rise to the New Black Panther Party litigation.

RESPONSE:

See General Objections.

DOCUMENT REQUEST NO. 24:

All video evidence obtained by the Department relating to the New Black Panther Party generally, as well as the actions of the New Black Panther Party in Philadelphia on election day, 2008.

RESPONSE:

See General Objections.

DOCUMENT REQUEST NO. 25:

All documents evidencing concern over First Amendment implications of voter intimidation cases. This request includes, but is not limited to, the circumstances surrounding the New Black Panther Party litigation.

RESPONSE:

See General Objections.

DOCUMENT REQUEST NO. 26:

All documents evidencing any other voter intimidation cases in which concerns were raised within the Department about the First Amendment rights of those alleged to have intimidated voters.

RESPONSE:

See General Objections.

DOCUMENT REQUEST NO. 27:

All documents evidencing any other voter intimidation cases in which the status of an individual as a poll watcher affected the Department's decision to dismiss or lessen charges relating to voter intimidation.

RESPONSE:

See General Objections.

DOCUMENT REQUEST NO. 28:

All documents evidencing the decision to limit injunctive relief in the New Black Panther Party litigation to a single municipality and only through November 2012.

RESPONSE:

The Department refers the Commission to the Memorandum in Support of Motion for Default Judgment produced in response to Document Request No. 50, *infra*.

DOCUMENT REQUEST NO. 29:

All documents evidencing communications by or between the Department and any third parties relating to the New Black Panther Party litigation, including, but not limited to, communications with Kristen Clarke of the NAACP Legal Defense Fund.

RESPONSE:

The Department encloses responsive documents yielded by its search to date.

DOCUMENT REQUEST NO. 30:

Any and all documents detailing Department protocol with regard to third-party contacts relating to pending litigation.

RESPONSE:

The Department responds to this Document Request as follows: Department employees are subject to various federal regulations which guide their conduct. These include, but may not be limited to, 28 C.F.R. Part 45 (DOJ Employee Responsibilities); 5 C.F.R. § 735 (Employee Responsibilities and Conduct for the Executive Branch); 5 C.F.R. § 2635 (Standards of Ethical Conduct for Employees of the Executive Branch); 5 C.F.R. § 3801 (Supplemental Standards of Ethical Conduct for Employees of the Department of Justice); 28 C.F.R. Part 77 (Ethical Standards for Attorneys for the Government); and 28 C.F.R. § 50.2 (Release of Information by Personnel of the Department of Justice Relating to Criminal and Civil Proceedings). In addition, each Department attorney is subject to rules and regulations of the state bar(s) of which he or she is a member. The above-referenced regulations are publicly available.

DOCUMENT REQUEST NO. 31:

All documents evidencing all other instances in which DOJ has consulted with outside third parties, with no pre-existing role or relationship, with regard to voter intimidation cases.

RESPONSE:

In addition to the General Objections, the Department specifically objects to this Document Request on the ground that the term “consulted” is ambiguous. However, in an effort to assist the Commission, the Department refers the Commission to the documents produced in response to Document Request Nos. 29 and 33, *infra*, which reflect communications with third parties.

DOCUMENT REQUEST NO. 32:

Any and all documents evidencing communications by or between the Department and any member of the Executive Office of the President and/or the White House with regard to the New Black Panther Party litigation.

RESPONSE:

See General Objections.

DOCUMENT REQUEST NO. 33:

Any and all documents evidencing communications by or between the Department and any member of Congress with regard to the New Black Panther Party litigation.

RESPONSE:

The Department encloses responsive documents yielded by its search to date.

DOCUMENT REQUEST NO. 34:

Any and all documents evidencing communications by or between the Department and Michael Coard.

RESPONSE:

The Department's search to date has yielded no documents responsive to this Document Request.

DOCUMENT REQUEST NO. 35:

Any and all documents evidencing communications by or between the Department and Malik Zulu Shabazz.

RESPONSE:

The Department encloses responsive documents yielded by its search to date.

DOCUMENT REQUEST NO. 36:

Any and all documents evidencing communications by or between the Department and Minister King Samir Shabazz (a/k/a Maurice Heath).

RESPONSE:

The Department encloses responsive documents yielded by its search to date.

DOCUMENT REQUEST NO. 37:

Any and all documents evidencing communications by or between the Department and Jerry Jackson.

RESPONSE:

The Department encloses responsive documents yielded by its search to date.

DOCUMENT REQUEST NO. 38:

All documents evidencing your contention that the decision to dismiss defendants and to reduce the relief sought in the New Black Panther Party litigation was made by career employees at the Department.

RESPONSE:

In addition to the General Objections, the Department specifically objects to this Document Request on grounds that the phrase “reduce the relief sought” is vague, ambiguous, and subject to different interpretations. The Department encloses responsive documents yielded by its search to date related to the decision to dismiss three defendants in *United States v. New Black Panther Party for Self Defense*, Civil Action No. 2:09-cv-0065 (E.D. Pa.).

DOCUMENT REQUEST NO. 39:

Any and all documents evidencing draft complaints or pleadings with regard to the New Black Panther Party litigation.

RESPONSE:

See General Objections.

DOCUMENT REQUEST NO. 40:

All documents evidencing communications by or between the Voting Rights Section and any other portion of the Department with regard to the New Black Panther Party litigation.

RESPONSE:

See General Objections.

DOCUMENT REQUEST NO. 41:

All documents evidencing any legal analysis relating to the New Black Panther Party litigation.

RESPONSE:

The Department refers the Commission to the Department's filings produced in response to Document Request No. 50, *infra*.

DOCUMENT REQUEST NO. 42:

All documents evidencing the procedures and/or mechanisms in place within the Department, since the inception of the Voting Rights Act, to receive, investigate, and/or resolve complaints regarding voter intimidation.

RESPONSE:

In addition to the General Objections, the Department specifically objects to this Document Request on grounds of burdensomeness and materiality insofar as it seeks information dating back to 1965. The Department encloses responsive documents yielded by its search to date. *See also* Response to Document Request No. 1, *supra*.

DOCUMENT REQUEST NO. 43:

All documents evidencing claims within the Voting Section's ICM system relating to voter intimidation cases and/or the New Black Panther Party litigation.

RESPONSE

The Department refers the Commission to the documents produced in response to Document Request No. 44, *infra*.

DOCUMENT REQUEST NO. 44:

All documents evidencing voter intimidation complaints received, investigated, or litigated by the Department, from the inception of the Voting Rights Act to the present.

RESPONSE:

In addition to the General Objections, the Department specifically objects to this Document Request insofar as it seeks information dating back to 1965 on grounds of burdensomeness and materiality. The Department encloses responsive documents yielded by its search to date.

DOCUMENT REQUEST NO. 45:

All documents evidencing the Voting Section's understanding of the elements and standards of a Section 1973i(b) case.

RESPONSE:

In addition to the General Objections, the Department specifically objects to this Document Request insofar as it seeks information dating back to 1965 on grounds of burdensomeness and materiality. The Department refers the Commission to the documents produced in Response to Interrogatory No. 29, *supra*.

DOCUMENT REQUEST NO. 46:

All documents evidencing DOJ attempts to pursue actions pursuant to Section 1973i(b).

RESPONSE:

The Department encloses responsive documents yielded by its search to date.

DOCUMENT REQUEST NO. 47:

All documents evidencing the jurisdictional basis for the Department's Office of Professional Responsibility to review the decision-making process relating to the New Black Panther Party litigation.

RESPONSE:

The Department refers the Commission to 28 C.F.R. § 0.39 and Attorney General Order 1931-94. A copy of Attorney General Order 1931-94 can be found at <http://www.justice.gov/ag/readingroom/agencymisconducta.htm>.

DOCUMENT REQUEST NO. 48:

All documents evidencing any other instances in which DOJ argued that the existence of an OPR investigation was a sufficient basis to stop an inquiry and/or investigation by Congress and/or a federal investigatory agency such as the U.S. Commission on Civil Rights.

RESPONSE:

In addition to the General Objections, the Department objects to this Document Request on grounds that its premise is incorrect. The Department is cooperating with all inquiries into this matter.

DOCUMENT REQUEST NO. 49:

All documents discussing or examining the legal authority (or otherwise) of the Department to cease cooperation with members of Congress and/or the U.S. Commission on Civil Rights based on a pending investigation by the Office of Professional Responsibility. This request includes, but is not limited to, the OPR investigation related to the New Black Panther Party litigation.

RESPONSE:

In addition to the General Objections, the Department objects to this Document Request on grounds that its premise is incorrect. The Department is cooperating with all inquiries into this matter.

DOCUMENT REQUEST NO. 50:

All documents evidencing the pleadings filed in the New Black Panther Party litigation.

RESPONSE:

The Department encloses responsive documents yielded by its search to date.

DOCUMENT REQUEST NO. 51:

All documents evidencing that Jerry Jackson was, or is, a registered poll watcher in Philadelphia.

RESPONSE:

The Department encloses a responsive document yielded by its search to date.



UNITED STATES COMMISSION ON CIVIL RIGHTS

624 NINTH STREET, NW, WASHINGTON, DC 20425
www.usccr.gov

December 8, 2009

VIA HAND DELIVERY

Joseph H. Hunt, Esq.
Director, Federal Programs Branch
Civil Division
United States Department of Justice
20 Massachusetts Avenue, NW
Washington, DC 20001

Re: United States Commission on Civil Rights' Statutory Enforcement Report
on the Implication of DOJ's Actions in the New Black Panther Party
Litigation for Enforcement of Section 11(b) of the Voting Rights Act

Dear Mr. Hunt:

Reference is made to your letter of November 24, 2009, relating to the above-noted matter.

Pursuant to your request that future communications from the U.S. Commission on Civil Rights ("the Commission") be directed to you, enclosed please find a set of Interrogatories and Requests for Production of Documents relating to the above-noted matter. These requests are accompanied by a subpoena directed to the Department.

In your letter, you seem to contend that there is a question of the Commission's authority to issue subpoenas to the Department or its employees. In this regard, your attention is directed to 42 U.S.C. § 1975a(e)(2). This provision grants the Commission the authority to issue subpoenas for the attendance of witnesses and the production of written documents or other materials. This provision in no way prohibits or excludes requests directed to federal agencies or their employees.¹ Indeed, you should be aware that, as recently as 2004, the Commission issued a subpoena, signed by then-Chair Mary Frances Berry, directed to R. Alex Acosta of the Civil

¹ A conflict of interest may exist with regard to the Department's enforcement of Commission subpoenas directed to the Department of Justice. Under 42 U.S.C. § 1975a(e)(2), the decision whether to initiate a judicial action to enforce a subpoena issued by the Commission rests in the discretion of the Attorney General. This would put the Attorney General in the untenable position of seeking an action against a Department under his supervision. Accordingly, in the event a conflict develops, it is suggested that the agency heads consult as to possible alternative methods to resolve such dispute.

Rights Division.² In that instance, the Department met with staff from the Commission and fully cooperated in producing the requested information.

In the present case, beginning in June 2009, the Commission has consistently requested the voluntary production of information from the Department, without any success. It was only after the Department, by letter dated September 9, 2009, formally indicated that no information would be forthcoming (pending completion of an investigation by the Office of Professional Responsibility), and subsequently ignored the Commission's letter of September 30, 2009, that subpoenas were issued by the Commission. While your letter refers to an ongoing "dialogue" between the Department and the Commission, it is the dearth of cooperation on the part of the Department that has resulted in the Commission's need to issue subpoenas.

There is particularly no justification for the ongoing delay in producing documents relating to past voter intimidation investigations. Despite DOJ's contention that there are few reported cases, the Commission has repeatedly explained its need for documents relating to all past investigations, filings, settlements, consent decrees, etc. in order to assess whether the DOJ's actions in the NBPP case constitute a change of policy.

In making the attached interrogatory and document requests, we are both mindful of the sensitivity of the subject matter involved and aware that, in response to similar requests, the Department has raised various concerns and matters of privilege. While such considerations carry weight, cooperation with Commission investigations is a mandatory statutory obligation. *See* 42 U.S.C. § 1975b(e) ("All federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties."). Moreover, due to the unique investigative role of the Commission – akin to that of a congressional committee³ – disclosure to the Commission of the information sought is both proper and required.

² Indeed, in discussing the Commission's policies with regard to subpoenas, Ms. Berry has stated:

We [the Commission] subpoena everyone who comes before us, and we do that even though some people are willing.

Transcript of Commission Meeting of January 11, 2002, p. 7.

³ Numerous courts have likened the Commission's investigatory function to that of a congressional oversight committee. *See Hannah v. Larche*, 363 U.S. 420, 489-90 (1960) (The concurrence noted that the Commission was "charged with responsibility to gather information as a solid foundation for legislative action," and that the hearing in question was "in effect a legislative investigation.") (Frankfurter, J, concurring). More explicitly, "Congress has entrusted the Commission with [the role of] investigating and appraising general conditions and reporting them to Congress so as to inform the legislative judgment. Resort to a legislative commission as a vehicle for proposing well-founded legislation and recommending its passage to Congress has ample precedent." *Id.* at 492-93. (Frankfurter, J, concurring). *See also Berry v. Reagan*, No. 83-3182, 1983 WL 538, *2 (D.D.C. 1983) ("[I]n making investigations and reports thereon for the information of Congress under [the Commission's statute], in aid of the legislative power, it acts as a legislative agency.") (internal citation omitted). *See also Buckley v. Valeo*, 424 U.S. 1, 137 (1976) (Powers and functions that "are essentially of an investigative and informative nature" fall "in the same general category as those powers which Congress might delegate to one of its own committees.")

In this regard, production of the requested documents and information to the Commission is in keeping with the practice of disclosure to congressional committees over the years.

[I]n the last 85 years Congress has consistently sought and obtained deliberative prosecutorial memoranda, and the testimony of line attorneys, FBI field agents and other subordinate agency employees regarding the conduct of open and closed cases in the course of innumerable investigations of Department of Justice activities. These investigations have encompassed virtually every component of the DOJ, and all officials, and employees, from the Attorney General down to subordinate level personnel.

CRS Report for Congress, *Congressional Investigations of the Department of Justice, 1920-2007: History, Law, and Practice*, p. 2 (Oct. 3, 2007).⁴ As the CRS notes, “[a]n inquiring committee need only show that the information sought is within the broad subject matter of its authorized jurisdiction, is in aid of a legitimate legislative function, and is pertinent to the area of concern.” *Id.*

In addition, while the Commission’s investigation primarily concerns the Department’s policies, procedures, standards and actions in enforcing section 11(b) of Voting Rights Act, the fact that the Attorney General has referred this matter to the Office of Professional Responsibility (OPR) raises questions regarding the possibility of misconduct, as have related press reports. As reflected on the agency’s website, “OPR reviews allegations of attorney misconduct involving violation of any standard imposed by law, applicable rules of professional conduct, or Departmental policy.” Given the nature of OPR’s jurisdiction, any perceived misconduct within its purview relating to matters of civil rights enforcement strengthens the requisite nature of the Commission’s discovery requests and weakens any claim that matters must be protected from review. *See In re Sealed Case*, 121 F.3d 729, 738 (D.D.C. 1997); CRS Report at 31.

As to possible concern regarding revelations of government decision-making considerations, press reports indicate that the Department consulted with outside third parties, such as Kristen Clarke of the NAACP Legal Defense Fund. No privilege exists that would allow disclosure by the Department of information to an outside group, but prohibit same to an investigatory agency with a statutory mandate.⁵

⁴ Because the closest corollary to a Commission investigation is an investigation by a congressional committee, the CRS memorandum is uniquely instructive in analyzing other possible objections to the disclosure of information.

⁵ To the extent that the Department does seek to assert any privilege, the attached discovery requests require that each and every assertion of an alleged privilege identify with specificity the nature of the privilege raised, the basis for the assertion, and any legal authorities in support thereof. In addition, the instructions require that the Department indicate whether any claim of executive privilege has been specifically authorized by the President. *See* Instruction No. 10.

Joseph H. Hunt, Esq.
December 8, 2009
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But to the extent that some documents or other communications may involve internal pre-decisional deliberative discussions, it should be understood that: (1) as between the Commission and the Department the only legal privilege that exists is the President's constitutionally-based executive privilege,⁶ (2) the executive privilege must be invoked by the President, or possibly by a Department Head on the President's behalf, (3) the President should not routinely invoke executive privilege, and may not do so to shield potential wrongdoing, and (4) the President's executive privilege is not absolute and should not be read broadly to frustrate the core functions of an investigative agency.

With regard to documents or communications that arguably might fall within the President's executive privilege, we ask that you confirm early on whether the President has chosen to invoke executive privilege to shield particular information from the Commission. If not, there is no reason to argue about what is and is not subject to that privilege.

Lastly, you have requested information relating to the Commission's deliberation regarding this matter. In this regard, please be informed that the Commission's authorization of the subpoenas occurred on October 30, 2009, but the Commission has discussed and approved previous information requests at several of its meetings, as reflected in previous letters to the Department. Copies of the applicable transcript(s) will be provided under separate cover when finalized. As to coordination with the Department regarding information that might eventually become publicly disclosed, please be informed that affected agencies are given the opportunity to review Commission reports prior to their release pursuant to the agency's internal Administrative Instruction 1-6.

We look forward to working with the Department to facilitate the provision of the requested materials to the Commission, while at the same time addressing any legitimate confidentiality concerns. To that end, it is requested that you please contact the undersigned to schedule a meeting in the next two weeks to (i) identify those discovery requests as to which there is no dispute; (ii) resolve any legitimate concerns that might exist; and (iii) reschedule the previously-noted depositions of Department personnel. In addition, prior to any such meeting, it is requested that you please identify any specific instance in which the pendency of an OPR investigation

⁶ With regard to the existence of other common-law privileges, the Department's Office of Legal Counsel has opined that with regard to inter-branch investigations "the interests implicated by the attorney-client privilege generally are subsumed under a claim of executive privilege . . . , and the considerations of separation of powers and effective performance of constitutional duties determine the validity of the claim of privilege." 6 U.S. Op. Off. Legal Counsel 481, n.24 (Aug. 2, 1982). Attorney-client privilege "is not usually considered to constitute a separate basis [from executive privilege] for resisting congressional demands for information." 10 U.S. Op. Off. Legal Counsel 68, 78 (April 28, 1986). Indeed, Congress has never taken the position, nor have the courts held, that congressional investigators must recognize the attorney-client privilege when conducting an investigation that involves the executive branch. Whether to recognize such a claim rests within the sound discretion of the congressional committee. From a separation of powers perspective, the President's claim of privilege is even weaker with respect to the Commission, half of whose Commissioners are appointed by the President.

Joseph H. Hunt, Esq.
December 8, 2009
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precluded the disclosure of requested information from Congress or an independent federal agency.

Thank you for your anticipated cooperation.

Sincerely,

David P. Blackwood
General Counsel

Attachments

cc: Chairman Gerald A. Reynolds
Vice Chair Abigail Thernstrom
Commissioner Todd F. Gaziano
Commissioner Gail Heriot
Commissioner Peter N. Kirsanow
Commissioner Arlan D. Melendez
Commissioner Ashley L. Taylor, Jr.
Commissioner Michael J. Yaki
Martin Dannenfels, Staff Director

DATE: December 8, 2009

TO: U.S. Department of Justice
c/o Joseph H. Hunt, Director, Federal Programs Branch

FROM: U.S. Commission on Civil Rights
David P. Blackwood, General Counsel

SUBJECT: U.S. Commission on Civil Rights' Statutory Enforcement Report on
the Implications of DOJ's Actions in the New Black Panther Party
Litigation for Enforcement of Section 11(b) of the Voting Rights Act

Pursuant to 42 U.S.C. § 1975a(e)(4) and § 1975b(e), the United States Commission on Civil Rights (the "Commission"), through its General Counsel, David P. Blackwood, requests that the U.S. Department of Justice answer fully, in writing and under oath, each of the following Interrogatories and Document Requests and serve a copy of the responses and objections, if any, on counsel for the Commission on or before January 11, 2010 at the offices of the U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Suite 620, Washington, DC 20425.

INSTRUCTIONS AND DEFINITIONS

1. These requests for information seek information available to the U.S. Department of Justice and its employees, agents, and representatives.
2. The United States Commission on Civil Rights shall be referred to as the "U.S. Commission on Civil Rights," the "Commission," or the "agency."
3. The United States Department of Justice shall be referred to as "DOJ" or the "Department."
4. The Civil Rights Division of the United States Department of Justice shall be referred to as "the Civil Rights Division."

5. The Voting Rights Section of the Civil Rights Division of the United States Department of Justice shall be referred to as “the Voting Rights Section.”
6. The New Black Panther Party for Self-Defense shall be referred to as “NBPP” or the “New Black Panther Party.”
7. “The New Black Panther Party litigation” shall refer to the case styled The United States of America v. New Black Panther Party for Self Defense, et al., Civil Action No. 2:09-cv-0065 in the United States District Court for the Eastern District of Pennsylvania.
8. If any document responsive to this request was, but is no longer, in your possession, custody or control, please furnish a description of each such document and indicate the manner and circumstances under which it left your possession, custody, and control and state its present location and custodian, if known.
9. If for any request there is no responsive document in the Department’s possession, custody, or control, state whether documents that would have been responsive were destroyed or mislaid, and, if so, the circumstances under which they were destroyed or mislaid.
10. State the basis for any objection to responding to any discovery request, together with any legal authorities or precedents upon which DOJ relies to support said objection. In the event that the Department objects to only part of a discovery request, the Department is required to furnish all information requested by the discovery request that is not included within the partial objection.

If any claim of privilege is raised relating to any document or information request, identify with specificity the privilege asserted, any legal authorities relied upon, and indicate whether any privilege so asserted can be addressed by agreements of confidentiality between the parties. If any claim of executive privilege is raised, identify the highest official within the Department connected with the specific document or information, and indicate whether the President of the United States has specifically exercised said privilege.

In addition, for all documents or information withheld pursuant to an objection or a claim of privilege, identify:

- A. the author's name and title or position;
 - B. the recipient's name and title or position;
 - C. all persons receiving copies of the document;
 - D. the number of pages of the document;
 - E. the date of the document;
 - F. the subject matter of the document; and the basis for the claimed privilege.
11. These discovery requests are continuing in nature, and to the extent that DOJ acquires new information on or before April 2, 2010 that is responsive to these requests, the Department is required to supplement its response.
12. Where the name or identity of a person is requested, please provide the full name, home and business addresses, and home and business telephone numbers of such person. If the name requested is that of a corporation, please state the full name of the corporation, where it is incorporated, and its principal place of business.

13. Where knowledge or information in possession of a party is requested, such request includes the knowledge of the party's agents, employees, representatives, officers and, unless privileged, its attorneys.
14. The pronoun "you" refers to the party to whom these Interrogatories are addressed and to the persons mentioned in paragraph "13" above.
15. The terms "identify," "identity" and "identification," when referring to a natural person, mean to provide an identification sufficient to serve such person with process to require his or her attendance in federal district court, and shall include without limitation his or her full name, present or last known address, present or last known business affiliation, title or occupation, and each of his or her positions during the applicable period of time covered by any answer referring to such person. When used in reference to a writing or document, the referenced terms (including, without limitation, any business records) mean to give a sufficient characterization of such writing or document so as to properly identify it in a subpoena issued pursuant to the Federal Rules of Civil Procedure, and shall include, without limitation, the following information with respect to each document:
 - A) the date appearing on such document, and if it has no date, the answers shall so state and shall give the date or approximate date such document was prepared;
 - B) the identity or descriptive code, file number, bates number, title or label of such document;
 - C) the general nature and description of such document, and if it was unsigned, the answer shall so state and shall identify the person or persons who prepared it;

- D) the name of the person to whom each such document was addressed and the name of each person other than such addressee to whom such document or copies thereof were given or sent;
 - E) the name and address of the person having present possession, custody or control of such document; and
 - F) whether or not any draft, copy or reproduction of such document contains any postscripts, notations, change or addendum not apparent on the document itself, and if so, the answer shall give the description of each draft, copy or reproduction.
17. Provide the following information in chronological order with respect to each oral communication which is the subject matter in whole or in part of any discovery request addressed to you:
- A) who was present;
 - B) the date thereof;
 - C) where the oral communication occurred;
 - D) what was said by each person during such conversation, and the order in which it was said, identifying what was said by each person involved in the conversation.
18. The term “person” as used herein means, in plural as well as singular, any natural person, firm, association, board, agency, department, partnership, corporation, or other form of legal entity, unless the context indicates otherwise.
19. The terms “writing” and/or “document” as used herein means all records, papers, books, transcriptions, pictures, drawings or diagrams of any nature, whether transcribed by hand or some mechanical, electronic, photographic or other means, as well as sound reproductions of oral statements or conversations by whatever means made, whether in your actual or constructive possession or control or not, relating or pertaining in any way to the subject matters in connection with which

it is used and includes originals, file copies, or other copies no matter how prepared and all drafts prepared in connection with such writing, whether used or not, including by way of illustration and not by way of limitation, the following: books, records, lists, receipts, contracts, agreements, expense accounts, sound and tape recordings, records of electronic communications (whether in electronic form or otherwise), memoranda (including written memoranda of telephone conversations and other conversations, discussions, meetings, agreements, acts and activities), minutes, plans, diaries, computer printouts, calendars, desk pads, scrapbooks, notebooks, letters, communications, correspondence, bulletins, complaint circulars, forms, opinions or reports of consultants, pamphlets, notices, statements, journals, summaries or reports of investigations or negotiations, postcards, telegrams, telex messages, reports, intra-office or inter-office communications, test results, findings or reports, and any and every other method by which information is recorded and/or transmitted, including, but not limited to, any recorded, transcribed, punched, computerized, filmed, and/or graphic matter, however produced and/or reproduced, filings with any agency, department or court, photostats, microfilm, maps, deposition transcripts, affidavits, and all other writings whether prepared by you for your own use or for transmittal or received by you. If any such writings and/or documents are maintained in folders, produce the file folders containing such data, including the precise order in which such items are contained in the file folder and all wording on each such file folder.

20. The term “present time” as used herein means the date on which these discovery requests were served on the Department.

21. The term “the facts upon which you rely,” used in reference to any allegation or legal theory, contention, denial, etc., refers to a full and complete statement of all evidence within your knowledge upon which the Department relies to support its position or statements. It also requires the Department to “identify,” pursuant to Paragraph “15” above, those individuals with knowledge of these facts and all documents reflecting these facts relied upon by you, and if the facts relied upon are related to an oral communication, then provide a statement of (i) the name, address, and business position of each and every person who participated in such communication, whether a speaker, hearer, or overhearer; (ii) the date, time and place of such oral communication; and (iii) the subject matter of such oral communication with sufficient particularity to reveal and make understandable each and every subject matter referred to and the subject of each such oral communication. The failure of any discovery request which requests “the facts upon which you rely” to request the identity of individuals or documents, or to state the substance of any oral communication upon which you rely, should not be construed as a waiver of the requirements set forth in this paragraph.
22. “Communication” means any oral or written exchange of words, thoughts, or ideas between two or more persons, whether person-to-person, in a group, by telephone, by letter, by electronic mail, by telex, or by any other process. All such communications in writing shall include, without limitation, printed, typed, hand written or other readable documents, correspondence, memos, reports, contracts, both initial and subsequent diaries, log books, minutes, notes, studies, surveys and forecasts.

23. When appropriate in the context of a discovery request or a response thereto, the singular shall mean the plural, and the masculine gender shall mean the feminine, and vice versa.
24. The terms “and” and “or” shall be interpreted conjunctively or disjunctively so as to require, in each context, the most complete and inclusive response.
25. Whenever in response to these discovery requests, reference is made to a natural person, state his or her full name and present address, if known, and the present or last known business position and affiliation.
26. Unless otherwise indicated, these discovery requests refer to the time, place and circumstances of the occurrence mentioned or complained of in the pleadings to the New Black Panther Party litigation, as well as the related DOJ investigation and decision-making process relating to said litigation.
27. If any responsive documents are available electronically, please provide a current Internet address whereby such document may be downloaded or otherwise obtained.

INTERROGATORIES

1. Identify all DOJ personnel who have worked on the New Black Panther Party litigation. This request includes, but is not limited to: (i) those DOJ personnel who interviewed witnesses in Philadelphia on election day; (ii) all DOJ personnel directly assigned to said litigation; (iii) those individuals who exercised decision-making authority relating to same; and (iv) all individuals in the appellate section who reviewed any aspect of said litigation. For each individual identified, indicate whether said person is a career or political employee.

2. Identify and describe in detail the decision-making process within DOJ relating to the New Black Panther Party litigation. This request includes, but is not limited to, the decision-making processes that: (i) led to the initial filing of said litigation; (ii) the decision to seek a default; (iii) the decision to delay seeking a default judgment; (iv) the decision to seek review by the appellate section; (v) the decision to review the relief sought in the original complaint; and (vi) the decision to dismiss certain defendants and to reduce the relief sought against the remaining defendant.

3. Describe the process for investigating and evaluating voter intimidation cases within the Department, including the determination of whether to pursue litigation. If this process was not followed to any extent with regard to the New Black Panther Party litigation, identify and describe the manner in which the process was not followed.

4. With regard to the New Black Panther Party litigation, identify and describe in detail: a) the factors involved in the initial charging decision; b) the factors involved in the decision not to pursue a default judgment against three of the initial four defendants; and c) the factors involved in the decision to limit the preventative relief sought against Minister King Samir Shabazz (a/k/a Maurice Heath) to a Philadelphia-based injunction.

5. Identify all communications, whether oral or written, within the Department relating to the New Black Panther Party litigation. This request includes, but is not limited to, communications concerning (i) the initial decision to file the complaint; (ii) the merits of said litigation; (iii) the decision to seek a default; (iv) the decision to delay seeking a default judgment; (v) the decision to seek review by the appellate section; (vi) the decision to review the relief sought in the original complaint; and (vii) the

decision to dismiss certain defendants and to reduce the relief sought against the remaining defendant.

6. Identify and describe in detail any communications by anyone in the Department with the Attorney General of the United States with regard to the New Black Panther Party litigation.

7. Identify each and every section within the Department of Justice that reviewed or worked on any portion of the New Black Panther Party litigation. For each such section, describe the work or analysis performed.

8. Identify and describe in detail all documents provided to the appellate section as part of its review of the New Black Panther Party litigation.

9. Identify all other voter intimidation cases that have been reviewed by the appellate section prior to trial or the entry of a default judgment.

10. Identify and describe in detail any First Amendment concerns raised by the appellate section with regard to the New Black Panther Party litigation.

11. Identify and describe in detail whether the appellate section, in reviewing the New Black Panther Party litigation, raised any distinction between one who intimidates voters as a poll watcher and one who intimidates voters, but is not a poll watcher.

12. Identify and describe in detail all communications, whether oral or written, by or between the Department and any outside third parties with regard to the New Black Panther Party litigation. This request includes, but is not limited to, all communications with Kristen Clarke of the NAACP Legal Defense Fund.

13. Describe in detail the purpose of DOJ contacts with outside third parties with regard to the New Black Panther Party litigation as well as the authority used to justify such contacts.

14. Identify and describe in detail all other instances in which DOJ has consulted with outside third parties with regard to voter intimidation cases.

15. Identify all communications, whether oral or written, by or between the Department and any member of the Executive Office of the President and/or the White House with regard to the New Black Panther Party litigation.

16. Identify all communications, whether oral or written, by or between the Department and any member of Congress with regard to the New Black Panther Party litigation.

17. Identify and describe in detail all communications by or between the Department and any of the following individuals: (i) Michael Coard; (ii) Malik Zulu Shabazz; (iii) Minister King Samir Shabazz (a/k/a Maurice Heath); and (iv) Jerry Jackson.

18. Identify and describe in detail all facts upon which you rely to support your contention that the decision to dismiss certain defendants and reduce the relief sought in the New Black Panther Party litigation was made by career employees at the Department including, but not limited to, the identity of the career employee(s) you contend made said decision.

19. For the period from January 1, 2009, identify all investigations conducted by the Department with regard to the NBPP, and/or any related individuals or entity.

20. Identify and describe in detail any reports received by the Department as to other alleged incidents of voter intimidation (and/or other voting-related improprieties) by members of the NBPP during the 2008 election.

21. Describe in detail all interviews conducted by you, or on your behalf, with any witnesses relating to the actions of the NBPP in Philadelphia during the 2008 presidential election.

22. Describe in detail the investigation conducted by you, or on your behalf, relating to the actions of the NBPP in Philadelphia during the 2008 presidential election.

23. Describe in detail any reports, summaries of events or descriptions received by you from any third party with regard to the activities, practices and/or actions of the NBPP and/or the individuals named as defendants in the New Black Panther Party litigation.

24. Identify and describe in detail all additional facts learned by you, subsequent to the filing of the complaint in the New Black Panther Party litigation, that influenced the Department's decision to drop three of the defendants as parties and to reduce the relief sought.

25. Identify and describe in detail any and all federal statutes, rules, regulations, and/or policies the Department enforces that in any way relate to voter intimidation.

26. For the period from January 1, 1995 through the present, identify all staff currently devoted full- or part-time to investigating and/or litigating voter intimidation matters.

27. Since the inception of the Voting Rights Act, describe the procedures and/or mechanisms in place within the Department to receive, investigate, and resolve

complaints regarding voter intimidation. How have these mechanisms evolved over time, and what procedures are currently in place?

28. Describe the Voting Section's ICM system used to track investigative matters and cases. If any additional or more recent telephone, electronic, or other tracking systems are used, describe those systems.

29. Since the inception of the Voting Rights Act, identify by year the number of voter intimidation complaints (i) received, (ii) investigated, and/or (iii) litigated by the Department, as well as the outcomes of same.

30. For each complaint listed in response to Interrogatory 29, describe: (i) the facts alleged; (ii) DOJ's investigatory actions; (iii) the basis of decision to pursue (or not) formal investigation; (iv) the basis to initiate litigation (or not); and (v) the basis for pursuit of ultimate resolution obtained.

31. Of those complaints listed in Interrogatory 29, how many have been investigated and/or litigated under 42 U.S.C. § 1973i(b), either solely or in conjunction with another statute or constitutional provision? Identify same.

32. Explain the Voting Section's understanding of the elements and standards of a § 1973i(b) case.

33. In a newspaper article in The Washington Times dated July 30, 2009, it is stated that:

Associate Attorney General Thomas J. Perrelli, the No. 3 official in the Obama Justice Department, was consulted and ultimately approved the decision in May to reverse course and drop a civil complaint accusing three members of the New Black Panther Party of intimidating voters in Philadelphia during November's election ...

Do you acknowledge that the aforesaid characterization is accurate? If you do not acknowledge that said characterization is accurate, describe all facts upon which you rely to support your contention.

34. In The Weekly Standard magazine dated August 10, 2009, it is contended that:

In April [2009], a preliminary filing of default was filed by Justice lawyers with the court clerk. No concern or objection was raised within Justice. This decision was approved by both the Acting Assistant Attorney General for Civil Rights, Loretta King, and Steve Rosenbaum, previously Acting Deputy Assistant Attorney General for Civil Rights and recently returned to his post as Section Chief for Housing.

Do you acknowledge the characterization that both Loretta King and Steve Rosenbaum approved the filing of a request for default in the New Black Panther Party litigation is accurate? If you do not agree that the aforesaid characterization is accurate, state all facts upon which you rely to support your contention.

35. Identify and describe in detail the basis for referring issues relating to the New Black Panther Party litigation to DOJ's Office of Professional Responsibility (OPR), including, but not limited to, an identification and description of any suspected acts of prosecutorial misbehavior or ethical breach which you believe require investigation. If there is an alternative basis for investigation by OPR, please identify and describe same.

36. Identify and describe in detail the alleged jurisdictional basis for the Department's Office of Professional Responsibility to review the decision-making process relating to the New Black Panther Party litigation.

37. Identify and describe in detail any other instances in which DOJ argued that the existence of an OPR investigation was a sufficient basis to cease Department

cooperation with an inquiry and/or investigation by members of Congress and/or a federal investigatory agency such as the U.S. Commission on Civil Rights. Provide citations to all authorities upon which the Department relies to support its position.

38. Do you acknowledge that Assistant Attorney General for Civil Rights Loretta King discussed the New Black Panther Party litigation with Deputy Attorney General David W. Ogden and Associate Attorney General Thomas J. Perrelli? If so, describe in detail said communications.

39. In a letter dated July 24, 2009 to Gerald A. Reynolds, the Chairman of the United States Commission on Civil Rights, DOJ official Portia L. Roberson indicated:

We believe this injunction [in the New Black Panther Party litigation] is tailored appropriately to the scope of the violation and the requirements of the First Amendment.

Please identify and describe in detail the First Amendment concerns arising out of the New Black Panther Party litigation including, but not limited to, whether such concerns related to (i) verbal comments made by the NBPP defendants; (ii) the weapon(s) carried by same; (iii) the uniforms worn by said individuals; and/or (iv) a combination of any of the aforesaid. Cite all authorities upon which you rely to support your concerns.

40. Identify and describe in detail any other voter intimidation cases in which concerns were raised within the Department about the First Amendment rights of those believed to have intimidated voters.

41. In a letter dated July 24, 2009 to Gerald A. Reynolds, the Chairman of the United States Commission on Civil Rights, DOJ official Portia L. Roberson stated:

The decision was made after a careful and thorough review of the matter by the Acting Assistant Attorney General for Civil Rights, a career employee with nearly 30 years experience in the Department, including

nearly 15 years as the career Deputy Assistant Attorney General for Civil Rights.

With regard to said statement, is it the position of the Department of Justice that the Acting Assistant Attorney General for Civil Rights was the ultimate decision maker with regard to New Black Panther Party litigation? If not, please identify any and all additional officials, as well as their role in said litigation.

42. Identify and describe in detail in what way, if any, Jerry Jackson's status as a poll watcher affected the Department's decision to dismiss him as a defendant in the New Black Panther Party litigation, including, but not limited to, whether status as a poll watcher excuses potential or alleged acts of voter intimidation.

43. Identify each witness interviewed by the Department relating to the incident that occurred on election day, 2008, in Philadelphia involving the NBPP.

44. Identify all career employees in the Civil Rights Division who recommended the ultimate relief sought in the New Black Panther Party litigation.

45. Identify all career employees in the Civil Rights Division who objected to the ultimate relief sought in the New Black Panther Party litigation.

46. Identify all persons not otherwise identified in your answers to the above discovery requests who have personal knowledge of the circumstances surrounding (i) the election day activities of the NBPP; (ii) the Department's investigation of same; (iii) the New Black Panther Party litigation; (iv) the Department's decision-making process relating to said litigation; and/or (v) the resulting OPR investigation.

47. With respect to the November 2008 elections, it was reported that a major party congressional candidate in Orange County mailed a letter to 24,000 registered Latino voters that may have been designed to intimidate them from voting. The letter,

written in Spanish, falsely stated that immigrants may not vote, and that the letter also declared “there is no benefit in voting.” MALDEF asked DOJ to investigate.

With regard to said incident:

- (a) What division of DOJ, if any, received the complaints about these alleged acts of voter intimidation?
- (b) Was Section 11b, 42 U.S.C. § 1973i(b) considered as a potential legal strategy to pursue?
- (c) What action, if any, did DOJ take in these actions?

48. With respect to the November 2008 elections, it was reported that in Tucson alleged anti-migrant activists wore dark clothing with a badge-like emblem and carried a handgun in a holster. In addition, the men involved attempted to ask Latino voters questions, write down their personal information, and videotaped them and their license plates as they went to cast their vote. A man named Russell Dove, a local anti-migrant activist, acknowledged his participation in the effort to intimidate Latino voters.

With regard to said incident:

- (a) What division of DOJ, if any, received the complaints about these alleged acts of voter intimidation?
- (b) Was Section 11b, 42 U.S.C. § 1973i(b) considered as a potential legal strategy to pursue?
- (c) What action, if any, did DOJ take in these actions?

49. With respect to the November 2008 elections, in Grand Coteau, Louisiana, in a racially heated mayoral election, a five-foot cross was erected outside the town hall, and lit on fire, on November 3, 2006. This was staged on public property, and many

African Americans felt the cross-burning was a tool to intimidate minority voters from freely exercising their right to vote.

With regard to said incident:

- (a) What division of DOJ, if any, received the complaints about these alleged acts of voter intimidation?
- (b) Was Section 11b, 42 U.S.C. § 1973i(b) considered as a potential legal strategy to pursue?
- (c) What action, if any, did DOJ take in these actions?

DOCUMENT REQUESTS

The following documents are requested:

1. Since the inception of the Voting Rights Act, all materials used to train Agency staff on voter intimidation issues.
2. Since the inception of the Voting Rights Act, all documents and/or print-outs from tracking systems or other databases identifying and detailing the progress of complaints, investigations, and/or litigation involving voter intimidation.
3. Any and all documents describing the facts of the New Black Panther Party litigation.
4. Any and all documents providing incident reports or witness statements with regard to the circumstances which gave rise to the New Black Panther Party litigation.
5. All documents evidencing any investigation conducted by the Department, or on its behalf, relating to the actions of the NBPP in Philadelphia during the 2008 presidential election.
6. All documents evidencing any reports of alleged voting intimidation (or other voting-related improprieties) by members of the NBPP, other than those that gave rise to the New Black Panther Party litigation.
7. All documents evidencing any reports or summaries of events or descriptions received by you from any third party with regard to the activities, practices and/or actions of the NBPP generally, and/or those named as defendants in the New Black Panther Party litigation.
8. All documents evidencing any additional facts learned by you, subsequent to the filing of the complaint in the New Black Panther Party litigation, that influenced the

Department's decision to drop three of the defendants as parties and to reduce the relief sought.

9. Any and all documents evidencing communications by or between any member of the Voting Rights Section and Loretta King relating to the NBPP and/or the New Black Panther Party litigation.
10. Any and all documents evidencing communications by or between any member of the Civil Rights Division and David W. Ogden relating to the NBPP and/or the New Black Panther Party litigation.
11. Any and all documents evidencing communications by or between any member of the Civil Rights Division and Thomas J. Perrelli relating to the NBPP and/or the New Black Panther Party litigation.
12. Any and all documents evidencing any communications by anyone within the Department with the Attorney General of the United States with regard to the New Black Panther Party litigation.
13. Any and all internal memoranda evaluating potential charges in the New Black Panther Party litigation.
14. Any and all internal memoranda or other documents evidencing the decision (or potential decision) to dismiss any defendants, or reduce the relief sought, against any defendant in the New Black Panther Party litigation.
15. All documents evidencing the original investigative memo (a/k/a the "J Memo") relating to the New Black Panther Party litigation.

16. All documents evidencing communication by or between any member of the Civil Rights Division and the appellate section relating to the New Black Panther Party litigation.
17. All documents evidencing any review by the appellate section of any aspect of the New Black Panther Party litigation.
18. All documents evidencing any other voter intimidation cases that have been reviewed by the appellate section prior to trial or the entry of a default judgment.
19. All documents submitted to DOJ's Office of Professional Responsibility as part of the investigation relating to the New Black Panther Party litigation.
20. All documents evidencing any research or investigation by DOJ with regard to the New Black Panther Party and/or its affiliates.
21. A copy of the DOJ publication "Federal Prosecution of Election Offenses."
22. All documents evidencing your contention, as set forth in the letter of July 24, 2009 from Portia L. Roberson to Gerald A. Reynolds, Chairman of the United States Commission on Civil Rights, that "Jerry Jackson ... was a resident of the apartment building where the polling place was located ..."
23. All documents relating to your investigation of the circumstances which gave rise to the New Black Panther Party litigation.
24. All video evidence obtained by the Department relating to the New Black Panther Party generally, as well as the actions of the New Black Panther Party in Philadelphia on election day, 2008.

25. All documents evidencing concern over First Amendment implications of voter intimidation cases. This request includes, but is not limited to, the circumstances surrounding the New Black Panther Party litigation.
26. All documents evidencing any other voter intimidation cases in which concerns were raised within the Department about the First Amendment rights of those alleged to have intimidated voters.
27. All documents evidencing any other voter intimidation cases in which the status of an individual as a poll watcher affected the Department's decision to dismiss or lessen charges relating to voter intimidation.
28. All documents evidencing the decision to limit injunctive relief in the New Black Panther Party litigation to a single municipality and only through November 2012.
29. All documents evidencing communications by or between the Department and any third parties relating to the New Black Panther Party litigation, including, but not limited to, communications with Kristen Clarke of the NAACP Legal Defense Fund.
30. Any and all documents detailing Department protocol with regard to third-party contacts relating to pending litigation.
31. All documents evidencing all other instances in which DOJ has consulted with outside third parties, with no pre-existing role or relationship, with regard to voter intimidation cases.
32. Any and all documents evidencing communications by or between the Department and any member of the Executive Office of the President and/or the White House with regard to the New Black Panther Party litigation.

33. Any and all documents evidencing communications by or between the Department and any member of Congress with regard to the New Black Panther Party litigation.
34. All documents evidencing communications by or between the Department and Michael Coard.
35. All documents evidencing communications by or between the Department and Malik Zulu Shabazz.
36. All documents evidencing communications by or between the Department and Minister King Samir Shabazz (a/k/a Maurice Heath).
37. All documents evidencing communications by or between the Department and Jerry Jackson.
38. All documents evidencing your contention that the decision to dismiss defendants and to reduce the relief sought in the New Black Panther Party litigation was made by career employees at the Department.
39. Any and all documents evidencing draft complaints or pleadings with regard to the New Black Panther Party litigation.
40. All documents evidencing communications by or between the Voting Rights Section and any other portion of the Department with regard to the New Black Panther Party litigation.
41. All documents evidencing any legal analysis relating to the New Black Panther Party litigation.
42. All documents evidencing the procedures and/or mechanisms in place within the Department, since the inception of the Voting Rights Act, to receive, investigate, and/or resolve complaints regarding voter intimidation.

43. All documents evidencing claims within the Voting Section's ICM system relating to voter intimidation cases and/or the New Black Panther Party litigation.
44. All documents evidencing voter intimidation complaints received, investigated, or litigated by the Department, from the inception of the Voting Rights Act to the present.
45. All documents evidencing the Voting Section's understanding of the elements and standards of a Section 1973i(b) case.
46. All documents evidencing DOJ attempts to pursue actions pursuant to Section 1973i(b).
47. All documents evidencing the jurisdictional basis for the Department's Office of Professional Responsibility to review the decision-making process relating to the New Black Panther Party litigation.
48. All documents evidencing any other instances in which DOJ argued that the existence of an OPR investigation was a sufficient basis to stop an inquiry and/or investigation by Congress and/or a federal investigatory agency such as the U.S. Commission on Civil Rights.
49. All documents discussing or examining the legal authority (or otherwise) of the Department to cease cooperation with members of Congress and/or the U.S. Commission on Civil Rights based on a pending investigation by the Office of Professional Responsibility. This request includes, but is not limited to, the OPR investigation related to the New Black Panther Party litigation.
50. All documents evidencing the pleadings filed in the New Black Panther Party litigation.

51. All documents evidencing that Jerry Jackson was, or is, a registered poll watcher in Philadelphia.

David P. Blackwood
General Counsel
U.S. Commission on Civil Rights
624 Ninth Street, NW
Washington, DC 20425
202-376-7622

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing United States Commission on Civil Rights' Interrogatories and Requests for Documents was hand-delivered on this _____ day of December, 2009 to:

U.S. Department of Justice
c/o Joseph H. Hunt
Director, Federal Programs Branch
20 Massachusetts Avenue, N.W.
Washington, DC 20001

David P. Blackwood



UNITED STATES COMMISSION ON CIVIL RIGHTS

624 NINTH STREET, NW, WASHINGTON, DC 20425

www.usccr.gov

September 30, 2009

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
Washington, DC 20530

Re: U.S. Commission on Civil Rights Review and Report on the Implications of Enforcement Actions in *United States v. New Black Panther Party for Self-Defense*, Civ. No. 09-0065 SD (E.D. Pa.) (NBPP case)

Dear Attorney General Holder:

The Commission requests that you instruct Department officials to fully cooperate, as 42 U.S.C. § 1975b(e) requires, with our overdue information requests in the above-referenced matter. To that end, we also ask you to identify an individual who will exercise the substantive authority to coordinate the Department's responses to our current and future requests.

Pursuant to formal proceedings, the Commission initiated an inquiry into the implications of the Department's enforcement actions in the NBPP case as reflected in our letters to DOJ of June 16 and 22. We received a largely non-responsive letter from Portia Roberson in late July and none of the documents we requested. On August 7, the Commission voted 6-0, with two members abstaining, to expand its investigation by sending a follow-up letter to the Department. On August 10, the Commission addressed its letter to you, explaining our need for the information. For example, we stressed our need for information on previous voter intimidation investigations so that we could determine whether the Department's action in the NBPP case constitutes a change in policy and, if so, what the implications of that change might be.

At our most recent meeting on September 11, 2009, the Commission voted to make its review of the implications of the NBPP matter the subject of its annual enforcement report. The Commission was aware that the Department's Office of Professional Responsibility (OPR) had initiated an inquiry into some aspects of the NBPP case to determine whether further review is warranted. Although a letter from Ms. Roberson of September 9 expresses the Department's desire to delay any response to the Commission until the OPR investigation is complete, you may rest assured that the Commission will be sensitive to OPR's internal ethics review as we move forward with our own inquiry. As the discussion at our recent meeting indicates, the Commission will work to accommodate any legitimate concerns the Department may have regarding specific requests for information once the Department begins its production.

The Commission has a special statutory responsibility to investigate voting rights deprivations and make appraisals of federal policies to enforce federal voting rights laws. The Commission must form an independent judgment regarding the merits of the NBPP enforcement actions (regardless of how the decisions were made) and the potential impact on future voter-intimidation enforcement by the Department. Accordingly, Congress has provided, in a provision with no statutory exceptions, that, "All Federal agencies shall fully cooperate with the Commission to the end that it may effectively carry out its functions and duties." 42 U.S.C. § 1975b(e).

It is important to note that many aspects of the Commission's inquiry have no connection with the matters subject to OPR's jurisdiction. As set forth in our August 10 letter, the Commission will seek to determine:

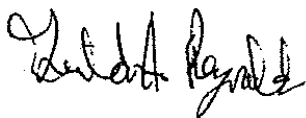
- 1) the facts and the Department's actions regarding prior voting intimidation investigations;
- 2) the underlying conduct in Philadelphia giving rise to the NBPP case;
- 3) whether the decision in the NBPP case is consistent with departmental policy or practice in prior cases or amounts to a change in policy or practice;
- 4) the extent to which current policy or practice as reflected in the NBPP case may encourage voter intimidation; and
- 5) whether that policy or practice is consistent with proper enforcement of section 11(b) of the Voting Rights Act.

The Commission may also seek to determine whether any decisions in the case were induced or affected by improper influences. Thus, there may be some areas of potential overlap with OPR's internal review, including an examination of the decision-making process in the case. With regard to these questions, if there are concerns as to the timing or content of specific discovery requests, the Commission will work with the Department to resolve them in a prompt and satisfactory manner. In addition to my personal availability to speak with your representatives, the Commission has appointed a subcommittee of commissioners to focus on any discovery issue that might arise in our investigation.

Accordingly, please identify the individual with substantive responsibility for the production of documents, scheduling of interviews and any possible depositions. If you have not done so by October 14th, however, it will be necessary for us to propound our interrogatories and interview requests directly on the affected Department personnel.

Thank you in advance for your cooperation and prompt reply to these requests.

Sincerely,



Gerald A. Reynolds
Chairman



UNITED STATES
COMMISSION ON
CIVIL RIGHTS

624 Ninth Street, N.W.
Washington, D.C. 20425

August 10, 2009

The Honorable Eric Holder
Attorney General
U.S. Department of Justice
Washington, DC 20530

Dear Attorney General Holder:

Pursuant to our statutory mandate, we sent inquiries on June 16 and 22 to the Civil Rights Division's Acting Assistant Attorney General, Loretta King, regarding the unusual dismissal of the government's case against most of the defendants in *United States v. New Black Panther Party for Self-Defense*, Civ. No. 09-0065 SD (E.D. Pa.) (NBPP case).¹ We regret that the reply from Portia Roberson, Director of the Office of Intergovernmental and Public Liaison,² is largely non-responsive to our questions. To the extent it is responsive, it paints the Department in a poor light. We also reviewed correspondence between DOJ and Members of Congress who raised similar questions about the case. The July 13 letter from Assistant Attorney General Ronald Weich to House Judiciary Committee Ranking Member Lamar Smith is also non-responsive and includes what we believe to be factual errors and asserts novel and questionable legal claims. As we explain below, the DOJ's replies thus far raise new and serious questions about its civil rights enforcement decisions, which we believe we are obligated to investigate.

Moreover, news stories³ have now raised questions about Ms. King's role in the decision to dismiss the suit against the NBPP,⁴ whose members, with military-style uniforms and weapons, taunted voters with racially-intimidating comments as they approached the polls.⁵ The news stories also report certain steps by senior political appointees at DOJ in approving the dismissal of most of the case and the extremely narrow injunction against the sole remaining defendant. That Associate Attorney General Thomas Perrelli, a political appointee, reportedly approved the dismissal of the suit against a Democratic poll worker raises several questions. In light of these reports, it may have been a mistake to address our initial inquiry to Ms. King or

¹ The decision to begin our inquiry was reached during an open meeting of the U.S. Commission on Civil Rights on June 12, 2009. Chairman Reynolds, Commissioner Gaziano, Commissioner Heriot, and Commissioner Kirsanow voted to begin the inquiry with the letter that was subsequently sent on June 16 (Commissioner Melendez abstained from the vote). On June 22, Vice Chair Thernstrom and Commissioner Taylor, who were not present at the time the vote was taken, sent their own letter to Ms. King joining the request for relevant information on the case. The signatories to this letter have voted to expand the Commission's investigation as reflected herein, with Commissioners Melendez and Yaki abstaining.

² Ms. Roberson did not date her letter. Commission staff stamped it as received on July 24.

³ See, e.g., Jerry Seper, *No. 3 at Justice OK'd Panther Reversal*, WASH. TIMES, July 30, 2009.

⁴ The New Black Panther Party for Self Defense has been identified as a hate group by the Southern Poverty Law Center and the Anti-Defamation League, among others. Southern Poverty Law Center, *Active U.S. Hate Groups in U.S.*, available online; Anti-Defamation League, *New Black Panther Party for Self-Defense*, available online; National Geographic Channel, *Inside the New Black Panthers*, available online. Nor is its influence small. The Anti-Defamation League claims that "it has become the largest organized anti-Semitic black militant group in America." Anti-Defamation League, *supra*.

⁵ NBPP Case, No. 09-0065 (E.D. Pa. filed Jan. 7, 2009) (Compl. ¶¶ 8-11).

anyone outside your office. Under the circumstances, we ask that you personally direct the response to our voter intimidation inquiries or that you appoint another senior member of the Department to do so who does not have a conflict.

As you know, the Civil Rights Act of 1957 created both the U.S. Commission on Civil Rights and the Civil Rights Division of the U.S. Department of Justice. Just as the Department of Justice is answerable for its conduct in enforcing (or refusing to enforce) the civil rights laws, the U.S. Commission on Civil Rights is answerable for properly investigating the enforcement of those laws and reporting on the same to the President, to Congress, and to the public. The Commission has a special statutory responsibility to investigate deprivations of the right to vote, and the Commission must collect information and make appraisals of federal policies relating to racial discrimination. 42 U.S.C. § 1975a.

In our original letter, we not only sought the rationale for the Department's dismissal of the charges against the NBPP and other defendants, we also sought information to place the NBPP case in the context of other alleged voter intimidation investigations. In order for us to form an independent judgment of whether the Voting Rights Act is being properly enforced, we need to know the detailed facts of the NBPP case, not just the Department's conclusion that the acts of intimidation did not merit maintaining the ongoing suit. We also need to know the facts and disposition of other investigations. To be precise, we requested the Department's "evidentiary and legal standards for dismissing [related] charges in cases of alleged voter intimidation." We also sought information regarding "any similar cases in which the CRD has dismissed charges against a defendant."

The letter from Ms. Roberson to us repeats some of the vague conclusions sent to Members of Congress.⁶ Yet, the Roberson letter provides none of the facts we need to determine whether the NBPP voter intimidation case was handled consistently with others the Department has investigated. Ms. Roberson provided no response as to whether there are "any similar cases in which the CRD has dismissed charges against a defendant" charged with voter intimidation. Nor did she respond to our request for the Department's "evidentiary and legal standards for dismissing such charges in cases of alleged voter intimidation." If the Department has no such standards, we would like to know that.

The Department's original complaint against the NBPP and several of its members alleged serious acts of racially-targeted voter intimidation, some of which were captured on video and viewed by millions of Americans. Ms. Roberson asserts that "the facts and law did not support pursuing" the suit against three defendants, but provides no factual or legal explanation why that is so. Ms. Roberson's statement that default judgments are disfavored in the Third Circuit is beside the point. When a court states that default judgments are disfavored, it doesn't mean that the defendant should get away scot free for refusing to appear; it means that the plaintiff should present evidence of the defendants' wrongdoing before the judgment is entered. In this case, the evidence of defendants' wrongdoing appears to be strong. There are reliable eyewitnesses and important evidence was captured on video. Moreover, the federal

⁶ These conclusions are more than weak. We believe the public rationale offered thus far is even more corrosive to the rule of law than the dismissal without comment.

judge requested that DOJ proceed to judgment. If the Department had done what the judge requested and proffered its evidence, its judgment would not be a mere default judgment.

In our original request for information, we noted the peculiar logic of the Department's court filing that the defendants' failure to respond was the reason for its dismissal of the case against three defendants: Such an argument sends a perverse message to wrongdoers—that attempts at voter suppression will be tolerated so long as the persons who engage in them are careful not to appear in court to answer the government's complaint.

We also questioned the narrow injunction against defendant Minister King Samir Shabazz, who is seen on tape in a paramilitary uniform waving a nightstick, and who the Department alleged was taunting white voters with racially-bigoted remarks as they tried to enter the polling place. The injunction the Department says it will "fully enforce" prohibits Mr. Samir Shabazz "from displaying a weapon within 100 feet of any open polling location on any election day in the City of Philadelphia" at least until late 2012. An injunction in a civil RICO case against an individual who brandished a gun to extort money would not be limited to preventing him from brandishing guns to extort money in his hometown. The DOJ did not seem interested in preventing Mr. Samir Shabazz from brandishing weapons in suburban polling places. The terms of the injunction also do not prohibit Shabazz from carrying weapons to the polls in Philadelphia if they are, or appear to be, under his paramilitary garb. Nor does it prohibit him from making intimidating comments or blocking voters' access to the polls. In short, it does not prohibit him from engaging in any specific intimidating conduct anywhere except "displaying a weapon" at City of Philadelphia polling places (the VRA itself prohibits everyone from violating its general terms, so including that without specific prohibitions adds little or nothing).

Yet, Ms. Roberson implies that a broader injunction would not satisfy "the requirements of the First Amendment." This is a claim that we need to explore further. It is unclear what First Amendment issue would arise by enjoining the NBPP or other racial hate-groups from organizing its members again to carry any weapons (especially when dressed in paramilitary uniforms) at polling places and subject particular voters to racially-bigoted diatribes as they attempt to enter the polls. If the Department believes the injunctive authority of the Voting Rights Act does not extend this far, we need to know that, since that will likely have serious implications for the Department's enforcement of the VRA generally.⁷

⁷ We note that the Department's previous letters to the Commission and Members of Congress contain questionable factual claims that call into doubt the decision to dismiss the charges in the first place. For example, we understand that defendant Jerry Jackson was not a resident of the assisted living apartment building where the intimidation took place as the Department recently claimed, although we also do not understand why that would excuse intimidating and racially harassing voters at a polling place if it is true he resided there.

We also do not understand the weight the Department seems to place on the fact that the local police allowed Mr. Jackson to stay at that location on Election Day. Local police do not enforce the VRA and they have other concerns when they respond to a call. The DOJ officials who filed the complaint did not think the federal law turned on the local police actions that day. The Department also seems to rely on the fact that Mr. Jackson was a registered poll watcher for the Democratic Party, but that is not a defense to voter intimidation. Recent news stories have reported that Jackson was reappointed as a poll watcher four days after the Department dismissed the suit against him.

Since the Department has raised the "local-police-didn't-arrest-him" issue, notes taken by federal officials who interviewed the police and memos regarding the same are relevant to our inquiry. Witness statements taken by the

According to reports about an internal Department memo, senior political appointees also sought to secure the opinion of the Appellate Section of the Civil Division as to whether a judgment against all NBPP defendants could be defended.⁸ According to the reports, the Appellate Section Chief did not agree with those seeking to have the charges dismissed. Instead, the Appellate Chief reportedly advised that the Department should pursue the default judgment against “all defendants,” since the complaint was aimed at preventing “paramilitary style intimidation of voters” at polling places. The Chief noted that such an action would leave open “ample opportunity for political expression.” This conclusion seems legally sound to us. We do not understand why that advice was overridden and why Ms. Roberson suggests that the First Amendment would preclude the case from proceeding against other defendants.

So that there is no mistake about the scope of our current inquiry, the Commission will seek to determine: (1) the facts giving rise to the NBPP case as well as the facts and disposition of other voter intimidation cases; (2) why the decision was made to dismiss the suit against most of the NBPP defendants and who was involved in making it; (3) why the injunction against Mr. Samir Shabazz is so narrow; (4) whether the decision in the NBPP case is consistent with DOJ policy in prior investigations or amounts to a change in policy; (5) the extent to which we believe current policy will undermine future voter-intimidation enforcement; and (6) whether we believe such policies are consistent with proper enforcement of section 11(b) of the Voting Rights Act.

In addition to our authority to subpoena documents and witnesses in aid of our mission, the Commission has even broader authority to require the cooperation of federal agencies. The Commission’s organic statute provides: “All Federal agencies shall fully cooperate with the Commission to the end that it may effectively carry out its functions and duties.” 42 U.S.C. § 1975b(e). The Department’s previous response does not answer our most basic questions, which impairs our duty to investigate potential voting deprivations and federal enforcement policies. We trust that your response to this letter will provide us with the information necessary to make significant progress with our investigation.

Accordingly, we would like you to provide the Commission the following:

1. Answers to our original requests for information on June 16.
2. Answers and documents responsive to our comments and requests above.

Department relating to Mr. Jackson’s behavior are also relevant, since reports indicate that Mr. Jackson wore the same paramilitary uniform as, and stood in formation with, Mr. Samir Shabazz as they intimidated voters entering the polls. Several witnesses have publicly recounted their fear, and former civil rights movement leader Bartle Bull called the alleged acts “the most blatant form of voter intimidation I have encountered in my life in political campaigns in many states, even going back to the work I did in Mississippi in the 1960s.” Bull Aff. ¶ 6.

There is also evidence that the New Black Panther Party and its Chairman, Malik Zulu Shabazz, managed, directed, and endorsed the behavior of the other defendants, yet the Department justifies dismissing the suit against them on the ground that the NBPP did not issue written instructions to display weapons at the polls and Mr. Zulu Shabazz later disavowed what happened in Philadelphia. Mr. Zulu Shabazz was interviewed on national television on November 7, 2008, and claimed that his activities were part of a coordinated nationwide effort, and that displaying a weapon was part of NBPP deployment. Further investigation of the coordination among the NBPP, Mr. Zulu Shabazz, and the other defendants is surely warranted, including interviewing Mr. Zulu Shabazz.

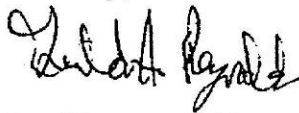
⁸ Jerry Seper, *No. 3 at Justice OK’d Panther Reversal*, WASH. TIMES, July 30, 2009.

3. Answers and documents requested by Representatives Lamar Smith and Frank Wolf on July 17 and July 22, respectively.
4. A statement explaining your Office's involvement in or discussions relating to the NBPP suit, as well as those of officers and employees in the Offices of Deputy Attorney General, Associate Attorney General, Solicitor General, the Office of Legal Counsel, the Civil Division, and any individual in the Civil Rights Division.
5. An explanation of whether the Department is free to re-file the case against the three dismissed defendants and conduct full discovery.
6. Information as to whether any retaliation, negative actions, or discipline of any kind have been taken against any lawyer who developed, investigated, or litigated the case.
7. Information the Department has regarding its contacts with attorney Michael Coard, who said he was taking the case on behalf of two defendants, who obtained pleadings from the Department, and then did not file a responsive pleading. Among other matters, we would like to know the name of all Department officers and employees who communicated with Coard and the nature of their communication with him.
8. Information on any other individuals who contacted the Department regarding the New Black Panther Party litigation.

The Commission has a keen interest in this case because of its special statutory responsibility to study the enforcement of federal voting rights laws. We believe the Department's defense of its actions thus far undermines respect for the rule of law and raises other serious questions about the Department's law enforcement decisions. The fundamental right that the Commission is investigating—the right to vote free of racially-motivated intimidation—has been called the cornerstone of other civil rights in our democracy. Until it is completed, this investigation will remain one of the Commission's top priorities.

We appreciate your prompt attention to this important matter, and we look forward to your response.

Sincerely,



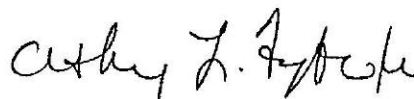
Gerald A. Reynolds
Chairman



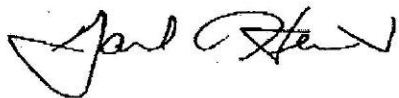
Abigail Thernstrom
Vice Chair



Peter Kirsanow
Commissioner



Ashley Taylor, Jr.
Commissioner



Gail Heriot
Commissioner



Todd Gaziano
Commissioner

cc: Commissioner Arlan Melendez

Commissioner Michael Yaki

The Honorable John Conyers
Chairman
Committee on the Judiciary

The Honorable Lamar Smith
Ranking Member
Committee on the Judiciary

The Honorable Jerrold Nadler
Chairman
Subcommittee on the Constitution, Civil Rights, and Civil Liberties

The Honorable James Sensenbrenner, Jr.
Ranking Member
Subcommittee on the Constitution, Civil Rights, and Civil Liberties

The Honorable Frank Wolf
Ranking Member
Commerce-Justice-Science Subcommittee, Appropriations Committee

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary

The Honorable Russ Feingold
Chairman
Subcommittee on the Constitution

The Honorable Tom Coburn
Ranking Member
Subcommittee on the Constitution



U.S. Department of Justice

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Washington, DC 20530

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Mr. Gerald A. Reynolds
Chairman
United States Commission on Civil Rights
624 Ninth Street, NW
Washington, D.C. 20425

Dear Chairman Reynolds:

This responds to letters from the United States Commission on Civil Rights, dated June 16 and 22, 2009, concerning *United States v. New Black Panther Party for Self-Defense*, Civ. No. 09-0065 SD (E.D. Pa.), a case filed to enforce Section 11(b) of the Voting Rights Act of 1965, 42 U.S.C. § 1973i(b).

This case was filed on January 9, 2009. The United States obtained an injunction against a defendant who held a nightstick in front of a polling place in Philadelphia, Pennsylvania. The injunction is tailored appropriately to the scope of the violation and the requirements of the First Amendment, and the Department will fully enforce the terms of the injunction.

The Department voluntarily dismissed the Section 11(b) claims against three other defendants named in the complaint because the facts and the law did not support pursuing those claims against them. That decision was made after a careful and thorough review of the matter by the Acting Assistant Attorney General for Civil Rights, a career employee with nearly 30 years experience in the Department, including nearly 15 years as the career Deputy Assistant Attorney General for Civil Rights.

Although, as you note, these defendants failed to respond to the complaint, that does not mean the Department "had basically won the case" against them. The Court of Appeals for the Third Circuit "does not favor entry of defaults or default judgments." *United States v. \$55,518.05 In U.S. Currency*, 728 F.2d 192, 194 (3d Cir. 1984). Rather, it is its "preference that cases be disposed of on the merits whenever practicable." *Hritz v. Woma Corp.*, 732 F.2d 1178, 1181 (3d Cir. 1984); see also *Hill v. Williamsport Police Dept.*, 69 Fed. Appx. 49, 51 n.3 (3d Cir. 2003) (factors to consider in granting a default judgment include "whether material issues of fact or issues of substantial public importance are at issue"). Accordingly, an entry of a default judgment in the district court is not automatic. Moreover, even if a court were to grant a default judgment on liability, the court still would need to assess the propriety of any requested injunction. *Broadcast Music, Inc. v. Sprint Mount Area Bavarian Resort, Ltd.*, 555 F. Supp. 2d 537, 543 (E.D. Pa. 2008) (granting injunctive relief following entry of default judgment only after considering propriety of remedy sought); cf.

Shields v. Zuccarini, 254 F.3d 476, 482 (3d Cir. 2001) (identifying factors a court must consider before granting permanent injunctive relief).

Section 11(b) prohibits intimidation, threats or coercion of “any person for voting or attempting to vote, or ... for urging or aiding any person to vote or attempt to vote.” The United States is authorized to enforce Section 11(b) through civil litigation and to obtain declaratory and injunctive relief. For a variety of reasons, including the limited remedies available under Section 11(b), the Department has filed only three cases under this provision in the three decades for which we have reliable records on the subject. Indeed, in the 44 years since Congress passed the Voting Rights Act, fewer than 10 reported cases have ever been brought by any party prior to the case in question.

In *U.S. v. New Black Panther Party for Self-Defense*, the district court found that the United States had alleged that Minister King Samir Shabazz “stood in front of the polling location at 1221 Fairmont Street in Philadelphia, wearing a military-style uniform, wielding a nightstick, and making intimidating statements and gestures to various individuals, all in violation of 42 U.S.C. § 1973i(b),” Order, dated May 18, 2009, at 1, and entered judgment “in favor of the United States of America and against Minister King Samir Shabazz, enjoining Minister King Samir Shabazz from displaying a weapon within 100 feet of any open polling location on any election day in the City of Philadelphia, or from otherwise violating 42 U.S.C. § 1973i(b).” Judgment, dated May 18, 2009. We believe this injunction is tailored appropriately to the scope of the violation and the requirements of the First Amendment. We intend to enforce fully the terms of this injunction. Section 11(b) does not authorize other kinds of relief, such as monetary damages or civil penalties.

The United States had, prior to these rulings, voluntarily dismissed claims against the three other defendants named in the complaint: The New Black Panther Party for Self-Defense (“the Party”), Malik Zulu Shabazz and Jerry Jackson. The Department considered not only the allegations in the complaint, but also the evidence that had been amassed by the Department to support those allegations.

The complaint alleges that the Party “made statements and posted notice that over 300 members of the New Black Panther Party for Self-Defense would be deployed at polling locations during voting on November 4, 2008, throughout the United States.” Complaint, para. 12. Notably, the complaint does not allege that those statements or the notice called for any Party member to display weapons at polling locations or do anything that would violate Section 11(b). Nor is there any allegation in the complaint that Malik Zulu Shabazz made any such statement in advance of the election.

The complaint does allege that the Party and Malik Zulu Shabazz “managed” and “directed” “the behavior, actions and statements of Defendants Samir Shabazz and [Jerry] Jackson at [the Philadelphia polling place], alleged in this Complaint.” Complaint, para. 12. The Department considered the evidence developed to support this allegation and concluded that the factual contentions in the complaint did not have sufficient evidentiary support.

The complaint also alleges that the Party and Malik Zulu Shabazz "endorsed" the alleged activities at the Philadelphia polling place after the election. Even assuming that a post-event "endorsement" is sufficient to impose Section 11(b) liability, the Department found the evidence on this allegation to be equivocal. The Party posted statements on its web site specifically disavowing the Philadelphia polling place activities and suspending the Party's Philadelphia chapter because of these activities.

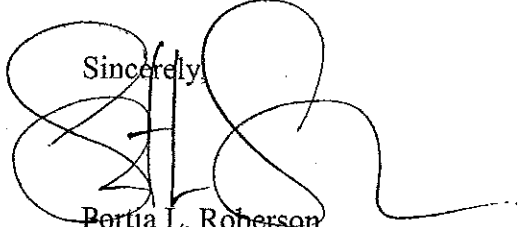
With regard to the alleged activities at the Philadelphia polling place, the Department concluded that the allegations in the complaint regarding Samir Shabazz, the person holding the nightstick, were sufficient to state a claim under Section 11(b) and that the evidence developed supported those allegations. As noted above, we therefore sought and obtained a judgment against this defendant and appropriately tailored injunctive relief.

The Department decided not to proceed with its claims against Jerry Jackson, who was a resident of the apartment building where the polling place was located and was certified by city officials as a poll watcher. The local police officers who were called to the polling place ordered Samir Shabazz to leave the polling place, but allowed Jackson to remain. Considering the contemporaneous response of the local police officers to Jackson's activities, as well as the evidence developed to support the allegations against Jackson, the Department concluded that the factual contentions in the complaint did not have sufficient evidentiary support.

We can assure you that the Department is committed to comprehensive and vigorous enforcement of both the civil and criminal provisions of federal law that prohibit voter intimidation. We continue to work with voters, communities, and local law enforcement to ensure that every American can vote free from intimidation, coercion, or threats.

We hope this information is helpful. Please do not hesitate to contact this office if we may be of assistance with this or any other matter.

Sincerely,



Portia L. Roberson
Director



**UNITED STATES
COMMISSION ON
CIVIL RIGHTS**

624 Ninth Street, N.W.
Washington, D.C. 20425

June 22, 2009

Ms. Loretta King
Acting Assistant Attorney General
Office of the Assistant Attorney General, Main
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Ms. King:

On June 16, 2009 your office was sent a letter signed by four of our colleagues at the U.S. Commission on Civil Rights. (Attached.) We are writing today to lend our support for that letter. The letter was sent in relation to the Civil Rights Division's dismissal of a lawsuit against individuals who were caught on video engaging in voter suppression as members of the New Black Panther Party.

We are gravely concerned about the Civil Rights Division's actions in this case and feel strongly that the dismissal of this case weakens the agency's moral obligation to prevent voting rights violations, including acts of voter intimidation or vote suppression. We cannot understand the rationale for this case's dismissal and fear that it will confuse the public on how the Department of Justice will respond to claims of voter intimidation or voter suppression in the future.

We join with our colleagues in requesting further information on the Division's rationale for dismissing this case and the evidentiary and legal standards utilized in dismissing other charges of alleged voter intimidation.

Sincerely,

A handwritten signature in black ink, appearing to read "Abigail Thernstrom".

Abigail Thernstrom
Vice Chairman

A handwritten signature in black ink, appearing to read "Ashley L. Taylor, Jr.".

Ashley L. Taylor, Jr.
Commissioner

Cc: Christopher Coates, Chief, Voting Rights Section
Arlan Melendez, Commissioner
Michael Yaki, Commissioner
Representative Lamar Smith (TX)

Attachment: June 16, 2009 Letter to Ms. Loretta King



UNITED STATES
COMMISSION ON
CIVIL RIGHTS

624 Ninth Street, N.W.
Washington, D.C. 20425

June 16, 2009

Ms. Loretta King
Acting Assistant Attorney General
Office of the Assistant Attorney General, Main
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Ms. King:

One of the U.S. Commission on Civil Rights' first official projects upon its establishment by the Civil Rights Act of 1957—the same act that created the Civil Rights Division—was to convene hearings in Alabama to look for evidence of racial discrimination in voting there. Witness after witness testified of efforts to interfere with their right to vote, whether by threats, intimidation, coercion, trickery or the erection of legal or other impediments. The data gathered by the Commission formed the basis for the Voting Rights Act of 1965, which is unequivocal in its command that “no person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten or coerce any person from voting or attempting to vote” or from aiding a voter. 42 U.S.C. § 1973i (2009). Investigating such claims and bringing them to the attention of enforcement entities such as the Department of Justice are a part of the Commission’s statutory mandate to this day. 42 U.S.C. § 1975a (2009).¹ Our mandate also includes investigating and reporting to the President and Congress on how well federal agencies are enforcing the nation’s civil rights laws.

So it is with great confusion that we² learn of the Civil Rights Division’s recent decision to dismiss a lawsuit against defendants who were caught engaging in attempted voter suppression the likes of which we haven’t witnessed in decades. Specifically, defendants were caught on video blocking access to the polls, and physically threatening and verbally harassing voters during the November 4, 2008 general election. They wore uniforms bearing the insignia of the New Black Panther Party, described by the Division as a “black-supremacist organization,” and one of them actually brandished a nightstick in plain view of voters and poll observers. Complaint ¶¶ 9, 13. Furthermore, the Division’s own complaint alleges that defendants “made statements containing racial

¹ In 2006, for example, the Commission called upon then-Attorney General Gonzalez to fully and vigorously investigate reports that Spanish-surnamed individuals in Orange County received correspondence seeking to intimidate them from voting in the mid-term elections that year.

² The decision to send this letter was arrived at in an opening meeting of the United States Commission on Civil Rights on June 12, 2009 by majority vote of the Commissioners present. The vote was 4 to 0 with one member abstaining. The signatories to this letter all voted in favor of the motion.

threats and racial insults.” Complaint ¶ 10. Their behavior was such that an experienced attorney and veteran of the civil rights movement, Bartle Bull, called it “the most blatant form of voter intimidation I have encountered in my life in political campaigns in many states, even going back to the work I did in Mississippi in the 1960s.” Bull Aff. ¶ 6.

Though it had basically won the case and could have submitted a motion for default judgment against the Party and its members for failing to respond to the Division’s complaint, the Division took the unusual move of voluntarily dismissing the charges as against all but the defendant who waived the nightstick. Yet even as to that remaining defendant, the only relief the Division requested was weak—an injunction prohibiting him from displaying a weapon within 100 feet of any polling place in Philadelphia. It has since been revealed that one of the defendants had been carrying credentials as a member of, and poll watcher for, the local Democratic committee.

In its notice of dismissal, the Division cites as its rationale only the fact that defendants failed to appear and respond. That makes no sense, for at least two reasons. First, the Division’s public rationale would send the wrong message entirely—that attempts at voter suppression will be tolerated and will not be vigorously prosecuted so long as the groups or individuals who engage in them fail to respond to the charges leveled against them. Second, that rationale would equally support dismissal of all claims in this case, not just the dismissal against some defendants.

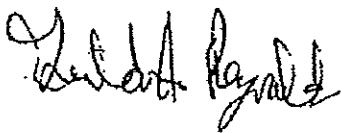
In its forthcoming report on Justice’s efforts to protect the voting rights of citizens in the 2008 election, the Commission commends the Department for its willingness, through the Voting Section, to play an aggressive and proactive role in preventing voting rights violations, *including voter intimidation*, and credits the Division for its expanded election-monitoring functions. But such efforts ring hollow if they are not accompanied by swift, decisive action to prosecute obvious violators, regardless of their race or political party (or that of their victims), to the fullest extent of the law. The vigorous defense of our democratic system demands no less.

Accordingly, as an initial matter, please advise the Commission of the Division's rationale for dismissing the charges against defendants and of its evidentiary and legal standards for dismissing certain charges in cases of alleged voter intimidation. Also, please advise us of any similar cases in which CRD has dismissed charges against a defendant.

Letter to AAAG King
Page 3

Thank you for your prompt attention to this matter. If you have any questions regarding this request, please contact my Counsel and Special Assistant, Dominique Ludvigson, at (202) 376-7626 or at dludvigson@usccr.gov.

Sincerely,



Gerald A. Reynolds
Chairman



Peter Kirsanow
Commissioner



Gail Heriot
Commissioner



Todd Gaziano
Commissioner

cc: Christopher Coates, Chief, Voting Section
Abigail Thernstrom, Commissioner
Arlan Melendez, Commissioner
Ashley Taylor, Commissioner
Michael Yaki, Commissioner

FRANK R. WOLF
10TH DISTRICT, VIRGINIA

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES:

BANKING MEMBER—COMMERCE-JUSTICE-
SCIENCE

TRANSPORTATION-HUD

CO-CHAIR—TOM LANTOS
HUMAN RIGHTS COMMISSION



Congress of the United States
House of Representatives

June 8, 2009

241 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-4610
(202) 225-6136

13873 PARK CENTER ROAD
SUITE 130
HERNDON, VA 20171
(703) 709-6800
(800) 945-9653 (IN STATE)

110 NORTH CAMERON STREET
WINCHESTER, VA 22601
(540) 667-0990
(800) 850-3463 (IN STATE)

wolf.house.gov

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave NW Rm 5111
Washington DC 20530

Dear Attorney General Holder:

I am troubled by your recent decision to drop the Department of Justice's lawsuit against the "New Black Panther Party for Self-Defense," a militant supremacist organization and hate group, and its two members who threatened voters as part of a national voter intimidation effort on Election Day last November.

According to the DOJ complaint, two uniformed men stood outside a polling station located at 1221 Fairmont Street in Philadelphia, Pennsylvania, brandishing weapons to intimidate voters. New Black Party Chairman and self-proclaimed "Attorney at War" Malik Zulu Shabazz confirmed that the placement of these men, Samir Shabazz and Jerry Jackson, in front of the polling station was part of a nationwide effort to position armed party members at precincts.

The complaint also stated that Samir Shabazz "pointed the weapon at individuals, menacingly tapped it [on] his other hand, or menacingly tapped it elsewhere. This activity occurred approximately eight to fifteen feet from the entrance to the polling station." Additionally, both men made "racial threats and racial insults at both black and white individuals" and made "menacing and intimidating gestures, statements, and movements directed at individuals who were present to aid voters," according to witness statements in the DOJ complaint. One of the witnesses, an experienced civil rights attorney who worked with Charles Evers in Mississippi, has publicly called this "the most blatant form of voter intimidation" he has ever seen.

On January 7, the Department of Justice appropriately filed suit in the U.S. District Court in Philadelphia against three men and the New Black Panther Party for Self-Defense under the Voting Rights Act. In the department's news release, Acting Assistant Attorney General Grace Chung Becker stated, "The Voting Rights Act of 1965 was passed to protect the fundamental right to vote and the Department takes allegations of voter intimidation seriously."

The Honorable Eric H. Holder, Jr.

June 8, 2009

Page 2

I worry that the department's commitment to protecting the "fundamental right to vote" is wavering under your leadership. I fail to understand how you could dismiss a legitimate case against a party that deployed armed men to a polling station -- one of whom brandished a weapon to voters -- who harassed and intimidated voters, and could then decide that such actions do not constitute a violation of section 11(b) of the Voting Rights Act of 1965, which prohibits "intimidation, coercion, or threats" against voters. What message does this send to other like-minded groups -- whoever their target -- about this administration's commitment to voting rights?

None of the defendants filed an answer to the lawsuit, which means that legally they admitted all of the allegations in the complaint. Yet your department dismissed the suit it had already won by default against three of the defendants. Not only did the department dismiss the civil suit, but it has also failed to criminally prosecute the defendants. The actions of these defendants are all violations of criminal provisions of the U.S. Code that prohibit intimidating, threatening and coercing voters. This is outlined on pages 54-63 of "Federal Prosecution of Election Offenses," the handbook provided by the Public Integrity Section of the Criminal Division to Justice Department prosecutors. These defendants could have (and should have) been charged under a number of provisions, including 42 U.S.C §1973gg-10(1); 18 U.S.C. §§ 241, 242, 245(b)(1)(A), and 594.

In 2006, then-Senator Barack Obama called such intimidation tactics "deplorable," citing similar intimidation of Native American voters in South Dakota in 2004 and a number of other incidents targeting African American voters. Your inexplicable dismissal of the civil case and the failure to file a criminal prosecution flies in the face of the president's stand on voting rights and sullies the good name of your department. It calls into question your commitment to protecting all voters and guaranteeing that they can exercise their franchise freely without fear.

The American people and this Congress deserve a full and transparent accounting of your decision to drop this case.

Best wishes.

Sincerely,

Frank R. Wolf
Member of Congress

FRW:tc

FRANK R. WOLF
10TH DISTRICT, VIRGINIA

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES:

RANKING MEMBER—COMMERCE-JUSTICE-
SCIENCE

TRANSPORTATION-HUD

CO-CHAIR—TOM LANTOS
HUMAN RIGHTS COMMISSION



Congress of the United States
House of Representatives

July 8, 2009

241 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-4610
(202) 225-5136

13873 PARK CENTER ROAD
SUITE 130
HERNDON, VA 20171
(703) 709-5800
(800) 946-9653 (IN STATE)

110 NORTH CAMERON STREET
WINCHESTER, VA 22601
(540) 667-0990
(800) 850-3463 (IN STATE)

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The Hon. John Conyers
Chairman
House Judiciary Committee
2138 Rayburn HOB
Washington, DC 20515

The Hon. Lamar Smith
Ranking Member
House Judiciary Committee
2142 Rayburn HOB
Washington, DC 20515

Dear Chairman Conyers and Ranking Member Smith:

I write to urge the House Judiciary Committee to hold a hearing on Attorney General Eric Holder's decision to dismiss the Department of Justice's (DOJ) case against the New Black Panther Party for voter intimidation on November 4, 2008. The dismissal of this case, which civil rights activist Bartle Bull called, "the most blatant form of voter intimidation I have encountered in my life in political campaigns in many states, even going back to the work I did in Mississippi in the 1960s," merits congressional attention, if only to force the department to explain its decision to dismiss this case.

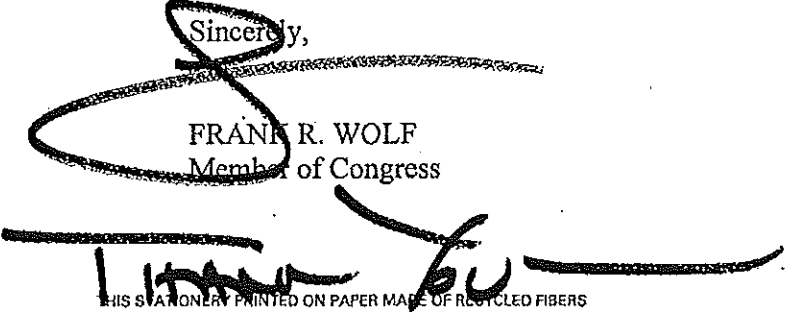
Following the department's surprising dismissal, I sent the attorney general the enclosed letter requesting additional information regarding his decision. Additionally, the U.S. Commission on Civil Rights, which I oversee as ranking member of the House Commerce-Justice-Science Appropriations subcommittee, voted unanimously to send the enclosed letters to the department on June 16 and June 22. To date, neither the commission nor I have received any response to our inquiries.

Upon his installation as attorney general, Eric Holder declared, "We will protect the civil rights of our fellow citizens, all of our fellow citizens – in the workplace, in the housing market, in our educational institutions and in the voting booth, as well as in their day to day lives." I believe that the House Judiciary Committee has an obligation to determine whether Mr. Holder's deeds match his words, especially in light of the many unanswered questions posed by the Commission on Civil Rights and members of Congress.

Thank you for your consideration. Please do not hesitate to contact me at 5-5136 if I can provide additional information on my inquiry regarding the dismissal of this case.

Best wishes.

Sincerely,


FRANK R. WOLF
Member of Congress

Congress of the United States
Washington, DC 20515

July 9, 2009

The Honorable Glenn A. Fine
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Mr. Inspector General,

We write today to request that you investigate whether improper political considerations led the Justice Department to dismiss a voter intimidation case it previously brought against the New Black Panther Party and two individuals affiliated with it. Following the dismissal, Judiciary Committee Ranking Member Lamar Smith and Ranking Member Frank Wolf each submitted letters to the Justice Department requesting information regarding the decision to drop the voter intimidation charges. To date, the Department has not responded to either request. Copies of the letters are attached.

The dismissal of the Department's case against the New Black Panther Party raises significant concerns about possible politicization of the Justice Department. The case in question was filed by the Department against members of the New Black Panther Party and two individuals affiliated with it. Significantly, one of those individuals carried credentials indicating he was a member of the local Democratic Committee. As both of our letters recount, the individuals are alleged to have engaged in brazen acts of voter intimidation outside of polling locations in Philadelphia, Pennsylvania, on Election Day 2008. After reviewing the facts, the Justice Department brought charges against the two individuals and the Party under the Voting Rights Act.

Despite the fact that a judge essentially ruled in favor of the Justice Department's complaint when the defendants failed to respond to the allegations, the Civil Rights Division under the Obama Administration decided to dismiss the case instead of obtaining a default judgment. We are unaware of any changes in the facts underlying this case between the Department's filing of its initial complaint and the subsequent filing of its motion to dismiss. Nor are we aware of any allegations of prosecutorial misconduct in the bringing of the initial complaint.

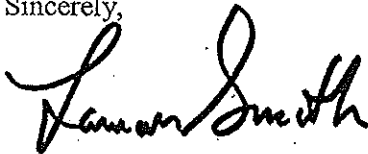
The Hon. Glenn A. Fine
July 9, 2009
Page 2

As Inspector General of the Justice Department, you spent more than a year investigating allegations of wrongful political influence in the removal of several U.S. Attorneys. Allegations of wrongful political influence by Obama Administration officials in the dismissal of a voting rights case are equally important and should be subject to an equally thorough investigation.

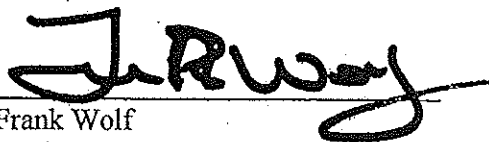
Voter intimidation threatens the very core of democracy. The American people need to know that the Justice Department takes seriously cases of voter intimidation, regardless of the political party of the defendants. We respectfully request that you open an investigation into the dismissal of the Black Panther Case and report to Congress.

We appreciate your timely consideration of our request.

Sincerely,



Lamar Smith
Ranking Member
House Judiciary Committee



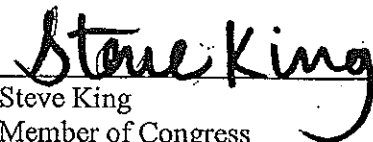
Frank Wolf
Ranking Member
Commerce, Justice, Science Subcommittee
House Appropriations Committee



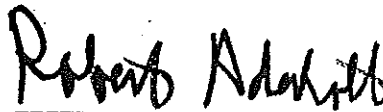
James Sensenbrenner
Ranking Member
Constitution, Civil Rights, Civil Liberties
Subcommittee
House Judiciary Committee



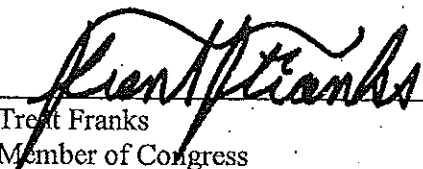
John Culberson
Member of Congress



Steve King
Member of Congress



Robert Aderholt
Member of Congress



Trent Franks
Member of Congress

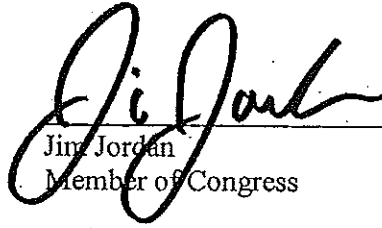


Jo Bonner
Member of Congress

The Hon. Glenn A. Fine .
July 9, 2009
Page 3



Louie Gohmert
Member of Congress



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ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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(202) 225-3951

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May 28, 2009

Ms. Loretta King
Acting Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
Washington DC 20530

Dear Ms. King,

It has come to my attention that on Election Day 2008, several members of the New Black Panther Party intimidated voters at a polling place in Philadelphia. These members brandished a baton in a threatening manner and made verbal threats to potential voters. After investigating the incident, the Civil Rights Division filed a complaint against the New Black Panther Party and several of its members for violations of Section 11(b) of the Voting Rights Act, which prohibits any "attempt to intimidate, threaten, or coerce" any voter and those aiding voters.

I understand that neither the New Black Panther Party nor its members filed a response to the complaint or any motion. As a result, the federal judge directed the Division to file a motion for a default judgment against the Party and its members. Instead of submitting the default judgment against the Party and its members to the court for signature, however, I understand the Division voluntarily moved to dismiss the complaint, even though it had effectively won the case.

This case was an uncontested lawsuit against defendants including one who, by the terms of the Division's own complaint, had "made statements containing racial threats and racial insults at both black and white individuals," and who "made menacing and intimidating gestures, statements, and movements directed at individuals who were present to aid voters." That individual, Jerry Jackson, had been carrying credentials as a member of the local Democratic committee. The Division sought relief only against the one defendant who carried and waived a baton on Election Day, and not against Mr. Jackson, and it sought only to enjoin that defendant from "displaying a weapon within 100 feet of any open polling location" in Philadelphia.

Ms. Loretta King
Page Two
May 28, 2009

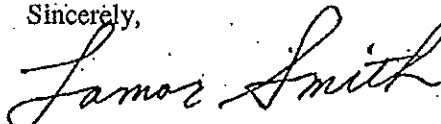
These actions raise a number of troubling questions. For example, why did the Civil Rights Division voluntarily dismiss a lawsuit that it had effectively already won, against defendants who were physically threatening voters? Is the Division concerned that this dismissal will encourage the New Black Panther Party, or other groups, to intimidate voters? Why did the Division seek such limited relief against a defendant who was actually carrying and brandishing a weapon at a polling station on Election Day? What role did the change of administrations play in the unusual resolution of voluntarily dismissing a case on which the Division had already prevailed?

In an effort to obtain answers to these and related questions, I request that the appropriate employees of the Division brief my staff regarding this lawsuit and the circumstances surrounding its dismissal. I am also requesting all non-privileged documents relating to the Division's dismissal of the suit.

Please respond to Crystal Jezierski, minority chief oversight counsel, or Paul Taylor, minority chief counsel on the Subcommittee on the Constitution, Civil Rights, and Civil Liberties at (202) 225-6906 by June 19 to arrange the briefing and the document delivery.

Thank you for your prompt consideration of this request.

Sincerely,



Lamar Smith
Ranking Member

cc: The Honorable Ron Weich
The Honorable John Conyers, Jr.
The Honorable Jerrold Nadler
The Honorable F. James Sensenbrenner, Jr.

FRANK R. WOLF
10TH DISTRICT, VIRGINIA

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Congress of the United States
House of Representatives

June 8, 2009

241 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-4610
(202) 225-6136

13873 PARK CENTER ROAD
SUITE 130
HERNDON, VA 20171
(703) 709-6800
(800) 845-9653 (IN STATE)

110 NORTH CAMERON STREET
WINCHESTER, VA 22601
(540) 667-0990
(800) 850-3463 (IN STATE)

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The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave NW Rm 5111
Washington DC 20530

Dear Attorney General Holder:

I am troubled by your recent decision to drop the Department of Justice's lawsuit against the "New Black Panther Party for Self-Defense," a militant supremacist organization and hate group, and its two members who threatened voters as part of a national voter intimidation effort on Election Day last November.

According to the DOJ complaint, two uniformed men stood outside a polling station located at 1221 Fairmont Street in Philadelphia, Pennsylvania, brandishing weapons to intimidate voters. New Black Party Chairman and self-proclaimed "Attorney at War" Malik Zulu Shabazz confirmed that the placement of these men, Samir Shabazz and Jerry Jackson, in front of the polling station was part of a nationwide effort to position armed party members at precincts.

The complaint also stated that Samir Shabazz "pointed the weapon at individuals, menacingly tapped it [on] his other hand, or menacingly tapped it elsewhere. This activity occurred approximately eight to fifteen feet from the entrance to the polling station." Additionally, both men made "racial threats and racial insults at both black and white individuals" and made "menacing and intimidating gestures, statements, and movements directed at individuals who were present to aid voters," according to witness statements in the DOJ complaint. One of the witnesses, an experienced civil rights attorney who worked with Charles Evers in Mississippi, has publicly called this "the most blatant form of voter intimidation" he has ever seen.

On January 7, the Department of Justice appropriately filed suit in the U.S. District Court in Philadelphia against three men and the New Black Panther Party for Self-Defense under the Voting Rights Act. In the department's news release, Acting Assistant Attorney General Grace Chung Becker stated, "The Voting Rights Act of 1965 was passed to protect the fundamental right to vote and the Department takes allegations of voter intimidation seriously."

The Honorable Eric H. Holder, Jr.
June 8, 2009
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I worry that the department's commitment to protecting the "fundamental right to vote" is wavering under your leadership. I fail to understand how you could dismiss a legitimate case against a party that deployed armed men to a polling station -- one of whom brandished a weapon to voters -- who harassed and intimidated voters, and could then decide that such actions do not constitute a violation of section 11(b) of the Voting Rights Act of 1965, which prohibits "intimidation, coercion, or threats" against voters. What message does this send to other like-minded groups -- whoever their target -- about this administration's commitment to voting rights?

None of the defendants filed an answer to the lawsuit, which means that legally they admitted all of the allegations in the complaint. Yet your department dismissed the suit it had already won by default against three of the defendants. Not only did the department dismiss the civil suit, but it has also failed to criminally prosecute the defendants. The actions of these defendants are all violations of criminal provisions of the U.S. Code that prohibit intimidating, threatening and coercing voters. This is outlined on pages 54-63 of "Federal Prosecution of Election Offenses," the handbook provided by the Public Integrity Section of the Criminal Division to Justice Department prosecutors. These defendants could have (and should have) been charged under a number of provisions, including 42 U.S.C §1973gg-10(1); 18 U.S.C. §§ 241, 242, 245(b)(1)(A), and 594.

In 2006, then-Senator Barack Obama called such intimidation tactics "deplorable," citing similar intimidation of Native American voters in South Dakota in 2004 and a number of other incidents targeting African American voters. Your inexplicable dismissal of the civil case and the failure to file a criminal prosecution flies in the face of the president's stand on voting rights and sullies the good name of your department. It calls into question your commitment to protecting all voters and guaranteeing that they can exercise their franchise freely without fear.

The American people and this Congress deserve a full and transparent accounting of your decision to drop this case.

Best wishes.

Sincerely,

Frank R. Wolf
Member of Congress

FRW:tc



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 13, 2009

The Honorable Frank R. Wolf
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Wolf:

This responds to your letter, dated June 8, 2009, concerning *United States v. New Black Panther Party for Self-Defense*, Civ. No. 09-0065 SD (E.D. Pa.), a case filed to enforce Section 11(b) of the Voting Rights Act of 1965, 42 U.S.C. § 1973i(b).

This case was filed on January 9, 2009. The United States obtained an injunction against a defendant who held a nightstick in front of a polling place in Philadelphia, Pennsylvania. The injunction is tailored appropriately to the scope of the violation and the requirements of the First Amendment, and the Department will fully enforce the terms of the injunction.

The Department voluntarily dismissed the Section 11(b) claims against three other defendants named in the complaint because the facts and the law did not support pursuing those claims against them. That decision was made after a careful and thorough review of the matter by the Acting Assistant Attorney General for Civil Rights, a career employee with nearly 30 years experience in the Department, including nearly 15 years as the career Deputy Assistant Attorney General for Civil Rights.

Although, as you note, these defendants failed to respond to the complaint, that does not mean the Department "had effectively won the case" against them. The Court of Appeals for the Third Circuit "does not favor entry of defaults or default judgments." *United States v. \$55,518.05 In U.S. Currency*, 728 F.2d 192, 194 (3d Cir. 1984). Rather, it is its "preference that cases be disposed of on the merits whenever practicable." *Hritz v. Woma Corp.*, 732 F.2d 1178, 1181 (3d Cir. 1984); *see also Hill v. Williamsport Police Dept.*, 69 Fed. Appx. 49, 51 n.3 (3d Cir. 2003) (factors to consider in granting a default judgment include "whether material issues of fact or issues of substantial public importance are at issue"). Accordingly, an entry of a default judgment in the district court is not automatic. Moreover, even if a court were to grant a default

judgment on liability, the court still would need to assess the propriety of any requested injunction. *Broadcast Music, Inc. v. Sprint Mount Area Bavarian Resort, Ltd.*, 555 F. Supp. 2d 537, 543 (E.D. Pa. 2008) (granting injunctive relief following entry of default judgment only after considering propriety of remedy sought); *cf. Shields v. Zuccarini*, 254 F.3d 476, 482 (3d Cir. 2001) (identifying factors a court must consider before granting permanent injunctive relief).

Section 11(b) prohibits intimidation, threats or coercion of "any person for voting or attempting to vote, or ... for urging or aiding any person to vote or attempt to vote." The United States is authorized to enforce Section 11(b) through civil litigation and to obtain declaratory and injunctive relief. For a variety of reasons, including the limited remedies available under Section 11(b), the Department has filed only three cases under this provision in the three decades for which we have reliable records on the subject. Indeed, in the 44 years since Congress passed the Voting Rights Act, fewer than 10 reported cases have ever been brought by any party prior to the case in question.

In *U.S. v. New Black Panther Party for Self-Defense*, the district court found that the United States had alleged that Minister King Samir Shabazz "stood in front of the polling location at 1221 Fairmont Street in Philadelphia, wearing a military-style uniform, wielding a nightstick, and making intimidating statements and gestures to various individuals, all in violation of 42 U.S.C. § 1973i(b)." Order, dated May 18, 2009, at 1, and entered judgment "in favor of the United States of America and against Minister King Samir Shabazz, enjoining Minister King Samir Shabazz from displaying a weapon within 100 feet of any open polling location on any election day in the City of Philadelphia, or from otherwise violating 42 U.S.C. § 1973i(b)." Judgment, dated May 18, 2009. We believe this injunction is tailored appropriately to the scope of the violation and the requirements of the First Amendment. We intend to enforce fully the terms of this injunction. Section 11(b) does not authorize other kinds of relief, such as monetary damages or civil penalties.

The United States had, prior to these rulings, voluntarily dismissed claims against the three other defendants named in the complaint: The New Black Panther Party for Self-Defense ("the Party"), Malik Zulu Shabazz and Jerry Jackson. The Department considered not only the allegations in the complaint, but also the evidence that had been amassed by the Department to support those allegations.

The complaint alleges that the Party "made statements and posted notice that over 300 members of the New Black Panther Party for Self-Defense would be deployed at polling locations during voting on November 4, 2008, throughout the United States." Complaint, para. 12. Notably, the complaint does not allege that those statements or the notice called for any Party member to display weapons at polling locations or do anything that would violate Section

The Honorable Frank R. Wolf
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11(b). Nor is there any allegation in the complaint that Malik Zulu Shabazz made any such statement in advance of the election.

The complaint does allege that the Party and Malik Zulu Shabazz "managed" and "directed" "the behavior, actions and statements of Defendants Samir Shabazz and [Jerry] Jackson at [the Philadelphia polling place], alleged in this Complaint." Complaint, para. 12. The Department considered the evidence developed to support this allegation and concluded that the factual contentions in the complaint did not have sufficient evidentiary support.

The complaint also alleges that the Party and Malik Zulu Shabazz "endorsed" the alleged activities at the Philadelphia polling place after the election. Even assuming that a post-event "endorsement" is sufficient to impose Section 11(b) liability, the Department found the evidence on this allegation to be equivocal. The Party posted statements on its web site specifically disavowing the Philadelphia polling place activities and suspending the Party's Philadelphia chapter because of these activities.

With regard to the alleged activities at the Philadelphia polling place, the Department concluded that the allegations in the complaint regarding Samir Shabazz, the person holding the nightstick, were sufficient to state a claim under Section 11(b) and that the evidence developed supported those allegations. As noted above, we therefore sought and obtained a judgment against this defendant and appropriately-tailored injunctive relief.

The Department decided not to proceed with its claims against Jerry Jackson, who was a resident of the apartment building where the polling place was located and was certified by city officials as a poll watcher. The local police officers who were called to the polling place ordered Samir Shabazz to leave the polling place, but allowed Jackson to remain. Considering the contemporaneous response of the local police officers to Jackson's activities, as well as the evidence developed to support the allegations against Jackson, the Department concluded that the factual contentions in the complaint did not have sufficient evidentiary support.

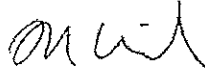
In response to your question about why criminal charges were not brought regarding this matter, the Department determined in 2008 that the conduct at issue did not present a prosecutable violation of any of the relevant federal statutes. As you know, the standard of proof to successfully pursue a criminal matter is significantly higher than that associated with a civil case.

We can assure you that the Department is committed to comprehensive and vigorous enforcement of both the civil and criminal provisions of federal law that prohibit voter intimidation. We continue to work with voters, communities, and local law enforcement to ensure that every American can vote free from intimidation, coercion, or threats.

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We hope this information is helpful. Please do not hesitate to contact this office if we may be of assistance with this or any other matter.

Sincerely,

A handwritten signature in dark ink, appearing to read 'R. Weich', written in a cursive style.

Ronald Weich
Assistant Attorney General

Congress of the United States
Washington, DC 20515

July 17, 2009

The Honorable Eric Holder
Attorney General
U.S. Department of Justice
Washington, D.C. 20530

Dear Attorney General Holder:

Thank you for the July 13, 2009, letter we received from Assistant Attorney General Ronald Weich responding to our concerns about the Department's highly unusual (if not unprecedented) dismissal of its Voting Rights Act (VRA) lawsuit against the New Black Panther Party and its members in the wake of the district court's offer to grant the United States a default judgment. We appreciate the Department's response and commitment to brief us and other members on this case. In advance of those briefings, we would like to share with you in more detail some specific concerns we have about the Department's actions in this matter. We ask that the Department be prepared to address these questions when it briefs Members of Congress on this matter in the coming weeks.

The Department maintains that the decision to dismiss the case against three Defendants – the New Black Panther Party, its Chairman, Malik Zulu Shabazz, and Jerry Jackson – was fully justified. This conclusion is based, in part, on the view that the New Black Panther Party's publicly announced plan to position several hundred of its members at polling places on election day did not violate Section 11(b) of the VRA because the announcement did not go so far as to expressly call on party members to "display weapons" at the polls. The fact that at least one New Black Panther Party member actually appeared at a polling place on Election Day with a weapon, and another member stood side-by-side in formation with his armed colleague in an effort to intimidate potential voters, does not change the Department's analysis.

However, to suggest that the New Black Panther Party failed to contravene the VRA merely because it avoided any reference to "weapons" in its pre-Election Day announcement eviscerates critical civil rights protections and establishes a dangerous precedent. Is the Justice Department's position now that a paramilitary organization is free to send its members en masse to polling places – in uniform no less – without fear of legal repercussions, as long as there is no explicit mention of weaponry? Had the Ku Klux Klan or Aryan Brotherhood made a similar announcement prior to November 4, 2008, would the Civil Rights Division have viewed the group's failure to mention weapons as an exculpatory omission?

The Hon. Eric Holder
July, 17 2009
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A violation of Section 11(b) does not require the use of weapons, or even the threat to use weapons. The appearance of uniformed members (at least one of whom was armed) of the New Black Panther Party is exactly the kind of conduct that Section 11(b) was intended to address. The fact that the New Black Panther Party was clever enough not to publicly call for the use of weapons does not – nor should not – absolve the organization of liability.

The Department's response also states that the Division did not find sufficient evidence that the New Black Panther Party and Malik Zulu Shabazz managed, directed, or endorsed the behavior of the other Defendants. This conclusion appears, however, to be directly contradicted by statements made by Mr. Shabazz on national television on November 7, 2008. In an interview, Mr. Shabazz claims that his activities in Philadelphia were part of a nationwide effort involving hundreds of party members, and that the display of the weapons was a necessary part of the New Black Panther Party deployment.

It could be argued that this admission, standing alone, should settle the issue. At a minimum, however, the Department should have responded by at least conducting a deposition of the Defendants and engaging in some minimal discovery to determine the full composition and character of the Defendants' intimidating activities. For the Department to state that there was not sufficient evidence to support proceeding against a party chairman who admits that weapons were part of a nationwide deployment is remarkable. It is unclear from your response whether or not Civil Rights Division attorneys actually interviewed Mr. Shabazz, and, if so, what the results of that interview were. We have a strong suspicion that, given Mr. Shabazz's statements to the national media, any interview conducted by Civil Rights Division attorneys would have yielded similarly useful evidence. The fact that the Defendants did not respond to the complaint, however, leads us to believe that no discovery took place in the case.

In addition, we wonder whether the videos and statements that can be found on the Internet, produced by organizations such as the Anti-Defamation League, were considered to provide context to the violent nature of the New Black Panther Party deployment on November 4, 2008. If so, we would request that you provide the undersigned a list of the videos and statements that the Department considered before dismissing the case against the New Black Panther Party and Malik Zulu Shabazz.

Additionally, the Department maintains that the case was dismissed because the New Black Panther Party disavowed the actions in Philadelphia *after* the election. Yet on May 4, 2009, the Civil Rights Division filed a response to a motion for partial summary judgment by the defendants in a housing discrimination lawsuit in Kansas that took exactly the opposite position. In *U.S. v. Sturdevant*, the defendants argued that the case should be dismissed because they fired the employee accused of discriminatory conduct, had not authorized such conduct, and no longer owned the apartment property where the

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discrimination occurred. The Department argued in its response brief that the case should not be dismissed because there were still disputed issues of material facts regarding which of the defendants' employees were ultimately responsible for monitoring and correcting the employee's discriminatory conduct, when the defendants knew about the discrimination, and what steps were taken to correct the problem. The Department's brief in that case also argued that even if the defendants were *now disavowing* the discriminatory actions of their former employee, there were no assurances that the defendants' failure to "train, monitor, and discipline" the former employee would not be repeated with other employees at other properties owned by the defendants. See *United States v. Sturdevant*, Case No. 2:07-02233 (D. Kan.), United States' Response to the AIMCO Defendants' Motion for Partial Summary Judgment, pages 10-12.

The same principle is at play in the New Black Panther Party case. By not engaging in discovery and eschewing a default judgment, the Department has no assurances that the New Black Panther Party will not engage in exactly the same type of behavior again. Nor are there any assurances that the New Black Panther Party will "train, monitor, and discipline" its members so that the behavior that occurred in Philadelphia will not be repeated in future elections. In fact, we would not be surprised if the members of the New Black Panther Party will likely be encouraged to engage in similar activities given the likely minimal deterrent effect of the sanctions levied against it after its reprehensible conduct last fall.

Turning to Defendant Jerry Jackson, your letter cites a variety of reasons for the voluntary dismissal. One of these is the "contemporaneous response" of the local Philadelphia police officers as justifying the dismissal against Mr. Jackson, in so far as they did not arrest or remove him. We urge you to reconsider this position. Whether or not Federal law has been violated is not determined by the behavior of local law enforcement officials, and we are unaware of the Civil Rights Division ever taking such a position before. In this vein, we would request that you provide any interview notes members of the career trial team made upon interviewing the local police officers. These attorneys' interview notes regarding their impressions of the local police officers is of critical importance given the weight the Department placed upon the officers' actions when deciding to dismiss the charges against Mr. Jackson.

Reports indicate that the Department had sworn statements from multiple victims that Mr. Jackson stood in formation with the armed Defendant, Samir Shabazz, and attempted to block the entrance to the polls. Messrs. Jackson and Shabazz were identically dressed. Their military uniforms alone were intimidating. Others, including voters, witnessed their behavior. We thus ask that you provide us with the executed sworn statements of witnesses Bartle Bull, Christopher Hill, Michael Mauro, and any other witnesses of which we may be unaware.

The Hon. Eric Holder
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The Department's response also suggests that the First Amendment was somehow implicated by a publicly announced nationwide plan to position paramilitary members of an organization at the entrance to a polling location. However, the First Amendment would implicate only the scope of any remedy, not underlying liability. For example, statements and party activities may be protected by the First Amendment, but would still be admissible evidence to show that the Voting Rights Act was violated. Although the Defendants may have exercised their First Amendment Rights in making statements that they intended to implement a nationwide plan to place uniformed members at the entrance to polls, such statements would still be admissible to demonstrate liability even if they cannot be enjoined.

In addition to the above questions we would also ask that the Department be prepared to reply to the following questions:

- Is the FBI aware of the activities of the Defendants, and if so, what is its assessment of their behavior and threatening nature? Does the FBI share your characterization of the response of local law enforcement officials on the scene, assuming it is accurate?
- What did the Department do to determine the extent of New Black Panther Party members deploying in other locations throughout the United States before dismissing the case? Did the Department's political appointees inquire about the possibility of a nationwide Panther deployment?
- Although the Department maintains that there was insufficient evidence to proceed to default against the New Black Panther Party and its Chairman Malik Zulu Shabazz, we are not aware that any discovery was conducted by the Department. Why, then, would the Department not simply have informed the District Court that it did not wish a default finding against the three defendants and instead wished to proceed to full discovery? This approach would have enabled the Department to resolve any evidentiary uncertainties and ensure a vigorous enforcement of voter intimidation statutes.
- Has the Department provided all communications with third-party interest groups about the case? For example, if memoranda or emails from third-party interest groups were sent to the Department or any official at the Department, such documents would not be privileged as you well know.
- Did Department staff apart from the four-person career trial team engage in any discussions with Defendants or their representatives? Did current Department political appointees conduct discussions with the Defendants or their agents prior to January 20? If so, have they recused themselves? Are there any career

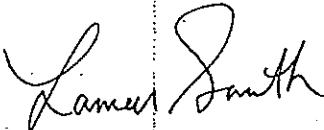
The Hon. Eric Holder
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Page Five

attorneys in the Voting Section or the Civil Rights Division who worked on the case besides the four Section attorneys named on the pleadings?

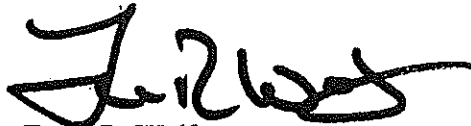
- What specific new facts did the Department learn between the filing of the complaint and its dismissal that caused the Civil Rights Division lawyers who had approved the filing of the suit in January to change their position and decide that the suit could not be maintained against those defendants against whom the suit was dismissed? How did the Department come to learn about those specific facts?

We appreciate your attention to this important matter and look forward to the Department's briefing.

Sincerely,



Lamar Smith
Ranking Member
Committee on the Judiciary



Frank R. Wolf
Ranking Member
Commerce-Justice-Science
Subcommittee House Appropriations
Committee

cc: The Honorable John Conyers, Jr.

FRANK R. WOLF
10TH DISTRICT, VIRGINIA

COMMITTEE ON APPROPRIATIONS

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CO-CHAIR—TOM LANTOS
HUMAN RIGHTS COMMISSION



Congress of the United States
House of Representatives

July 22, 2009

241 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-4610
(202) 225-5136

13873 PARK CENTER ROAD
SUITE 130
HERNDON, VA 20171
(703) 709-5800
(800) 946-9653 (IN STATE)

110 NORTH CAMERON STREET
WINCHESTER, VA 22601
(540) 667-0890
(800) 850-3453 (IN STATE)

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The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave NW Rm 5111
Washington DC 20530

Dear Attorney General Holder:

Veteran civil rights activist Bartle Bull, who managed campaigns for Robert F. Kennedy in New York in 1968 and other prominent Democratic state candidates, recently opined, "Martin Luther King did not die to have people in jack boots with billy clubs, block the doors of polling places... And neither did Robert Kennedy. It's an absolute disgrace." The disgrace Bull refers to is your unwarranted dismissal of *U.S. v. the New Black Panther Party for Self-Defense, Malik Zulu Shabazz, Minister King Samir Shabazz aka Maurice Heath, and Jerry Jackson*.

My commitment to voting rights is without question. In fact, in 1981 upon my vote for the Voting Rights Act, the *Richmond Times-Dispatch* published the enclosed editorial, "A More Offensive Law," castigating me for my vote when every other member of the Virginia congressional delegation opposed it. The editorial chastised me stating, "Mr. Wolf will be partly to blame [for federal voting rights oversight]."

During my meeting Monday with Ms. Loretta King and Mr. Steven Rosenbaum of the Civil Rights Divisions, they refused to answer my questions claiming the "privileged" nature of the information. I would remind you that such defenses do not apply to requests from members of Congress. The Freedom of Information Act (FOIA) includes a provision that states quite clearly that most of the FOIA exemptions – including deliberative process – do not apply to requests from Congress. See 5 U.S.C. § 552(d). This exemption has been affirmed by at least two D.C. Circuit opinions, which hold that FOIA requests from individual members of Congress satisfy the congressional request requirement and thus render any FOIA exemptions inapplicable. See *Murphy v. Department of the Army*, 613 F.2d 1151, 1157 (D.C. Cir. 1979); *FTC v. Owens-Corning Fiberglas Corp.*, 626 F.2d 966, 974 n.16 (D.C. Cir. 1980); see also *Rockwell Int'l Corp. v. U.S. Department of Justice*, 235 F.3d 598, 603 (D.C. Cir. 2001) (noting that disclosure of deliberative process memo to member of Congress did not waive FOIA exemption as to member of general public because FOIA carved out Congress from the statute's disclosure obligation exemptions).

Accordingly, I would respectfully reiterate my requests for the following information and documents:

1. Why am I being prevented from meeting with the trial team on this case?
2. What was the nature of Acting Assistant Attorney General for Civil Rights Loretta King's communication, if any, with you, Deputy Attorney General Ogden, or Associate Attorney General Perrelli's offices prior to the case dismissal?
3. Did you, Deputy Attorney General Ogden, or Associate Attorney General Perrelli approve (or express reservations about) the dismissal of this case and/or sign-off on any communication with regard to the dismissal? If so, will those communications be provided to members?
4. Mr. Ronald Weich's letter of July 13 states that Ms. King is a 30-year career employee and was acting in that capacity when the case was dismissed.

However, I understand that the Vacancy Reform Act characterizes her position at the time, Acting Assistant Attorney General for Civil Rights, as a "Presidential appointment with Senate confirmation" (PAS) and in that capacity she would be acting in a political capacity, *assuming the Office of the Associate Attorney General, Deputy Attorney General or Attorney General also did not opine on the matter*. Could you please clarify?

5. The former attorney general was a signatory to the complaint. Are you a signatory to any legal document or internal directive regarding the dismissal of this case?
6. In an affidavit taken by your department, civil rights activist Bartle Bull states, "I have never encountered or heard of another instance in the United States where armed men blocked the entrance to a polling location," and "It would qualify as the most blatant form of voter intimidation I have encountered in my life."

According to DOJ's own interpretation of 18 U.S.C. § 594 in its "Federal Prosecution of Election Offenses" manual (p. 56): "Section 594 prohibits intimidating, threatening, or coercing anyone, or attempting to do so, for the purpose of interfering with an individual's right to vote or not vote in any [federal] election."

- a. Do you believe that this and other witness testimony fails to support issues of "intimidation, threatening, or coercing" behavior on the part of the defendants?
- b. On what grounds did you find that the appearance of members of a widely recognized hate group wearing paramilitary-style uniforms did not constitute intimidation?

- c. What precedent does this set for other like-minded groups -- whoever their target -- about federal enforcement of voter intimidation by hate groups outside of polling stations?
 - d. If showing a weapon, making threatening statements, and wearing paramilitary uniforms in front of polling station doors does not constitute voter intimidation, at what threshold of activity would these laws be enforceable?
7. Mr. Weich's letter cites uncertainty as to the outcome of "default judgments" as your justification for dismissal of the charges against Jerry Jackson, Malik Zulu Shabazz, and the New Black Panther Party.

The letter also alleges that the body of evidence amassed further informed your decision to dismiss this case. Will you provide Members with:

- a. Copies of the sworn statements by witnesses?
 - b. An inventory of video evidence?
 - c. Examples of such evidence that influenced dismissal?
 - d. The names of individuals and third-party groups contacted and any documents that they provided in prosecuting this case?
8. Did the department contact the Southern Poverty Law Center and/or Anti-Defamation League, which list the New Black Panther Party as a hate group along with the KKK and American Nazi Party? If so, with whom did the department speak?
9. Is certainty of favorable judgment a new precedent for this department?
10. Did the signatories of the complaint concur with your decision to dismiss?
11. Mr. Weich's letter cites the local police officer's decision not to remove Jerry Jackson because he was a resident of the apartment building and certified by city officials as a poll watcher.

It has come to my attention that your justification that Jackson lived at the building where the polling place was located is false. The polling place was at a high-rise at 1221 Fairmount Street in Philadelphia, a senior living facility called the Guild House. Jackson, I understand, resides at 813 North Parks Street in Philadelphia and has never resided at 1221 Fairmount Street.

The Honorable Eric H. Holder, Jr.

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Page 4

- a. Please explain this discrepancy. Did your office do its due diligence before dismissing this case or responding to members?
 - b. Do you believe that Jerry Jackson's affiliation, uniform, statements, and behavior at 1221 Fairmont Street on November 4 are justified since he was a registered poll watcher?
 - c. Is it the policy of this Justice Department that any individual registered as a poll watcher may wear any form of uniform, brandish weapons, make unsolicited comments to voters, or loiter at the polls?
 - d. Does the Department believe that the possession of papers allowing one to be present at a polling place also allows the holder to violate Section 11(b) of the VRA?
 - e. Was Jerry Jackson registered as a poll watcher with a particular political party or campaign? If so, which one?
 - f. Was that political party or campaign interviewed with regard to Jackson's role in this complaint? If so, were they aware and did they condone his appearance on November 4?
 - g. In a video of the event, Jackson and Shabazz state that they are providing "security" for the polling precinct. Who authorized them to provide these services and under what authority?
12. Mr. Weich's letter states that the dismissal was based, in part, on the view that the New Black Panther Party's publicly announced plan to position several hundred of its members at polling places on Election Day did not violate Section 11(b) of the VRA because the announcement did not go so far as to expressly call on party members to "display weapons" at the polls.

How do you justify this response given that a violation of Section 11(b) does not require the use of weapons, or even the threat to use weapons?

13. Mr. Weich's letter asserts that evidence does not support the complaint regarding Malik Zulu Shabazz and the party "endorsing" or directing the "behavior, actions, and statements" of Shabazz and Jackson.

However, it would seem that the confession *on national television* by Malik Zulu Shabazz on November 7, 2008, flatly contradicts your assertion. Mr. Shabazz unequivocally claims that his activities in Philadelphia were part of a nationwide effort

involving hundreds of party members, and that the use of the weapons was a necessary part of the Black Panther deployment.

- a. Given Jackson and Shabazz's open membership in Malik Zulu Shabazz's New Black Panther Party, how do you justify that post-event endorsement of their actions is not sufficient to impose Section 11(b) liability?
 - b. Even if this connection is not entirely certain, why would you not allow the court to render judgment on this to make such a determination?
14. Specifically, you cite the Party's "disavowal" of Shabazz and Jackson actions on its Web site as your justification for dismissing these charges.
- a. Was this disavowal posted on the Web site before or after DOJ filed its complaint?
 - b. On what date was the disavowal posted and who was the author?
 - c. How does this disavowal negate Malik Zulu Shabazz's earlier public declarations that his party coordinated efforts to have party members posted in front of polling locations?
15. Can you provide an example of another case, whether civil rights, tax, anti-trust, or criminal enterprise, when the defendants' post-behavior disavowal resulted in the department similarly dismissing the case?
16. It is my understanding that Mr. Steven Rosenbaum brought a voter intimidation case against the North Carolina Republican Party in 1992 based on misleading postcards.
- Could you please provide the complaint, justification memo, and consent decree in this case as well as any additional documents that discuss First Amendment implications?
17. Mr. Weich's letter states that you believe the injunction against Samir Shabazz "is tailored appropriately to the scope of the violation" – enjoining Shabazz from "displaying a weapon within 100 feet of any open polling location on Election Day in the City of Philadelphia."
- The letter also states that "Section 11(b) does not authorize other kinds of relief, such as monetary damages or civil penalties."
- a. Why is the injunction from displaying weapons in front of polling places only limited to the City of Philadelphia and not extended to other cities that fall within

The Honorable Eric H. Holder, Jr.

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the Eastern District of Pennsylvania, such as Allentown, Reading, Lancaster and Bethlehem?

- b. What will happen if Shabazz brandishes a weapon at a polling place in another city?
- c. Is it true that this injunction stands only through Election Day 2012?
- d. What is the precedent for limiting this injunction to one geographic location?

Please consider these questions as an addendum to my July 17 letter with House Judiciary Committee Ranking Member Lamar Smith.

Sincerely,

Frank R. Wolf
Member of Congress

Cc: Nelson Hermilla, Chief
FOIA/PA Branch
Civil Rights Division
NALC, Room 311
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Richmond Times Dispatch

WILLIAM W. WART, BRUNNELL, Publisher
JOHN C. LEARD, Executive Editor
A. C. BROWN, KENNEDY, Managing Editor
EDWARD CHIMSLEY, Editor of the Editorial Page

Thursday, October 15, 1951

A More Offensive Law

A recent news story from Washington reported that South District Representative Frank R. Wolf didn't want to talk about the possibility of extending the Voting Rights Act. Mr. Wolf's view is absolutely no way that he can justify his endorsement of a measure that officially brands Virginia a second class state and causes the permanent disfranchisement of a large portion of its white population. Mr. Wolf was the only Virginia congressman to support the bill when it moved through the House of Representatives last week.

Grossly unfair in its present form, the Voting Rights Act would be made even more offensive by changes the House approved. The so-called pre-clearance provision, which now is subject to periodic reconsideration, would become a permanent feature of the law. Under this provision, favored states and localities could obtain general approval of any law, action or decision that might affect the voting rights or strength of minorities, especially blacks. The House's new version outlines a procedure by which a state might theoretically purify itself and gain exemption from the act. The process is so cumbersome and vague that it is likely to prove unworkable. One important aspect of the act that would remain unchanged in the House version is its inequitable selectivity. The law would continue to apply only to a minority of the South. Efforts to persuade the House to apply the act uniformly throughout the nation were unsuccessful.

Indeed, the House was unwilling to make even the slightest gesture

toward fairness. As the bill had emerged from the House Judiciary Committee, it provided that any state or local government could obtain exemption from the act by applying to the United States District Court in Washington. Sixth District Republican Rep. M. Caldwell Butler, one of the principal leaders of the anti-law movement, introduced the amendment that would have permitted states and localities to sue for relief in a local federal district court. The necessity to go to Washington, he argued, would be so costly and cumbersome that many communities would be discouraged from even attempting to make an application. But the House committee rejected this proposal.

The so-called "back door" Virginia route, which would have permitted states and localities to obtain exemption from the Voting Rights Act, was in many ways the Virginia's attempt to surridge the right of its black citizens to vote. The House bill, on the other hand, would have treated all white citizens as local governments and denied universal rights the the rest of the nation freely exercises. And Mr. Wolf will be partly to blame.

Representative Frank Wolfe will be partly to blame for the passage of the Voting Rights Act. He was the only Virginia congressman to support the bill when it moved through the House of Representatives last week. He was the only Virginia congressman to support the bill when it moved through the House of Representatives last week. He was the only Virginia congressman to support the bill when it moved through the House of Representatives last week.

FRANK R. WOLF
10TH DISTRICT, VIRGINIA

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES:

RANKING MEMBER -- COMMERCE-JUSTICE-
SCIENCE

TRANSPORTATION-HUD

CO-CHAIR -- TOM LANTOS
HUMAN RIGHTS COMMISSION



Congress of the United States
House of Representatives

July 31, 2009

241 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-4810
(202) 225-6136

13873 PARK CENTER ROAD
SUITE 130
HERNDON, VA 20171
(703) 709-6800
(800) 945-9853 (IN STATE)

110 NORTH CAMERON STREET
WINCHESTER, VA 22601
(540) 687-0990
(800) 850-3463 (IN STATE)

wolf.house.gov

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave NW Rm 5111
Washington DC 20530

Dear Attorney General Holder:

In light of the troubling reports of political influence in the enclosed article from yesterday's *Washington Times*, as well as the many unanswered questions to members of Congress, I implore you to re-file the voter intimidation case against the New Black Panther Party and other defendants so that impartial judges -- not political benefactors -- may rule on the merits of this case. Given your declaration on July 22 that the department's Civil Rights Division is "back and open for business," I would urge you to demonstrate your commitment to enforcing the law above political interests by re-filing.

My commitment to voting rights is unquestioned. In 1981, I was the only member -- Republican or Democrat -- of the Virginia delegation in the House to vote for the Voting Rights Act and was harshly criticized by the editorial page of the *Richmond Times Dispatch*, and when I supported the act's reauthorization in 2006, I was again criticized by editorial pages.

Given my consistent support for voting rights throughout my public service, I hope you can understand why I am particularly troubled by the dismissal of this case. The video evidence of the defendants' behavior on Election Day, as well as a January National Geographic Channel documentary, "Inside: The New Black Panther Party," should leave no question of the defendants' desire to intimidate or incite violence.

The ramifications of the dismissal of this case were serious and immediate. Defendant Jerry Jackson received a new poll watcher certificate, a copy of which I have enclosed, on May 19, 2009, immediately after the case was dismissed. Mr. Jackson faced no consequences for his blatant intimidation and promptly involved himself in the next election. Is that justice served?

As you will read in the enclosed memorandum of opinion from the Congressional Research Service's American Law Division, there is no legal impediment that would prevent you from re-filing this case. Unlike a criminal case, a civil case seeking an injunction against the other defendants could be brought again at any time. According to the memo provided to me, "It appears likely that the Double Jeopardy Clause would not bar a subsequent civil action against the [New Black Panther] Party or most of its members," and "second, because the United States voluntarily dismissed its suit against the Party and two of the three individual members before those defendants had filed an answer or motion to dismiss the suit, the previous action had not moved sufficiently beyond preliminary steps so as to implicate the Double Jeopardy Clause."

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I was surprised to learn from *The Washington Times* report of the existence of the enclosed correspondence from the chief of the department's Appellate Division recommending that the department proceed with the case and the default judgment. These opinions were never disclosed to me or other members of Congress by the department in its previous responses to questions regarding the dismissal of the case. According to the report:

"Appellate Chief Diana K. Flynn said in a May 13 memo obtained by The Times that the appropriate action was to pursue the default judgment unless the department had evidence the court ruling was based on unethical conduct by the government.

"She said the complaint was aimed at preventing the 'paramilitary style intimidation of voters at polling places elsewhere' and Justice could make a 'reasonable argument in favor of default relief against all defendants and probably should.' She noted that the complaint's purpose was to 'prevent the paramilitary style intimidation of voters while leaving open 'ample opportunity for political expression.'

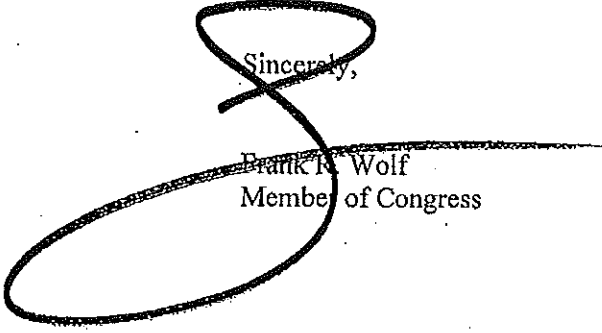
"An accompanying memo by Appellate Section lawyer Marie K. McElderry said the charges not only included bringing the weapon to the polling place, but creating an intimidating atmosphere by the uniforms, the military-type stance and the threatening language used. She said the complaint appeared to be 'sufficient to support the injunctions' sought by the career lawyers.

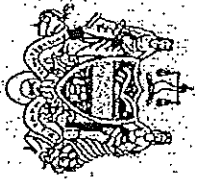
"The government's predominant interest is preventing intimidation, threats and coercion against voters or persons urging or aiding persons to vote or attempt to vote, she said."

Given that both the department's trial team and the Appellate Division argued strongly in favor of proceeding with the case, I can only conclude that the decision to overrule the career attorneys Associate Attorney General Thomas Perrelli, or other administration officials, was politically motivated. This report further confirms my suspicions that the Department of Justice under your watch is becoming increasingly political.

It is imperative that we protect all Americans right to vote: This is a sacrosanct and inalienable right of any democracy. The career attorneys and Appellate Division within the department sought to demonstrate the federal government's commitment to protecting this right by vigorously prosecuting any individual or group that seeks to undermine this right. The only legitimate course of action is to allow the trial team to bring the case again and allow the our nation's justice system to work as it was intended -- impartially and without bias.

Sincerely,


Frank R. Wolf
Member of Congress



Commonwealth of Pennsylvania
COUNTY OF PHILADELPHIA

WATCHER'S CERTIFICATE

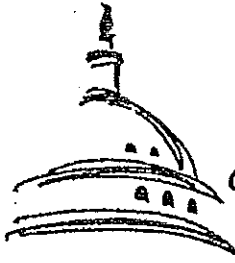
THIS CERTIFICATE AUTHORIZES THE INDIVIDUAL TO WATCH IN ANY
WARD / DIVISION IN PHILADELPHIA

THIS WILL CERTIFY That Shirley Mae Jacobs residing at
813 N. Market St.
the 1st Ward for the 04 Election Division of Philadelphia, representing
James Callahan Candidate for Judge of the Court
on the DEMOCRATIC BALLOT to serve at a Primary Election to be held May 19, 2009.

Witness our hand and official seal

Note - Each candidate is entitled to two Watchers per Division in his or her District, but no
candidate or party shall be represented by more than one Watcher in the same voting room at
any time.
16-88 (Rev. 1/09) - DEMOCRATIC COUNTY BOARD OF ELECTIONS

Richard M. Lawrence
MARCKEY M. STARBUCK
ANTHONY CLARK, Commissioner
Richard M. Lawrence
JANET K. DUVA, County Clerk



MEMORANDUM

July 30, 2009

To: Hon. Frank Wolf
Attention: Thomas Culligan

From: Anna Henning, Legislative Attorney, 7-4067

Subject: Application of the U.S. Constitution's Double Jeopardy Clause to Civil Suits

This memorandum responds to your request for an analysis of the application of the Double Jeopardy Clause to successive civil suits in federal courts. In particular, it examines the clause's potential application in the context of a civil suit brought against the New Black Panther Party for Self-Defense or its members, against whom the United States had previously brought an action for injunctive relief. In sum, it appears likely that the Double Jeopardy Clause would not bar a subsequent civil action against the Party or most of its members.

Double Jeopardy Clause: Application to Civil Penalties

The Double Jeopardy Clause provides that no "person [shall] be subject for the same offence to be twice put in jeopardy of life or limb."¹ It has been interpreted as prohibiting only successive punishments or prosecutions that are criminal in nature.² However, some penalties designated as "civil" by statute have been found to be sufficiently "criminal" to implicate double jeopardy concerns. In other words, whether a particular punishment is criminal or civil may require an interpretation of congressional intent and the extent to which the penalty can be characterized as penal in nature.³

Factors that courts consider when determining whether a penalty is criminal in nature include: (1) "whether the sanction involves an affirmative disability or restraint"; (2) "whether it has historically been regarded as a punishment"; (3) "whether it comes into play only on a finding of *scienter*"; (4) "whether its operation will promote the traditional aims of punishment – retribution and deterrence"; (5) "whether the behavior to which it applies is already a crime"; (6) "whether an alternative purpose to which it may rationally be connected is assignable for it"; and (7) "whether it appears excessive in relation to the

¹ U.S. Const. amend. V. Although federal proceedings are the focus of this analysis, the Supreme Court has held that the Double Jeopardy Clause also applies to the states. See *Benton v. Maryland*, 395 U.S. 784 (1969).

² See *Breed v. Jones*, 421 U.S. 519, 528 (1975) ("In the constitutional sense, jeopardy describes the risk that is traditionally associated with a criminal prosecution").

³ *Hudson v. United States*, 522 U.S. 93, 99 (1997) ("Even in those cases where the legislature 'has indicated an intention to establish a civil penalty, we have inquired further whether the statutory scheme was so punitive either in purpose or effect,' ... as to 'transform what was clearly intended as a civil remedy into a criminal penalty.'") (quoting *United States v. Ward*, 448 U.S. 242, 248 (1980); *Rex Trailer Co. v. United States*, 350 U.S. 148, 154 (1956)).

alternative purpose assigned.”⁴ However, Congress’ designation of a penalty as “civil” creates a presumption which must be overcome by clear evidence to the contrary.⁵ Thus, civil penalties are not typically found to be criminal in nature. For example, in *Hudson v. United States*, the U.S. Supreme Court held that monetary assessments and an occupational debarment order did not implicate the Double Jeopardy Clause, because neither type of penalty constituted a “criminal punishment.”⁶

Regardless of the nature of the penalty sought, the Double Jeopardy Clause does not bar a subsequent action if no more than preliminary proceedings commenced in the prior action.⁷ Typically, an action must have reached at least the stage where jury members have been sworn (in a jury trial) or where the first evidence has been presented to the judge (in a bench trial).

Application to a Subsequent Suit Against the New Black Panther Party for Self-Defense or its Members

In January 2009, the U.S. Department of Justice filed a civil suit in a U.S. district court against the New Black Panther Party for Self-Defense and three of its members.⁸ The suit was brought by the Department’s Civil Rights Division pursuant to the Voting Rights Act of 1965, 42 U.S.C. § 1973 *et. seq.*, which prohibits intimidation of “any person for voting or attempting to vote” and authorizes the Attorney General to bring civil actions to obtain declaratory judgment or injunctive relief to prohibit such actions.⁹ The Department alleged that members of the Party had intimidated voters and those aiding them during the November 2008 general election and sought an injunction banning the Party from deploying or displaying weapons near entrances to polling places in future elections.¹⁰ However, after the Department obtained an injunction barring one member’s future use of weapons near polling places, it voluntarily dismissed its suit against the Party and the other members.¹¹

For two reasons, it appears likely that the Double Jeopardy Clause would not prohibit the Justice Department from bringing a similar suit on the same or similar grounds against at least the Party and the individual members for whom the previous suit was dismissed. First, it is likely that a court would find that the injunctive relief sought in the previous action constitutes a civil, rather than criminal, punishment.

⁴ *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963).

⁵ *Hudson*, 522 U.S. at 100 (“[o]nly the clearest proof will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty.”) (quoting *Ward*, 448 U.S. at 249).

⁶ 522 U.S. 93 (1997).

⁷ *See, e.g., Ludwig v. Massachusetts*, 427 U.S. 618 (1976) (holding that the Double Jeopardy Clause did not bar a conviction imposed as part of a two-tiered system wherein a defendant’s speedy trial motion had been denied and he had been convicted and then he was convicted in a second trial after appeal).

⁸ *United States v. New Black Panther Party*, No. 2:09-cv-0065 (E.D.Penn. filed Jan. 7, 2009).

⁹ 42 U.S.C. § 1973i(b) (“No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote”); 42 U.S.C. § 1973gg-9(a) (“The Attorney General may bring a civil action in an appropriate district court for such declaratory or injunctive relief as is necessary to carry out this subchapter”).

¹⁰ Department of Justice, Press Release, *Justice Department Seeks Injunction Against New Black Panther Party*, Jan. 7, 2009, <http://www.usdoj.gov/opa/pr/2009/January/09-crt-014.html>.

¹¹ The United States dismissed the suits pursuant to Federal Rule of Civil Procedure 41(a)(1)(A), which authorizes a plaintiff to voluntarily dismiss a suit without a court order if a defendant has not yet served either an answer to the plaintiff’s complaint or a motion for summary judgment. The New Black Panther Party and two of the three individual members who had been sued had not yet filed an answer or a motion for summary judgment in the case.

Although Congress' designation of the injunctive relief actions as a civil penalty is not ultimately dispositive, it is unlikely, based on the seven factors noted previously, that injunctive relief sought by the Justice Department would be viewed as sufficiently criminal in nature so as to overcome the presumption in favor of accepting Congress' characterization. Most importantly, the injunctions seem to have been primarily designed to prohibit the use of guns at polling places for the purpose of implementing the purposes of the Voting Rights Act, rather than to impose punishment on the defendants.

Second, because the United States voluntarily dismissed its suits against the Party and two of the three individual members before those defendants had filed an answer or motion to dismiss the suit, the previous action had not moved sufficiently beyond preliminary steps so as to implicate the Double Jeopardy Clause. With respect to the one member against whom an injunction was obtained, this second factor would not apply. However, due to the likely characterization of the injunction as a civil penalty, it remains unlikely that a subsequent action would be barred.

From: Flynn, Diana K (CRT)
Sent: Wednesday, May 13, 2009 11:54 AM
To: Rosenbaum, Steven (CRT)
Cc: Coates, Christopher (CRT); McElderry, Marie K (CRT)
Subject: New Black Panther Party FW: Comments on the proposed default judgment filings in NBPP

We have been asked to provide comments on the Voting Section's proposed motion and papers in support of default judgment and relief. Marie McElderry and I have reviewed the papers and discussed. Her comments, which also reflect my views, are below. I add the following observations:

1. We can make a reasonable argument in favor of default relief against all defendants and probably should, given the unusual procedural situation. The argument may well not succeed at the default stage, and we should expect the district court to schedule further proceedings. But it would be curious not to pray for the relief on default that we would seek following trial. Thus, we generally concur in Voting's recommendation to go forward, with some suggested modifications in our argument, as set out below.
2. The fact that *Chamberlain's* minimal standard for entry of a default judgment may be satisfied does not entitle us to one. See Marie's discussion of the case law below. The district court will retain considerable discretion to withhold relief on default and schedule a hearing. Given that we are seeking relief against political organizations and members in areas central to First Amendment activity, it is likely that the court will not order relief absent such further proceedings. That said, the procedural posture leaves few good alternatives to filing in support of such relief now.
3. By far, the most difficult case to make at this stage is against the national party and Malik Shabazz. There is discussion in the internal papers of the history of the organization with respect to voter intimidation with the use of weapons and uniforms. If the Voting Section opts for seeking relief against the national defendants at this stage, we suggest including that history in our supporting Memorandum. Our case against the nationals may be a bit of a reach, particularly at this stage, particularly because of First Amendment concerns. But we already brought the case and made the allegations. See *COMPLAINT*, par. 12. I assume that this reflects the Division's policy judgment that it is appropriate to seek such relief after trial. We probably should not back away from those allegations just because defendants have not appeared. And Voting does seem to have evidence in support of the allegations.
4. We would NOT say that First Amendment defenses are irrelevant at this stage. (Contra, *MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT* at 4). The court should anticipate likely defenses and so should we. See Marie's detailed discussion

below. We think a discussion of the narrowness of the proposed relief, which is generally discussed throughout the memorandum, can be used explicitly at this point to explain why First Amendment defenses are unlikely to prevail. In other words we can argue up front that the proposed order is carefully crafted to avoid any First Amendment concerns. Emphasis can be placed on the fact that our proposal is designed to prevent the paramilitary style intimidation of voters, and otherwise leaves open ample opportunity for political expression.

The First Amendment concerns Steve expressed earlier are well-taken, and I think proceeding against the nationals is a very close call. But it appears to us that there is a basis for the relief we seek, and the unusual posture of the case probably requires that we say the relief is appropriate on default. In any event, we should expect to be required to try these issues.

Marie may make some additional suggestions to the wording of the papers, if permitted.

From: McElderry, Marie K (CRT)
Sent: Tuesday, May 12, 2009 5:15 PM
To: Flynn, Diana K (CRT)
Subject: Comments on the proposed default judgment filings in NBPP

Comments on proposed filings re default judgment in *United States v. New Black Panther Party For Self-Defense*, No. 2:09-cv-0065 SD (E.D. Pa.)

We have been asked to comment on whether the United States should seek injunctive relief against all defendants, and, if so, what relief we should request. As I understand the situation, the documents Voting proposes to file are the Motion for Default Judgment (dated April 30), the Memorandum of Law in Support of Motion for Default Judgment (dated April 30), and the proposed Order (dated May 6). Further support for these filings is contained in the May 6 Internal Remedial Memorandum Concerning Proposed Injunction Order.

Standard for obtaining default judgment. An overarching principle that we need to keep in mind is that the Third Circuit "does not favor entry of defaults or default judgments." *U.S. v. \$55,518.05 In U.S. Currency*, 728 F.2d 192, 194 (3d Cir. 1984). Rather, it is its "preference that cases be disposed of on the merits whenever practicable." *Hritz v. Woma Corp.*, 732 F.2d 1178, 1181 (3d Cir. 1984).

Our proposed Memorandum of Law relies on the three-part test in *Chamberlain v. Giampapa*, 210 F.3d 154, 164 (3d Cir. 2000), as governing a district court's determination whether a default judgment is proper. As the Third Circuit more recently acknowledged in an unreported decision, however, *Chamberlain* cites *U.S. v. \$55,518.05*, *supra*, as the source of that standard, and *\$55,518.05* is a case where a defendant sought to overturn a default judgment. *Hill v. Williamsport Police Dept.*, 69 Fed. Appx. 49, 51 (3d Cir. 2003). In *Hill*, the court noted that "both major treatises on federal practice and procedure, as well as the Ninth Circuit, set out additional factors to those listed in *Chamberlain* as appropriate for consideration when ruling on motions to grant default judgments." 69 Fed. Appx. at 51 n.3.¹ Among those factors are "whether material issues of fact or issues of substantial public importance are at issue," "how harsh an effect a default judgment might have," and "the strong policy of the Federal Rules of Civil Procedure." *Ibid.*

Nonetheless, the court in *Hill* determined that it is bound to follow *Chamberlain* in determining whether a district court has abused its discretion in deciding whether to issue a default judgment in the first place. The problem with importation of the three-part test to that context is that step two of the test requires the court to determine "whether the defendant appears to have a litigable defense," and that determination is complicated where, as here, the defendant has totally failed to file a response to the complaint (as opposed to having filed late). Our proposed Memorandum of Law, pg. 4, alludes to that complication by quoting the unreported decision in *Natlionwide Mutual Insurance Company v. Starlight Ballroom Dance Club, Inc.*, 175 F. Appx. 519, 522 (3d Cir. 2006) ("The second factor is the 'threshold issue in opening a default judgment.'"). We then take the position that the presence or absence of a meritorious defense "has no relevance at this stage of the proceedings." Memo. at 4. That is not actually the case, however, since the Court will be following *Chamberlain*.

In any event, I think that we can get over that hurdle by anticipating, as we do in our May 6 Internal Remedial Memorandum, possible defenses that might be raised, *i.e.*, First Amendment claims and the post-litigation

denunciation of the conduct of the Philadelphia chapter by the Party (and possibly by Malik Zulu Shabazz). I believe that the district court will anticipate such possible defenses and will want to know how we would address them. Indeed, by the time we file this motion and/or the court sets a hearing, the defendants may file something raising those or other defenses. Given that the court is bound to follow the three-part test, I think that we need to address in the Memorandum in support of the Motion at least those defenses that we have already identified.

I am also not sure that we have made a sufficient showing that we would be prejudiced by denial of a default judgment. When we filed the Complaint, we assumed that we would be engaging in the usual course of litigation, including discovery and filing of legal briefs. The opportunity to receive a judgment without pursuing all of those steps would be a benefit to us, but I am not sure that the court will be persuaded that we would be prejudiced by having to try the case on the merits, which is the preferred method of proceeding under Third Circuit case law. Especially in a case such as this, which is not cut and dried, I think the court will feel that its judgment would be informed by a more deliberate process.

Whether the unchallenged facts constitute a legitimate cause of action against the Party and its national leader. I have some reservations about whether we have a sufficient factual basis to state a claim against the Party and Malik Zulu Shabazz. Paragraph 12 of the Complaint alleges that they "managed, directed, and endorsed the behavior, actions and statements of Defendants Samir Shabazz and Jackson." The May 6 internal memorandum refers to an announcement made in advance of the November 4 election of a "plan to post party members at polling places." But nowhere do I see that we can show that either the Party or Malik Zulu Shabazz suggested, counseled, or endorsed the bringing or brandishing of weapons in advance of what happened in Philadelphia. Assuming that the main behavior we seek to enjoin is bringing weapons to the polls, I am not convinced that we can establish a basis for an injunction against the Party or Malik Shabazz by showing that the Party has violent and racist views against non-blacks and Jews. The additional information discussed on page 8 of the May 6 internal memorandum about

the Party's past actions of bringing weapons to political rallies may, however, be the basis for an argument that both the Party and Malik Shabazz should reasonably have known that the Philadelphia defendants might believe they were authorized to carry weapons to the polls, but I am not sure that would be sufficient to justify the relief we are seeking.

As I read our justification for relief against the Party and Malik Shabazz, it is based largely on Malik Shabazz's statements *after* the events in Philadelphia in which he defended the actions of King Samir Shabazz and Jerry Jackson on national television as based on the alleged presence of members of the Aryan brotherhood or the American Nazi party at that particular polling place. In addition, the Voting Section is relying on admissions made by Malik Shabazz to members of the section. It is unclear how we would present that evidence to the court. That "endorsement," however, is complicated by the statements on the Party's website renouncing the events in Philadelphia and suspending the Philadelphia chapter. It appears that we may have difficulty proving when those statements were added. At least as to the Party, those statements could be an impediment to proving a violation at all, not just an impediment to injunctive relief.

What type of injunctive remedy should be sought. Certainly, we have established a sufficient basis for the very limited injunctive relief that is recited in the proposed order dated April 30 against defendants King Samir Shabazz and Jerry Jackson. But I understand that such a limited injunction will not accomplish very much.

As to those "Philadelphia" defendants, however, the proposed order dated May 6 goes somewhat further. It seeks to enjoin defendants "from deploying or appearing within 200 feet of any polling location on any election day in the United States with weapons." Presumably, both deploying and appearing are meant to be modified by "with weapons." It is not clear what we mean by deploying, especially since the Voting Section indicated in its May 1, 2009, email that, in light of discussions with the Front Office, it does "not seek to enjoin the wearing of the NBPP uniforms at the polls." According to most dictionary definitions, the term "deploy" is used mainly in the context of

troops. I think it suggests that the military-type uniforms used by the Party are an integral part of what we want to enjoin, regardless of our stated intent not to seek to enjoin the wearing of those uniforms.

It appears that, at least as to the Philadelphia defendants, the violation we have alleged encompasses not only bringing the weapon, but also the intimidating atmosphere created by the uniforms, the military-type stance, and the threatening language used. I have not had time to do a comprehensive analysis of the First Amendment implications of attempting to enjoin members of the New Black Panther Party (or any other hate group, such as the American Nazi Party or the Klan) from wearing their uniforms at the polls on election day. The Supreme Court has stated that "[t]he government generally has a freer hand in restricting expressive conduct than it has in restricting the written or spoken word." *Texas v. Johnson*, 491 U.S. 397, 406 (1989) (flag-burning case). It may not, however, "proscribe particular conduct *because* it has expressive elements."

In this case, Party members' wearing of the uniform would likely be viewed as "expressive conduct." It would be relevant, then, to know whether the government has asserted an interest in regulating the wearing of the uniform that is unrelated to the suppression of expression. Here, the government's predominant interest, as expressed in 42 U.S.C. 1973i(b), is preventing intimidation, threats, and coercion (or attempts to do so) against voters or persons urging or aiding persons to vote or attempt to vote. Part of the intimidation in this case is wearing a military-style uniform, which suggests some kind of authority to take action. That aspect of the uniform could theoretically be separated from the particular message that this uniform is intended to convey, *e.g.*, racial hatred. Thus, appearing at the polls in such a uniform with a weapon is more intimidating than appearing in street clothes with a weapon. Interestingly, all three of the Declarations that we propose to present to the court focus on a combination of the uniform and the weapon. None of them mentions the third element of intimidation, *i.e.*, the verbal threats and racial taunts and slurs.

The April 30 Memorandum in support of our Motion addresses the

possible First Amendment claims of the Philadelphia defendants in the context of whether Injunctive relief would harm them, *i.e.*, the third part of the traditional test for obtaining an injunction. Memo. at 13-14. As to those defendants, our arguments appear to be sufficient to support the narrow injunction that the Voting Section was seeking as of April 30. It is obviously a closer question whether it would also support either Paragraph V of the May 6 proposed order, either as presently worded using the word "deploy," or a proposed order that explicitly mentions the Party uniform in some way.

As discussed above, my problems with applying Paragraph V to the Party and Malik Shabazz involve whether we have enough evidence to show that they violated the statute. If a decision is made that the evidence is sufficient, I would suggest a separate paragraph in the order for injunctive relief against these defendants that is narrowly tailored to the scope of their violation. That violation is described at various points of the Complaint as "deployment of armed and uniformed personnel at the entrance to [a] polling location," which involves the organization and planning of such activities involving the members of the Party. This portion of the injunction should therefore be geared to enjoining those actions. We might also want to ask the court to order these defendants to undertake some type of procedures or training, such as mentioned on page 8 of the May 6 internal Remedial Memorandum, that would make abundantly clear that the national organization and its leaders do not endorse intimidation, threats or coercion of voters or those who are urging or aiding them to vote.

Marie K. McElderry
Appellate Section
Civil Rights Division

¹ As the concurring judge in *Hill* pointed out, the Eighth Circuit does not use

the three-part test outside of the context where a party against whom default has been entered has moved to set aside the judgment. 69 Fed. Appx. at 53.

The Washington Times

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Originally published 04:45 a.m., July 31, 2009, updated 10:57 a.m., July 31, 2009

Lawmakers want answers, seek refiling in Panther case

[Jerry Seper \(Contact\)](#)

Congressional Republicans on Thursday escalated their criticism of the Justice Department for dismissing a controversial voter-intimidation case, demanding that civil charges against the New Black Panther Party be restored. They also renewed their request to interview career attorneys who disagreed with the administration's decision to dismiss the charges.

Rep. Frank R. Wolf of Virginia, a senior Republican on the House Appropriations Committee, obtained an opinion Thursday from the Congressional Research Service (CRS) affirming that charges could legally be refilled without violating the double-jeopardy clause of the U.S. Constitution and said he thought Attorney General Eric H. Holder Jr. was obligated to refile the case.

"In all fairness, he has a duty to protect those seeking to vote and I remain deeply troubled by this questionable dismissal of an important voter-intimidation case in Philadelphia," Mr. Wolf told The Washington Times.

The Times on Thursday reported that Associate Attorney General Thomas J. Perrelli, the department's No. 3 political appointee, approved the decision to drop the case against the NBPP and its members even after the government had won judgments against them for their actions in November at a Philadelphia polling location.

Justice spokeswoman Tracy Schmalzer said the department has an "ongoing obligation" to be

sure that claims it makes are supported by the facts and the law and a review of the NBPP complaint by "the top career attorneys in the Civil Rights Division" found that they did not.

She said Justice did obtain an injunction against the defendant who brandished a weapon at the polling place from doing so again and "will fully enforce the terms of that injunction."

Rep. Lamar Smith of Texas, ranking Republican on the House Judiciary Committee, also Thursday renewed his request that Mr. Holder make available the head of the department's Voting Section of the Civil Rights Division for a closed-door briefing on its decision to seek the complaint's dismissal.

Mr. Smith, unsuccessful since May in getting answers to questions on whether political appointees were involved in the complaint's dismissal, wants to know why the department has refused to respond to congressional inquiries requesting specific information on the investigation.

"Time and again, I have sought information from the Justice Department regarding the sudden dismissal of a case against members of the New Black Panther Party," Mr. Smith said. "Time and again, the Justice Department has claimed there was no wrongful political interference in the dismissal of the case.

"Now, according to news reports, it appears the Justice Department's political appointees did in fact play a role in the dismissal of this case," he said.

In January, Justice filed a civil complaint in federal court in Philadelphia against the NBPP and three of its members. Two NBPP members, wearing black berets, black combat boots, black dress shirts and black jackets with military-style markings, were charged with intimidating voters, including brandishing a nightstick and issuing racial threats and racial insults. A third was accused of managing, directing and endorsing their behavior. The incident was captured on videotape.

A Justice memo shows that the front-line lawyers who brought the case decided as early as Dec. 22 to seek a complaint against the NBPP; its chairman, Malik Zulu Shabazz, a lawyer and D.C. resident; Minister King Samir Shabazz, a resident of Philadelphia and head of the Philadelphia NBPP chapter who was accused of wielding the nightstick; and Jerry Jackson, a resident of Philadelphia and a NBPP member.

Witnesses said Mr. Samir Shabazz, armed with the nightstick, and Mr. Jackson used racial slurs and made threats as they stood at the door of the polling place. The department's injunction against Mr. Samir Shabazz prohibits him from displaying a weapon at a polling place until 2012.

Mr. Jackson was an elected member of Philadelphia's 14th Ward Democratic Committee and was credentialed to be at the polling place Nov. 4 as an official Democratic Party polling watcher, according to the Philadelphia city commissioner's office. A check of his MySpace Web page shows similar taunts. It also shows him in numerous poses with a variety of weapons.

Records show Mr. Jackson obtained new credentials as a poll watcher "at any ward/division in Philadelphia" just days after the charges against him were dismissed.

None of the NBPP members responded to the charges or made any appearance in court.

Four months after the complaint was filed, at a time career lawyers who brought the charges were in the final stages of seeking actual sanctions, they were told by their superiors to seek a delay after a meeting between political appointees and career supervisors, according to federal records and interviews.

The delay was ordered by Loretta King, who was acting assistant attorney general, after she discussed concerns about the case with Mr. Perrelli. Ms. King, a career senior executive service official, had been named by President Obama in January to temporarily fill the vacant political position of assistant attorney general for civil rights while a permanent choice could be made.

She and other career supervisors ultimately recommended dropping the case against two of the men and the party and seeking a restraining order against the one man who wielded the nightstick. Mr. Perrelli approved that plan, officials said.


None of the front-line lawyers has been made available for comment, and the department has yet to provide any records sought by The Times under a Freedom of Information Act request filed in May seeking documents detailing the decision process.

In an opinion sought by Mr. Wolf, the CRS said it "appears likely that the Double Jeopardy Clause would not prohibit the Justice Department from bringing a similar suit on the same or similar grounds against at least the Party and the individual members for whom the previous suit was dismissed."

Mr. Smith said if Mr. Perrelli knew about discussions to dismiss the complaint, the Justice Department's responses to Congress "make no mention of his involvement. Instead, he said, the department offered "vague justifications" for the dismissal, none of which included a legitimate explanation.

Ms. King and Steve Rosenbaum, chief of the department's special litigation section, were scheduled to brief Mr. Smith and committee Chairman John Conyers Jr., Michigan Democrat, on

Thursday, but conflicting schedules have forced that meeting into next month.

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The Washington Times Close Print

Friday, July 31, 2009

EDITORIAL: Hack Panthers

The Justice Department's decision to drop an already-won voter-intimidation case against members of the New Black Panther Party merits multiple, independent investigations.

On Tuesday, Rep. Frank R. Wolf, Virginia Republican, officially asked Attorney General Eric H. Holder Jr. to refile the case. Mr. Holder should comply.

So far, the Justice Department has stonewalled legitimate inquiry. It has yet to provide records sought by this newspaper back in May. It has yet to answer a July 22 letter from Mr. Wolf that asks 35 questions on 17 different subjects relating to the Black Panther case. Justice has claimed, falsely, that the decision to drop the case was made by career attorneys only, not by political appointees. And it has declined to let congressmen interview the career attorneys who originally filed, and won, the case against the Black Panthers

As first reported by The Washington Times, career attorneys at Justice already had won a default judgment against three Black Panthers and the party as a whole for intimidating voters at a Philadelphia polling place while wearing paramilitary-style garb, as one of them brandished a nightstick and made racial threats.

One of the Black Panthers, Jerry Jackson, was an official poll watcher for the Democratic Party and the Obama campaign. Justice Department spokesman Tracy Schmalzer refused several times to say whether department lawyers consulted with any outsiders. Yet Kristen Clarke of the NAACP Legal Defense Fund confirmed that she talked about the case with Justice Department lawyers.

Ms. Schmalzer said she would not talk about "internal deliberations." But if they consulted with

outside groups, those deliberations by definition are not just internal.

Robert N. Driscoll, former chief of staff of the Civil Rights Division of the Justice Department, told us it would be ethically dubious if political appointees consulted with outside interest groups without telling the career attorneys who filed the case. "I would be hammered if I were to have had such a meeting," he said.

Mr. Wolf's July 22 letter raised numerous discrepancies between Justice Department explanations and readily available facts. In a July 13 letter to the congressman, Assistant Attorney General Ronald Welch wrote that the department dropped the cases against the New Black Panther Party as a whole and its leader, Malik Zulu Shabazz, because "the factual contentions in the complaint did not have sufficient evidentiary support" to prove that they "managed" and "directed" the intimidating behavior of the two Panthers deployed at that polling place.

Mr. Wolf responded that, "the confession on national television by Malik Zulu Shabazz on Nov. 7, 2008, flatly contradicts your assertion. Mr. Shabazz unequivocally claims that his activities in Philadelphia were part of a nationwide effort involving hundreds of party members, and that the use of weapons was a necessary part of the Black Panther deployment."

Mr. Welch claimed one reason the charges against Mr. Jackson were dropped was that "he was a resident of the apartment building where the polling place was located," and thus allowed to be there. Mr. Wolf wrote back that Mr. Jackson "has never resided" at that address, which is a senior living facility called Guild House. At a fit and trim age 53, Mr. Jackson hardly qualifies for a retirement home.

Mr. Jackson's MySpace page still lists one of his main "general interests" as "Killing Crakkas." Four days after the Justice Department dropped the complaint against Mr. Jackson, he again was named an official election poll watcher for the Democratic primary in Philadelphia's municipal election. How convenient.

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The Washington Times

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EXCLUSIVE: No. 3 at Justice OK'd Panther reversal

Jerry Seper (Contact)

EXCLUSIVE:

Associate Attorney General Thomas J. Perrelli, the No. 3 official in the Obama Justice Department, was consulted and ultimately approved a decision in May to reverse course and drop a civil complaint accusing three members of the New Black Panther Party of intimidating voters in Philadelphia during November's election, according to interviews.

The department's career lawyers in the Voting Section of the Civil Rights Division who pursued the complaint for five months had recommended that Justice seek sanctions against the party and three of its members after the government had already won a default judgment in federal court against the men.

Front-line lawyers were in the final stages of completing that work when they were unexpectedly told by their superiors in late April to seek a delay after a meeting between political appointees and career supervisors, according to federal records and interviews.

The delay was ordered by then-acting Assistant Attorney General Loretta King after she discussed with Mr. Perrelli concerns about the case during one of their regular review meetings, according to the interviews.

Ms. King, a career senior executive service official, had been named by President Obama in

January to temporarily fill the vacant political position of assistant attorney general for civil rights while a permanent choice could be made.

She and other career supervisors ultimately recommended dropping the case against two of the men and the party and seeking a restraining order against the one man who wielded a nightstick at the Philadelphia polling place. Mr. Perrelli approved that plan, officials said.

TWT RELATED STORIES:

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- EDITORIAL: Return of the Black Panther
- EDITORIAL: Flack Panthers

Questions about how high inside the department the decision to drop the case went have persisted in Congress and in the media for weeks.

Justice Department spokeswoman Tracy Schmalzer told The Washington Times that the department has an "ongoing obligation" to be sure the claims it makes are supported by the facts and the law. She said that after a "thorough review" of the complaint, top career attorneys in the Civil Rights Division determined the "facts and the law did not support pursuing the claims against three of the defendants."

"As a result, the department dismissed those claims," she said. "We are committed to vigorous enforcement of the laws protecting anyone exercising his or her right to vote."

While the Obama administration has vowed a new era of openness, department officials have refused to answer questions from Republican members of Congress on why the case was dismissed, claiming the information was "privileged," according to congressional correspondence with the department.

Rep. Frank R. Wolf, Virginia Republican and a senior member of the House Appropriations Committee who has raised questions about the case, said he also was prevented from interviewing the front-line lawyers who brought the charges.

"Why am I being prevented from meeting with the trial team on this case?" Mr. Wolf asked. "There are many questions that need to be answered. This whole thing just stinks to high heaven."

Ms. Schmalzer said the department has tried to cooperate with Congress. "The Department

responded to an earlier letter from Congressman Wolf in an effort to address his questions. Following that letter, the Department agreed to a meeting with Congressman Wolf and career attorneys, in which they made a good-faith effort to respond to his inquiries about this case. We will continue to try to clear up any confusion Congressman Wolf has about this case."

Ms. King and a deputy are expected to travel to Capitol Hill on Thursday to meet behind closed doors with House Judiciary Committee Chairman John Conyers Jr., Michigan Democrat, and Rep. Lamar Smith of Texas, the top Republican on the panel, to discuss continuing concerns about the case.

The department also has yet to provide any records sought by The Times under a Freedom of Information Act request filed in May seeking documents detailing the decision process. Department officials also declined to answer whether any outside groups had raised concerns about the case or pressured the department to drop it.

Kristen Clarke, director of political participation at the NAACP Legal Defense Fund in Washington, however, confirmed to The Times that she talked about the case with lawyers at the Justice Department and shared copies of the complaint with several persons. She said, however, her organization was "not involved in the decision to dismiss the civil complaint."

She said the National Association for the Advancement of Colored People has consistently argued that the department should bring more voter intimidation cases, adding that it was "disconcerting" that it did not do so.

Mr. Perrelli, a prominent private practice attorney, served previously as a counsel to Attorney General Janet Reno in the Clinton administration and was an Obama supporter who raised more than \$500,000 for the Democrat candidate in the 2008 elections. He authorized a delay to give department officials more time to decide what to do, said officials familiar with the case but not authorized to discuss it publicly. He eventually approved the decision to drop charges against three of the four defendants, they said.

At issue was what, if any, punishment to seek against the New Black Panther Party for Self-Defense (NBPP) and three of its members accused in a Jan. 7 civil complaint filed in U.S. District Court in Philadelphia.

Two NBPP members, wearing black berets, black combat boots, black dress shirts and black jackets with military-style markings, were charged in a civil complaint with intimidating voters at a Philadelphia polling place, including brandishing a 2-foot-long nightstick and issuing racial threats and racial insults. Authorities said a third NBPP member "managed, directed and endorsed the behavior."

The election-day incident gained national attention when it was captured by a voter-fraud citizen activist group on videotape and distributed on YouTube (below).



None of the NBPP members responded to the charges or made any appearance in court.

"Intimidation outside of a polling place is contrary to the democratic process," said Grace Chung Becker, a Bush administration political appointee who was the acting assistant attorney general for civil rights at the time the case was filed. "The Voting Rights Act of 1965 was passed to protect the fundamental right to vote and the department takes allegations of voter intimidation seriously."

Mrs. Becker, now on a leave of absence from government work, said she personally reviewed the NBPP complaint and approved its filing in federal court. She said the complaint had been the subject of numerous reviews and discussions with the career lawyers.

Mrs. Becker said Ms. King was overseeing other cases at the time and was not involved in the decision to file the original complaint.

A Justice Department memo shows that career lawyers in the case decided as early as Dec. 22 to seek a complaint against the NBPP; its chairman, Malik Zulu Shabazz, a lawyer and D.C. resident; Minister King Samir Shabazz, a resident of Philadelphia and head of the Philadelphia NBPP chapter who was accused of wielding the nightstick; and Jerry Jackson, a resident of Philadelphia and a NBPP member.

"We believe the deployment of uniformed members of a well-known group with an extremely hostile racial agenda, combined with the brandishing of a weapon at the entrance to a polling place, constitutes a violation of Section 11(b) of the Voting Rights Act which prohibits types of intimidation, threats and coercion," the memo said.

The memo, sent to Mrs. Becker, was signed by Christopher Coates, chief of the Voting Section; Robert Popper, deputy chief of the section; J. Christian Adams, trial attorney and lead lawyer in the case; and Spencer R. Fisher, law clerk. None of the four has made themselves available for comment.

Members of Congress continue to ask questions about the case.

"If showing a weapon, making threatening statements and wearing paramilitary uniforms in front of polling station doors does not constitute voter intimidation, at what threshold of activity would these laws be enforceable?" Mr. Wolf asked.

Mr. Smith also complained that a July 13 response by Assistant Attorney General Ronald Weich to concerns the congressman had about the Philadelphia incident did not alleviate his concerns.

"The administration still has failed to explain why it did not pursue an obvious case of voter intimidation. Refusal to address these concerns only confirms politicization of the issue and does not reflect well on the Justice Department," Mr. Smith said.

Mr. Smith asked the department's Office on Inspector General to investigate the matter, and the request was referred to the department's Office of Professional Responsibility.

Lawmakers aren't alone in the concerns.

The U.S. Commission on Civil Rights said in a June 16 letter to Justice that the decision to drop the case caused it "great confusion," since the NBPP members were "caught on video blocking access to the polls, and physically threatening and verbally harassing voters during the Nov. 4, 2008, general election."

"Though it had basically won the case, the [Civil Rights Division] took the unusual move of voluntarily dismissing the charges," the letter said. "The division's public rationale would send the wrong message entirely — that attempts at voter suppression will be tolerated and will not be vigorously prosecuted so long as the groups or individuals who engage in them fail to respond to the charges leveled against them."

The dispute over the case and the reversal of career line attorneys highlights sensitivities that have remained inside the department since Bush administration political appointees ignored or reversed their career counterparts on some issues and some U.S. attorneys were fired for what Congress concluded were political reasons.

Mr. Weich, in his letter to the congressman, sought to dispel any notion that politics was

involved. He argued that the department dropped charges against three of the four defendants "because the facts and the law did not support pursuing" them. He said the decision was made after a "careful and through review of the matter " by Ms. King. He said:

- While the NBPP made statements and posted notice that more than 300 of its members would be deployed at polling places throughout the United States during the Nov. 4 elections, the statement and posting did not say any of them would display a weapon or otherwise break the law.
- While the complaint charged that the NBPP and Mr. Zulu Shabazz endorsed the activities at the polling places, the evidence was "equivocal" since both later disavowed what happened in Philadelphia and suspended that city's chapter after the incident.
- The charges against Mr. Jackson were dropped because police who responded to the polling place ordered Mr. Samir Shabazz to leave but allowed Mr. Jackson to stay. He also noted that the department approved "appropriately tailored injunctive relief" against Mr. Samir Shabazz for his use of the nightstick.

The injunction prohibits Mr. Samir Shabazz from brandishing a weapon outside a polling place through Nov. 15, 2012, and Ms. Schmalzer said the department "will fully enforce the terms of that injunction."

On its Web page, the NBPP said the Philadelphia chapter was suspended from operations and would not be recognized until further notice. It said the organization did not condone or promote the carrying of nightsticks or any kind of weapon at any polling place.

"We are intelligent enough to understand that a polling place is a sensitive site and all actions must be carried out in a civilized and lawful manner," it said.

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Witnesses who supported the Justice Department case said they were surprised by the reversal.

Stephen R. Morse, a blogger hired by Republicans to be at the polls and who videotaped the confrontation, said the NBPP members blatantly used racial insults on would-be voters and

other poll watchers, telling one man, "Cracker, you about to be ruled by a black man."

Mr. Morse, a University of Pennsylvania alumnus, said he was "outraged" that the complaint was dismissed, saying he hoped Democrats would join Mr. Smith and Mr. Wolf in attempting to ensure that the incident "doesn't become a partisan issue, but rather an issue of right vs. wrong."

Chris Hill, national director of operations for a Gathering of Eagles, an organization dedicated to the support of U.S. troops, said the NBPP members visibly intimidated voters with racial slurs as they tried to enter the building.

Mr. Hill, a U.S. Army veteran who also served as a Philadelphia poll watcher for Republicans, said several voters at the location said they were afraid. He said the NBPP members tried to deny him access to the poll although he was a certified poll watcher, telling him, "White power don't rule here."

A Justice Department memo also says that a black couple, Larry and Angela Counts, both Republican poll watchers, told authorities they were scared, worried about their safety and concerned about leaving the polling place at the end of the day because of the actions of the NBPP members. Mrs. Counts said she wondered whether someone might "bomb the place" and Mr. Counts said the NBPP members called him a "race traitor," the memo said.

U.S. District Judge Stewart Dalzell in Philadelphia entered default judgments against the NBPP members April 2 after ordering them to plead or otherwise defend themselves. They refused to appear in court or file motions in answer to the government's complaint. Two weeks later, the judge ordered the Justice Department to file its motions for default judgments by May 1 — a ruling that showed the government had won its case.

The men also have not returned calls from The Times seeking comment.

On May 1, Justice sought an extension of time and during the tumultuous two weeks that followed the career front-line lawyers tried to persuade their bosses to proceed with the case.

The matter was even referred to the Appellate Division for a second opinion, an unusual event for a case that hadn't even reached the appeals process.

Appellate Chief Diana K. Flynn said in a May 13 memo obtained by The Times that the appropriate action was to pursue the default judgment unless the department had evidence the court ruling was based on unethical conduct by the government.

She said the complaint was aimed at preventing the "paramilitary style intimidation of voters" at polling places elsewhere and Justice could make a "reasonable argument in favor of default relief

against all defendants and probably should." She noted that the complaint's purpose was to "prevent the paramilitary style intimidation of voters" while leaving open "ample opportunity for political expression."

An accompanying memo by Appellate Section lawyer Marie K. McElderry said the charges not only included bringing the weapon to the polling place, but creating an intimidating atmosphere by the uniforms, the military-type stance and the threatening language used. She said the complaint appeared to be "sufficient to support" the injunctions sought by the career lawyers.

"The government's predominant interest ... is preventing intimidation, threats and coercion against voters or persons urging or aiding persons to vote or attempt to vote," she said.

The front-line lawyers, however, lost the argument and were ordered to drop the case.

Bartle Bull, a civil rights activist who also was a poll watcher in Philadelphia, said after the complaint was dropped, he called Mr. Adams to find out why. He said he was told the decision "came as a surprise to all of us" and that the career lawyers working on the case feared that the failure to enforce the Voting Rights Act "would embolden other abuses in the future."

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U.S. Department of Justice
Office of Professional Responsibility

950 Pennsylvania Avenue, N.W., Suite 3266
Washington, DC 20530

AUG 28 2009 SEP 9 2009

The Honorable Frank Wolf
Ranking Member
Commerce, Justice, Science Subcommittee
House Appropriations Committee
United States House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Wolf:

Your July 9, 2009 letter to Department of Justice Inspector General Glenn Fine regarding the government's voluntary dismissals in *United States v. New Black Panther Party for Self-Defense, et al.*, Case No. 2:09-cv-0065 (E.D. Pa.), was referred to this Office for review. We also have seen and reviewed your June 8, 2009 letter to Attorney General Eric Holder regarding this matter. Please be advised that we have initiated an inquiry into the matter. We will contact you with the results of our inquiry once it is complete.

Thank you for bringing this matter to the attention of the Department. If you have any questions, please do not hesitate to call me or Assistant Counsel Mary Aubry on 202-514-3365.

Very truly yours,

Mary Patrice Brown
Acting Counsel



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

November 16, 2009

The Honorable Frank Wolf
Ranking Minority Member
Subcommittee on Commerce, Justice, Science, and Related Agencies
Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Wolf:

This is in response to your letter of November 10, 2009, which inquired about the status of the Office of Professional Responsibility (OPR) inquiry regarding the government's voluntary dismissals in *United States v. New Black Panther Party for Self-Defense, et al.*, and your letter of November 16, 2009, which requested copies of certain materials you describe as having been prepared for OPR in connection with that inquiry. A separate letter has been sent to Representative Smith, who joined your November 10 letter to us.

Your letters have been referred to the Office of Professional Responsibility for reply. To ensure the independence of the OPR inquiry, we do not believe it would be appropriate for other Department officials to attempt to set arbitrary deadlines on OPR's work, or to provide copies of any materials that may have been prepared in connection with its inquiry. We are therefore unable to provide the information or documents you have requested, and we will continue to await the outcome of the OPR process before providing a further response to your requests for information regarding this matter.

Please be assured that the Department is committed to vigorous enforcement of the Voting Rights Act.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ron Weich".

Ronald Weich
Assistant Attorney General

cc: The Honorable Alan B. Mollohan, Jr.
Chairman

FRANK R. WOLF
10TH DISTRICT, VIRGINIA

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES:

RANKING MEMBER—COMMERCE-JUSTICE-
SCIENCE

TRANSPORTATION-HUD

CO-CHAIR—TOM LANTOS
HUMAN RIGHTS COMMISSION



Congress of the United States
House of Representatives

November 16, 2009

241 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-4610
(202) 225-6136

13873 PARK CENTER ROAD
SUITE 130
HERNDON, VA 20171
(703) 709-5800
(800) 945-9653 (IN STATE)

110 NORTH CAMERON STREET
WINCHESTER, VA 22601
(640) 667-0990
(800) 850-3463 (IN STATE)

wolf.house.gov

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave NW Rm 5111
Washington DC 20530

Dear Attorney General Holder:

On November 9, House Judiciary Committee Ranking Member Lamar Smith and I wrote to you to request an update on the Department of Justice's (DOJ) Office of Professional Responsibility (OPR) investigation into the inexplicable dismissal of the serious voter intimidation case, *U.S. v. New Black Panther Party*. This investigation has now been open for more than two months.

In addition to our request for an update on the investigation by November 20, 2009, I also request copies of the reports prepared for OPR by the career DOJ attorneys responsible for this case -- Mr. Christopher Coates, Mr. Robert Popper, Mr. J. Christian Adams, and Mr. Spencer Fisher. The American people deserve a full accounting of the facts surrounding the incomprehensible dismissal of this case, including the statements provided by the trial attorneys to OPR.

Sincerely,

Frank R. Wolf
Member of Congress



U.S. Department of Justice

Office of Professional Responsibility

950 Pennsylvania Avenue, N.W., Suite 3266
Washington, D.C. 20530

November 24, 2009

TW

The Honorable Frank Wolf
Ranking Minority Member
Subcommittee on Commerce, Justice, Science, and Related Agencies
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Wolf:

I am writing in response to your November 10, 2009 letter, submitted jointly with Congressman Lamar Smith, as well as your separate November 16, 2009 letter, to Attorney General Eric H. Holder regarding the Office of Professional Responsibility's (OPR) investigation into the dismissal of certain charges relating to the New Black Panther Party and two individuals associated with the organization. Your letters were referred to OPR for a response.

OPR initiated an investigation into this matter in July 2009, and the investigation is being conducted consistent with OPR's Policies and Procedures (available at usdoj.gov/opr/polandproc.htm). As described in the Policies and Procedures, "the first step is usually to request a written response from the attorney involved in the allegation." In addition, "[s]upporting documentation and any other relevant material should be included with the response, and other individuals with relevant information should be identified." Attorneys also must provide to OPR "[c]ase files [and] investigative files." As with any investigation, OPR's review of these documents and responses could lead to additional requests for documents and information. After the gathering of evidence is completed, OPR prepares a written report to the Attorney General and the Deputy Attorney General.

I trust the above description of OPR's policies and procedures demonstrates that an appropriately complete investigation takes more time than has lapsed since the investigation was commenced in July 2009. Please be assured that OPR's investigation is proceeding apace. We will inform you of the results of our investigation as soon as we are able to do so.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mary Patrice Brown".

Mary Patrice Brown
Acting Counsel

(Original Signature of Member)

111TH CONGRESS
1ST SESSION

H. RES.

Directing the Attorney General to transmit to the House of Representatives all information in the Attorney General's possession relating to the decision to dismiss *United States v. New Black Panther Party*.

IN THE HOUSE OF REPRESENTATIVES

Mr. WOLF submitted the following resolution; which was referred to the Committee on _____

RESOLUTION

Directing the Attorney General to transmit to the House of Representatives all information in the Attorney General's possession relating to the decision to dismiss *United States v. New Black Panther Party*.

1 *Resolved*, That the Attorney General is directed to
2 transmit to the House of Representatives, not later than
3 14 days after the date of adoption of this resolution, copies
4 of any document, memo, or correspondence of the Depart-
5 ment of Justice with regard to *United States v. New Black*
6 *Panther Party*, or any portion of any such document,
7 memo, or correspondence that refers or relates to—

1 (1) any department communications with re-
2 gard to the case between November 5, 2008 and No-
3 vember 15, 2009;

4 (2) any communication with the defendants or
5 the defendants' attorneys between November 5,
6 2008 and November 15, 2009;

7 (3) any communication with third-party organi-
8 zations or individuals between November 5, 2008
9 and November 15, 2009; or

10 (4) any evidence with regard to the dismissal of
11 the case.

FRANK R. WOLF
10TH DISTRICT, VIRGINIA

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES:

RANKING MEMBER—COMMERCE-JUSTICE-
SCIENCE

TRANSPORTATION-HUD

CO-CHAIR--TOM LANTOS
HUMAN RIGHTS COMMISSION



Congress of the United States
House of Representatives

January 26, 2010

241 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-4610
(202) 225-5136

13873 PARK CENTER ROAD
SUITE 130
HERNDON, VA 20171
(703) 709-5800
(800) 946-9863 (IN STATE)

110 NORTH CAMERON STREET
WINCHESTER, VA 22601
(540) 667-0980
(800) 850-3463 (IN STATE)

wolf.house.gov

Mr. Glenn Fine
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington DC 20530

Dear Mr. Fine:

I have been disappointed by your reluctance to investigate the unfounded dismissal of an important voter intimidation case, *U.S. v. New Black Panther Party*. As you may recall, this case was inexplicably dismissed last year -- over the ardent objections of the career attorneys overseeing the case as well as the division's own appeal office. Despite repeated requests for information by members of Congress, the press, and the U.S. Commission on Civil Rights, the Department of Justice (DOJ) continues to stonewall all efforts to obtain information regarding the case's abrupt dismissal. This obstruction should be of great concern to you and merit an immediate investigation.

According to the Council of the Inspectors General on Integrity and Efficiency (CIGIE), the role of federal inspectors general is to "detect and prevent fraud, waste, abuse, and violations of law and to promote economy, efficiency and effectiveness in the operations of the Federal Government." I firmly believe that in this case, officials at the Department of Justice are engaged in activities that are an abuse of power, a blatant violation of voting rights enforcement, and potentially even defrauding of members of Congress and the U.S. Commission on Civil Rights by obstructing legitimate investigations of this matter.

In response to my letter to you last July, you referred the case to the department's Office of Professional Responsibility (OPR), which reports to the attorney general. Although OPR opened a preliminary investigation into the dismissal, more than seven months later I still have received no additional information. I do not believe that this office is capable of conducting an unbiased and independent review of this case given that it reports to a political appointee -- an inherent conflict-of-interest that can only be avoided by an independent inspector general (IG) investigation.

I have been a stalwart supporter of voting rights enforcement. Voting is a sacrosanct and inalienable right of any democracy. I was the only member of the Virginia congressional delegation -- Republican or Democrat -- to vote for the Voting Rights Act in 1982. I was heavily criticized by state newspapers, including the *Richmond Times-Dispatch*, for my vote. I was

Mr. Glenn Fine
January 26, 2010
Page 2

criticized again by editorials in my district when I supported the Voting Rights Act extension in 2006.

Given my longstanding support for voting rights, I have been deeply concerned with the department's mismanagement of this case and its continued obstructive tactics. These concerns rise far above the scope of the OPR preliminary investigation and are more appropriately handled by your office. Specifically, I would like you to consider the following concerns:

1. The attorney general has still not responded to the questions and concerns I shared in my six letters to him since last June 8. I have only received one response from DOJ, from Ron Weich last July, that was vague and, at least in one instance factually inaccurate. Members of Congress should be able to interact with the department and expect a response that attempts to answer questions:
2. The dismissal of this case was wholeheartedly opposed by the four career attorneys managing the case as well as the division's own appellate office, which is also staffed by career DOJ attorneys. In a memo penned by career Appellate Chief Diana K. Flynn, she wrote that DOJ could make a "reasonable argument in favor of default relief against all defendants and probably should." She further noted that the complaint's purpose was "to prevent the paramilitary style intimidation of voters while leaving open ample opportunity for political expression." I fear that only politicization from the department's leadership can explain why the department acted contradictory to the recommendations of its career trial attorneys and appellate office.
3. Ms. King and Mr. Rosenbaum, the two officials identified in recommending this case for dismissal, have a history of questionable judgment. Earlier this month, U.S. Magistrate Judge David Waxse -- former legal counsel for the ACLU in Kansas and western Missouri -- imposed sanctions on King and Rosenbaum for their refusal to provide information in a housing discrimination case. King was also reprimanded and sanctioned \$587,000 in attorneys' fees imposed against the department in an earlier case, *Johnson v. Miller*.
4. I am deeply concerned about allegations that Associate Attorney General Perrelli consulted with the White House counsel's office in his decision to dismiss this case. *The Washington Times* has reported a series of meetings between Mr. Perrelli and the deputy White House counsel corresponding to key dates in the decision to dismiss this case. Last week, *The Washington Times* further reported that Perrelli visited the White House counsel's office, including visits with former deputy Cassandra Butts and former counsel Greg Craig, on dates corresponding with key actions in the decisions that led to the dismissal of this case. The pace of these visits immediately slowed following the final dismissal of the case. If true, this represents a dangerous breakdown of the "firewall" policy that former Attorney General Mukasey put in place in 2007 to prevent politicization on active cases.

5. The department has thwarted all attempts by the U.S. Commission on Civil Rights to investigate this matter. The commission has repeatedly sought this same information, in fulfillment of its statutory responsibility to ensure the enforcement of civil rights law. After being similarly rebuffed, the commission filed subpoenas with the department for this information as well as to interview the career attorneys that handled the case.
6. DOJ is flagrantly obstructing the U.S. Commission on Civil Rights' statutory authority to provide oversight of the enforcement of civil rights laws. The department has instructed its career attorneys not to comply with subpoenas issued by the commission. This is an inherent conflict of interest with DOJ's statutory responsibility to enforce the commission's investigations and subpoenas.
7. Your office should be deeply troubled by the broad scope of the seven privileges claimed by DOJ in refusing to answer interrogatory questions submitted by the commission. What precedent will these broad claims of dubious privilege have on future congressional oversight of DOJ? DOJ even went as far as to claim that seven pages of a letter that I sent to the attorney general were considered privileged documents.

According to Michael Carvin, former deputy assistant attorney general for both the Civil Rights Division and the Office of Legal Counsel:

"They are relying on privileges that the Office of Legal Counsel says do not exist. There is no privilege, for instance, saying that the Justice Department will not identify personnel working on the case. ... Generally, a number of these privileges [are ones] I've literally never heard of. Normally there is no general attorney-client privilege unless you are dealing with the president. So a claim would have to come under the 'work product' or 'deliberative process' exemption. But 'work product' is very narrow, and the deliberative-process privilege is moot ... once the case closes. This is especially true when the [request for the information] does not involve litigants but instead an agency with statutory responsibilities concerning civil rights."

8. My staff has reviewed all of the documents provided by DOJ to the commission in response to their interrogatory request. The documents provided to the commission have little or no relevance with regard to the decision to dismiss this case. The "document dump" was merely a smokescreen designed to give the illusion of cooperation. In fact, the department failed to even provide all of the scant information that it agreed to share.
9. New Black Panther Party leader Malik Zulu Shabazz has been quoted issuing threatening comments toward Rep. Lamar Smith and me in a recent statement, saying, "These right-wing white, red-faced, red-neck Republicans are attacking the hell out of the New Black Panther Party, and we're organizing now to fight back... We gearing up for a showdown with this cracker... He keep talking -- we going to Capitol Hill, we're just gearing up."

Mr. Glenn Fine
January 26, 2010
Page 4

right now, we'll go to Capitol Hill." When laws aren't enforced, lawless men like Mr. Shabazz feel more emboldened to spread their intimidation.

In light of these new developments surrounding the department's refusal to reply to of congressional inquiries, its undermining of an investigation by the U.S. Commission on Civil Rights, and questionable meetings between Mr. Perrelli and the White House corresponding with keys dates in the dismissal of this case, I believe that you have an imperative to investigate these potential improprieties. Given that neither the Congress nor the commission can obtain critical information from the department, your authority as inspector general is the only way to learn whether the department has engaged in improper conduct with regard to the dismissal of this case and its hostility to the commission's statutory authorities and responsibilities.

In light of information that surfaced since my initial letter to you, I ask that you revisit your decision and immediately open an investigation. I would appreciate a decision on this matter no later than Friday, January 29.

Please do not hesitate to contact me or my staff member, Thomas Culligan, at 202-225-5136 if I can provide additional information on this matter.

Best wishes.

Sincerely,

Frank R. Wolf
Member of Congress

enclosures



U.S. Department of Justice

Office of the Inspector General

February 2, 2010

The Honorable Frank R. Wolf
United States House of Representatives
Washington, DC 20515

Dear Congressman Wolf:

This is in response to your letter to me, dated January 26, 2010, in which you asked the Office of the Inspector General (OIG) to open an investigation of the Department of Justice's (Department or DOJ) handling of the New Black Panther Party case.

We have carefully reviewed your letter and appreciate the importance of the matters that you have raised. As you note, we received the first letter from you and nine other members of Congress in July 2009 requesting that the OIG investigate the Department's handling of the case and whether political considerations influenced the Department's decisions in the case. When we received that letter, we referred the matter to the Department's Office of Professional Responsibility (OPR).

We did so because, by statute, OPR has jurisdiction to investigate allegations of misconduct relating to Department attorneys' handling of litigation or legal decisions. Such matters are expressly excluded by statute from the OIG's jurisdiction. In the 2002 Department of Justice Reauthorization Act (Act), Congress codified into statute the Attorney General Orders which gave this jurisdiction to OPR.

According to the Act, the OIG has jurisdiction to investigate allegations of misconduct against all employees in any DOJ component with one exception: DOJ attorneys acting in their legal capacity (or investigators acting at an attorney's direction). Specifically, Section 308 of the DOJ Reauthorization Act, entitled "Authority of the Department of Justice Inspector General," states that the Inspector General

shall refer to OPR allegations of misconduct involving attorneys, investigators, or law enforcement personnel, where the allegations relate

to the exercise of the authority of an attorney to investigate, litigate, or provide legal advice. . . ."¹

The issues that you raised regarding the New Black Panther Party case involved the exercise by Department attorneys of their authority to litigate and make legal decisions, and whether those decisions were based on improper considerations, such as political influence. That is why we referred the matter to OPR for investigation.²

In your letter dated January 26, 2010, you again ask us to open an investigation of the Department's handling of the New Black Panther Party matter. Your letter stated that you are disappointed in our "reluctance to investigate the unfounded dismissal of an important voter intimidation case," and you expressed concern about OPR handling the matter. You stated that you do not believe that OPR "is capable of conducting an unbiased and independent review of this case given that it reports to a political appointee - an inherent conflict-of-interest that can only be avoided by an independent inspector general (IG) investigation." You also stated that in light of several recent issues, including your inability to obtain information from the Department about the case, the Department's actions in response to the U.S. Civil Rights Commission's requests for information, and allegations of contacts between Associate Attorney General Thomas Perrelli and the White House, the OIG should revisit our decision and immediately open an investigation.

I understand your desire to have the OIG investigate the Department's handling of the New Black Panther Party case because of our independence. I have advocated changing the OIG's jurisdiction to allow us to investigate all matters within the Department, including matters such as this one that involve Department attorneys' exercise of their legal duties. Unfortunately, unlike all other OIGs which have unlimited jurisdiction to investigate all allegations of waste, fraud, or abuse within their agencies, the Department of Justice OIG does not.

For several years I have expressed my position that Congress should change this jurisdiction and give the OIG the authority to investigate all matters within the Department. I have raised various arguments for this

¹ See Public Law 107-273, Section 308 (21st Century Department of Justice Appropriations Authorization Act), codified at 5 U.S.C. App. 3 § 8E(b)(3). See also 28 C.F.R. § 0.29c(b).

² Over the years, we have received letters from members of Congress, on both sides of the aisle, asking the OIG to handle various allegations related to the Department's handling of litigation or legal decisions. In accord with the Attorney General Orders and the statute, we have referred such matters to OPR for it to handle, often to the disappointment of the members who asked us to conduct the investigation.

change, including, as you note in your letter, the independence issues that arise because OPR reports to the Attorney General.³

When Congress most recently considered this issue in its deliberation on the IG Reform Act, which was enacted in 2008, I again advocated for a change in the jurisdiction between OPR and OIG, to allow us to investigate all matters within the Department. However, Congress did not include this change in the IG Reform Act.⁴ Therefore, the jurisdiction to investigate Department attorneys' legal and litigation decisions, such as DOJ attorneys' litigation and legal actions related to the handling of the New Black Panther Party, remains with OPR.

However, in response to your recent letter, we asked OPR about the status of its ongoing investigation. It reported to us that it is in the midst of its investigation – which is a full investigation, not a preliminary investigation or inquiry. OPR reported that it has gathered documents and other relevant materials, has interviewed witnesses, and has numerous other witness interviews scheduled. OPR also told us that it intends to share the results of its investigation with Congress.

In addition, OPR informed us that it has included in its investigation the allegations relating to whether any improper political influence affected the Department's handling of the case. It has specifically included as part of its

³ See, e.g., my statement before the Senate Homeland Security and Governmental Affairs Committee, July 11, 2007, available at <http://www.justice.gov/oig/testimony> (the current limitation on the DOJ OIG's jurisdiction should be changed because it assigns jurisdiction to OPR, which is not statutorily independent and reports directly to the Attorney General and the Deputy Attorney General; this creates a conflict of interest and contravenes the rationale for establishing independent Inspectors General); my testimony before the Senate Judiciary Committee, May 2, 2006 (“[U]nfortunately, in my view, the jurisdiction of the Inspector General in the Department of Justice is limited to some degree because there's a Department of Justice Office of Professional Responsibility that has jurisdiction to review the actions of attorneys in the exercise of their legal authority up to and including the Attorney General . . . It originally arose from an Attorney General order issued by Attorney General Reno and then Attorney General Ashcroft, and then it was codified in the DOJ Reauthorization Act by the Congress. So it would require a congressional action to change it at this point.”); my testimony before the Senate Judiciary Committee, July 30, 2008 (“We don't have jurisdiction, unfortunately, over attorneys in the exercise of their legal duty. I have testified about that and I am hopeful, I hope that the Congress will do something about that because I believe that the Inspector General's Office ought to have unlimited jurisdiction in the Department of Justice. We're independent, we're transparent, and there's no conflict of interest. So I think that ought to be changed.”); my testimony before House Judiciary Committee, October 3, 2008 (OIG does not have the authority to investigate prosecutive decisions made by DOJ attorneys; Congress would have to amend this carve-out to our jurisdiction, and I have suggested that it be amended).

⁴ Although we believed this should be a bipartisan issue, the prior Administration opposed the change, and Congress did not include the change in the final bill.

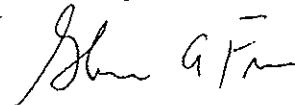
investigation the issue you raised in your letter regarding any alleged contact between Associate Attorney General Perrelli and the White House, and whether any alleged contact improperly influenced the Department's decisions regarding the case.

Your letter also raises concerns about the appropriateness of the Department's response to requests by Congress and the U.S. Civil Rights Commission for information about this case, including the appropriateness of Department's legal position on the assertion of certain privileges. We have inquired of the Department about its decisions regarding providing information to Congress and the U.S. Civil Rights Commission. The Department has indicated to us that it is still in the process of considering the legal issues about what information it can and should provide to the U.S. Civil Rights Commission, and that searches to identify responsive documents are still underway. Moreover, we believe, based on our inquiry, that the appropriateness of the legal position the Department takes in responding to these requests is also a matter involving attorneys' legal decisions, which would fall within OPR's jurisdiction.

Therefore, while we understand and appreciate the reason for your request that the OIG investigate the Department's handling of the New Black Panther Party case, we do not have jurisdiction to do so. We believe, and have advocated, that Congress should change this jurisdiction, but it has not done so. Therefore, in accord with the law, we referred the matter to OPR, and OPR is in the midst of its investigation.

If you have any questions about this letter or these issues, please feel free to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn A. Fine". The signature is written in a cursive style with a horizontal line under the "e" in "Fine".

Glenn A. Fine
Inspector General



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 2, 2010

The Honorable Frank R. Wolf
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Wolf:

This follows up on your letter, dated January 26, 2010, to Inspector General (IG) Glenn Fine regarding your concerns about the Department's response to your allegations about improper partisan political considerations affecting the Department's decision last year to dismiss claims against some of the defendants in *United States v. New Black Panther Party for Self-Defense, et al.*, Case No. 2:09-cv-0065 (E.D. Pa.) (the NBPP case). While we understand that IG Fine has responded to your letter, we believe it is important for the Department to address your concerns about the Office of Professional Responsibility (OPR), the pending matters before the U.S. Commission on Civil Rights, and our responses to your previous inquiries.

As you know, OPR initiated an investigation into the conduct of Department attorneys in the summer of 2009. Since then, OPR has advised that it has reviewed voluminous documents, conducted numerous interviews and its comprehensive investigative efforts are continuing. Once that phase is completed, OPR will draft its report, which OPR expects will be extensive. If OPR's draft report includes findings of professional misconduct, then the affected Department attorney(s) will have an opportunity to comment on the draft before OPR completes its final report. Thereafter, the Department will follow established practices, which may vary depending on the nature of any OPR findings. We will supplement this response when that process is concluded.

We must respectfully take issue with your questioning of OPR's ability to conduct an "unbiased and independent review" of this matter. We believe that such a charge is groundless. On the contrary, the Department expects that is precisely what OPR will do with all of the energy, dedication, and professionalism that the Office has demonstrated for more than thirty years. It has a long history of investigating allegations that improper political considerations affected the Department's prosecution and litigation decisions. Moreover, OPR is staffed entirely by career Department of Justice employees, most of whom have, prior to joining OPR, distinguished themselves as Assistant United States Attorneys, trial lawyers in the Department's litigating divisions, and/or litigating partners in private law firms. They are particularly well suited by their experience and career status to conduct full and fair investigations into allegations such as those at issue here, and report their independent findings to appropriate decision-makers within the Department. Any suggestion to the contrary is patently false.

Congress of the United States
Washington, DC 20515

March 2, 2010

The Honorable Glenn A. Fine
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Mr. Inspector General,

We write regarding your letter of February 2, 2010, in which you declined to investigate the Department of Justice's dismissal of its voter intimidation case against the New Black Panther Party (NBPP) and affiliated individuals. We urge you to reconsider your decision, which we believe to be based on a too narrow reading of both the scope of your investigative jurisdiction and the scope of the NBPP matter.

The Department's actions in May 2009 to dismiss most of the charges in its Voting Rights Act voter intimidation lawsuit against the NBPP and three of the Party's associates, a lawsuit it initiated only four months prior, has raised many issues for Congress's consideration. Chief among them is whether the Voting Rights Act's scope stretches broadly enough to reach such a clear instance of voter intimidation. However, it also raises a host of troubling questions about whether the Department's political appointees abused their power in this case for political purposes.

The Hon. Glenn A. Fine
March 2, 2010
Page Two

These include questions of whether White House officials attempted for partisan political purposes to influence either the NBPP case, the broader class of voting rights cases against minority defendants or both; whether senior Department management officials and political appointees actually colluded for these purposes with White House officials to derail the NBPP case or cases against minority defendants in general; whether senior Department management officials or political appointees unduly interfered with the recommendations of the NBPP trial attorneys to move forward with a default judgment when invited to do so by the trial judge upon the NBPP defendants' default; and whether Department management or political appointees, in concert with White House officials or on their own initiative, have acted improperly to impede the U.S. Commission on Civil Rights' investigation of this affair. Concerns raised in the NBPP matter also include, for example, whether White House or Department officials acted contrary to the letter or spirit of recommendations that you made and Attorney General Michael Mukasey adopted in connection with the U.S. Attorneys investigation last reported on by your office in September 2008.

We readily acknowledge that strict issues of prosecutorial misconduct raised by the case may be within the investigative and ethics jurisdiction of the Department's Office of Professional Responsibility (OPR). While OPR reviews the performance of the Department's attorneys to ensure that they meet basic ethical obligations, it is beyond the scope of OPR's duties and expertise to investigate the politically charged questions raised by the Department's management of the NBPP case. As the above recitation makes clear, the full set of issues presented by the NBPP matter extends well beyond strict issues of prosecutorial misconduct, reaches into the area of Department "politicization" by the White House and senior Department management, and may implicate the sufficiency of the recommendations you made in the U.S. Attorneys matter. Moreover, in the U.S. Attorneys matter itself, both you and OPR demonstrated the ability of your offices to conduct coordinated or parallel investigations of matters that raise companion issues within each of your respective jurisdictions.

For these reasons, we believe there is no impediment to your investigating the NBPP matter, regardless of whether you have properly or improperly already referred some issues in the case to OPR. Moreover, the larger issues in this affair, whether for the pursuit of impartial justice, the pursuit of criminal justice for government officials or the credibility of the Department, lie within your jurisdiction, not OPR's. In the U.S. Attorneys matter, you pursued your investigative authority promptly and zealously to its limits and then pressed for the appointment of a special prosecutor to take the investigation further when you could not, due to your lack of subpoena power over White House officials. It is imperative that you likewise quickly commence a thorough and zealous investigation of the NBPP matter and carry that investigation to its conclusion. We fear that further delay could compromise your ability to obtain all of the facts concerning the potential "politicization" of the Department and that your own hesitation could compromise the credibility of the Office of the Inspector General.

The Hon. Glenn A. Fine
March 2, 2010
Page Three

To date, we remain confident of your ability and willingness to investigate allegations within your jurisdiction wherever they may lead. It is precisely our high regard for the Office of the Inspector General that drives our request that your office investigate this matter. Given the Department's refusal thus far to provide meaningful answers to Congress or the U.S. Commission on Civil Rights as to what led to the abrupt reversal of its litigation position in the case we look to you to provide the thorough and impartial investigation called for. Knowing that the NBPP matter raises issues squarely within your jurisdiction and consistent with the precedent that you set in the U.S. Attorneys investigation, we are optimistic that, following your receipt of this letter, you will reconsider and reverse your prior decision not to initiate an Office of the Inspector General investigation of the NBPP affair.

Thank you for your attention to this matter. We look forward to receiving your reply no later than March 12, 2010.

Sincerely,



Lamar Smith
Ranking Member
House Judiciary Committee



Frank Wolf
Ranking Member
Commerce-Justice-Science Subcommittee
House Appropriations Committee

cc: The Honorable John Conyers, Jr.



U.S. Department of Justice

Office of the Inspector General

April 19, 2010

The Honorable Lamar Smith
United States House of Representatives
Washington, DC 20515

The Honorable Frank R. Wolf
United States House of Representatives
Washington, DC 20515

Dear Congressmen Smith and Wolf:

This is in response to your letter to me, dated March 2, 2010. In that letter, you urged the Office of the Inspector General (OIG) to reconsider our decision regarding your request that the OIG investigate the Department of Justice's handling of the New Black Panther Party case.

Our original decision, conveyed in our letter dated February 2, 2010, was that by statute jurisdiction to investigate the Department's handling of the New Black Panther Party litigation fell within the Office of Professional Responsibility's (OPR) jurisdiction rather than the OIG's jurisdiction. Your March 2 letter stated that our decision was based on too narrow a reading of our investigative jurisdiction and the scope of the New Black Panther Party matter. Your letter also stated that the Department's actions "raise a host of troubling questions whether the Department's political appointees abuse their power for political purposes," and you listed those questions.

We have carefully considered the issues you raise in your March 2 letter. However, it still appears to us that each of the issues you urge us to investigate relate to the Department's handling of the New Black Panther Party case or other cases. Specifically, the questions you raise concern whether improper political factors or actions affected the handling of the New Black Panther Party case or other related cases. Even though these allegations concern possible "politicization" of Department decisions, the issues to be investigated consist of whether the alleged politicization had an improper impact on the Department's handling of a case or cases. For the reasons laid out in more detail in our February 2 letter, we believe that, by statute, those issues fall within OPR's jurisdiction, not the OIG's jurisdiction.

According to the statute which defines the jurisdiction of the OIG and OPR, OPR's jurisdiction is not limited to "strict issues of prosecutorial

misconduct." Rather, it extends to allegations that "relate to the exercise of the authority of an attorney to investigate, litigate, or provide legal advice." 5 U.S.C. App. 3 § 8E (b)(3).¹ Moreover, while you stated that "it is beyond the scope of OPR's duties and expertise to investigate the politically charged questions raised by the Department's management of the NBPP case," the statute does not exempt OPR from investigating the matter when it is alleged that politicization has affected an attorney in the exercise of the authority to investigate, litigate or provide legal advice, or give us the jurisdiction to do so.²

Your letter also refers to the OIG's role in investigating the firing of the U.S. Attorneys, and it questions why the OIG would have jurisdiction to review that matter but not have jurisdiction to review the Department's dismissal of the New Black Panther Party litigation. The investigation concerning the U.S. Attorneys was initially assigned to OPR by the former Attorney General. Because the matter involved the firing of U.S. Attorneys (as well as allegations involving the hiring of career Department attorneys), we argued, before OPR started its investigation, that these issues did not involve the handling of litigation, and therefore the matter fell within our jurisdiction. OPR disagreed, arguing that the firing of at least some of the U.S. Attorneys was alleged to have occurred in order to influence a particular case, which gave OPR jurisdiction to investigate the matter. Eventually, because of this jurisdictional ambiguity, we agreed to conduct the investigation jointly.

By contrast, there does not appear to us to be a similar jurisdictional ambiguity with regard to the New Black Panther Party matter, because it involves the Department's actions in the handling of a specific case or cases. That is true even though the allegations are that the handling of this case or class of cases was affected by improper political considerations.

It is also important to note that OPR has been actively investigating this matter for several months (including whether political considerations affected the Department's decisions about the case). We recently inquired again about the status of OPR's investigation and were informed that OPR is in the latter stages of its investigation.

Finally, as described in our February 2 letter, we believe that the jurisdiction between OPR and the OIG should be changed and that we should

¹ See also 28 C.F.R. § 0.29c(b) (the Inspector General "shall refer to OPR allegations of misconduct involving attorneys, investigators, or law enforcement personnel, where the allegations relate to the exercise of the authority of an attorney to investigate, litigate, or provide legal advice. . . .")

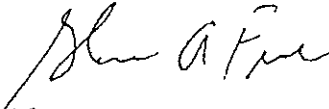
² As discussed in our February 2 letter, we believe it would be a better policy to give an independent Inspector General jurisdiction to investigate all matters within the Department of Justice, including allegations that politicization affected a decision to bring or dismiss a case. However, that is not what the statute currently provides.

have jurisdiction throughout the Department of Justice. Congress did not make such a change in 2008 in connection with its consideration of the Inspector General Reform Act. Recently, however, several members of Congress have expressed support for such a change. In light of the sentiments you express in your letter about the benefit of OIG investigating these types of matters, we hope that you will consider supporting legislation extending the OIG's jurisdiction to include matters now reserved to OPR's jurisdiction.

In sum, while we continue to understand your desire that the OIG investigate the Department's handling of the New Black Panther Party case, our reading of the statute indicates that the matter by law falls within OPR's jurisdiction. However, we would be willing to meet with you to discuss these issues further, and the concerns you raise, in order to understand more fully why you believe that under the jurisdictional statute the matter is within the OIG's jurisdiction.

If you have any questions about this letter, please feel free to contact us.

Sincerely,

A handwritten signature in cursive script that reads "Glenn A. Fine".

Glenn A. Fine
Inspector General

From: Flynn, Diana K (CRT)
Sent: Wednesday, May 13, 2009 11:54 AM
To: Rosenbaum, Steven (CRT)
Cc: Coates, Christopher (CRT); McElderry, Marie K (CRT)
Subject: New Black Panther Party FW: Comments on the proposed default judgment filings in NBPP

We have been asked to provide comments on the Voting Section's proposed motion and papers in support of default judgment and relief. Marie McElderry and I have reviewed the papers and discussed. Her comments, which also reflect my views, are below. I add the following observations:

1. We can make a reasonable argument in favor of default relief against all defendants and probably should, given the unusual procedural situation. The argument may well not succeed at the default stage, and we should expect the district court to schedule further proceedings. But it would be curious not to pray for the relief on default that we would seek following trial. Thus, we generally concur in Voting's recommendation to go forward, with some suggested modifications in our argument, as set out below.
2. The fact that *Chamberlain's* minimal standard for entry of a default judgment may be satisfied does not entitle us to one. See Marie's discussion of the case law below. The district court will retain considerable discretion to withhold relief on default and schedule a hearing. Given that we are seeking relief against political organizations and members in areas central to First Amendment activity, it is likely that the court will not order relief absent such further proceedings. That said, the procedural posture leaves few good alternatives to filing in support of such relief now.
3. By far, the most difficult case to make at this stage is against the national party and Malik Shabazz. There is discussion in the internal papers of the history of the organization with respect to voter intimidation with the use of weapons and uniforms. If the Voting Section opts for seeking relief against the national defendants at this stage, we suggest including that history in our supporting Memorandum. Our case against the nationals may be a bit of a reach, particularly at this stage, particularly because of First Amendment concerns. But we already brought the case and made the allegations. See *COMPLAINT*, par. 12. I assume that this reflects the Division's policy judgment that it is appropriate to seek such relief after trial. We probably should not back away from those allegations just because defendants have not appeared. And Voting does seem to have evidence in support of the allegations.
4. We would NOT say that First Amendment defenses are irrelevant at this stage. (Contra, *MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT at 4*). The court should anticipate likely defenses and so should we. See Marie's detailed discussion

below. We think a discussion of the narrowness of the proposed relief, which is generally discussed throughout the memorandum, can be used explicitly at this point to explain why First Amendment defenses are unlikely to prevail. In other words we can argue up front that the proposed order is carefully crafted to avoid any First Amendment concerns. Emphasis can be placed on the fact that our proposal is designed to prevent the paramilitary style intimidation of voters, and otherwise leaves open ample opportunity for political expression.

The First Amendment concerns Steve expressed earlier are well-taken, and I think proceeding against the nationals is a very close call. But it appears to us that there is a basis for the relief we seek, and the unusual posture of the case probably requires that we say the relief is appropriate on default. In any event, we should expect to be required to try these issues.

Marie may make some additional suggestions to the wording of the papers, if permitted.

From: McElderry, Marie K (CRT)
Sent: Tuesday, May 12, 2009 5:15 PM
To: Flynn, Diana K (CRT)
Subject: Comments on the proposed default judgment filings in NBPP

Comments on proposed filings re default judgment in *United States v. New Black Panther Party For Self-Defense*, No. 2:09-cv-0065 SD (E.D. Pa.)

We have been asked to comment on whether the United States should seek injunctive relief against all defendants, and, if so, what relief we should request. As I understand the situation, the documents Voting proposes to file are the Motion for Default Judgment (dated April 30), the Memorandum of Law in Support of Motion for Default Judgment (dated April 30), and the proposed Order (dated May 6). Further support for these filings is contained in the May 6 internal Remedial Memorandum Concerning Proposed Injunction Order.

Standard for obtaining default judgment. An overarching principle that we need to keep in mind is that the Third Circuit "does not favor entry of defaults or default judgments." *U.S. v. \$55,518.05 In U.S. Currency*, 728 F.2d 192, 194 (3d Cir. 1984). Rather, it is its "preference that cases be disposed of on the merits whenever practicable." *Hritz v. Woma Corp.*, 732 F.2d 1178, 1181 (3d Cir. 1984).

Our proposed Memorandum of Law relies on the three-part test in *Chamberlain v. Giampapa*, 210 F.3d 154, 164 (3d Cir. 2000), as governing a district court's determination whether a default judgment is proper. As the Third Circuit more recently acknowledged in an unreported decision, however, *Chamberlain* cites *U.S. v. \$55,518.05*, *supra*, as the source of that standard, and *\$55,518.05* is a case where a defendant sought to overturn a default judgment. *Hill v. Williamsport Police Dept.*, 69 Fed. Appx. 49, 51 (3d Cir. 2003). In *Hill*, the court noted that "both major treatises on federal practice and procedure, as well as the Ninth Circuit, set out additional factors to those listed in *Chamberlain* as appropriate for consideration when ruling on motions to grant default judgments." 69 Fed. Appx. at 51 n.3.¹ Among those factors are "whether material issues of fact or issues of substantial public importance are at issue," "how harsh an effect a default judgment might have," and "the strong policy of the Federal Rules of Civil Procedure." *Ibid.*

Nonetheless, the court in *Hill* determined that it is bound to follow *Chamberlain* in determining whether a district court has abused its discretion in deciding whether to issue a default judgment in the first place. The problem with importation of the three-part test to that context is that step two of the test requires the court to determine "whether the defendant appears to have a litigable defense," and that determination is complicated where, as here, the defendant has totally failed to file a response to the complaint (as opposed to having filed late). Our proposed Memorandum of Law, pg. 4, alludes to that complication by quoting the unreported decision in *Nationwide Mutual Insurance Company v. Starlight Ballroom Dance Club, Inc.*, 175 F. Appx. 519, 522 (3d Cir. 2006) ("The second factor is the 'threshold issue in opening a default judgment.'"). We then take the position that the presence or absence of a meritorious defense "has no relevance at this stage of the proceedings." Memo. at 4. That is not actually the case, however, since the Court will be following *Chamberlain*.

In any event, I think that we can get over that hurdle by anticipating, as we do in our May 6 internal Remedial Memorandum, possible defenses that might be raised, *i.e.*, First Amendment claims and the post-litigation

denunciation of the conduct of the Philadelphia chapter by the Party (and possibly by Malik Zulu Shabazz). I believe that the district court will anticipate such possible defenses and will want to know how we would address them. Indeed, by the time we file this motion and/or the court sets a hearing, the defendants may file something raising those or other defenses. Given that the court is bound to follow the three-part test, I think that we need to address in the Memorandum in support of the Motion at least those defenses that we have already identified.

I am also not sure that we have made a sufficient showing that we would be prejudiced by denial of a default judgment. When we filed the Complaint, we assumed that we would be engaging in the usual course of litigation, including discovery and filing of legal briefs. The opportunity to receive a judgment without pursuing all of those steps would be a benefit to us, but I am not sure that the court will be persuaded that we would be prejudiced by having to try the case on the merits, which is the preferred method of proceeding under Third Circuit case law. Especially in a case such as this, which is not cut and dried, I think the court will feel that its judgment would be informed by a more deliberate process.

Whether the unchallenged facts constitute a legitimate cause of action against the Party and its national leader. I have some reservations about whether we have a sufficient factual basis to state a claim against the Party and Malik Zulu Shabazz. Paragraph 12 of the Complaint alleges that they “managed, directed, and endorsed the behavior, actions and statements of Defendants Samir Shabazz and Jackson.” The May 6 internal memorandum refers to an announcement made in advance of the November 4 election of a “plan to post party members at polling places.” But nowhere do I see that we can show that either the Party or Malik Zulu Shabazz suggested, counseled, or endorsed the bringing or brandishing of weapons in advance of what happened in Philadelphia. Assuming that the main behavior we seek to enjoin is bringing weapons to the polls, I am not convinced that we can establish a basis for an injunction against the Party or Malik Shabazz by showing that the Party has violent and racist views against non-blacks and Jews. The additional information discussed on page 8 of the May 6 internal memorandum about

the Party's past actions of bringing weapons to political rallies may, however, be the basis for an argument that both the Party and Malik Shabazz should reasonably have known that the Philadelphia defendants might believe they were authorized to carry weapons to the polls, but I am not sure that would be sufficient to justify the relief we are seeking.

As I read our justification for relief against the Party and Malik Shabazz, it is based largely on Malik Shabazz's statements *after* the events in Philadelphia in which he defended the actions of King Samir Shabazz and Jerry Jackson on national television as based on the alleged presence of members of the Aryan brotherhood or the American Nazi party at that particular polling place. In addition, the Voting Section is relying on admissions made by Malik Shabazz to members of the section. It is unclear how we would present that evidence to the court. That "endorsement," however, is complicated by the statements on the Party's website renouncing the events in Philadelphia and suspending the Philadelphia chapter. It appears that we may have difficulty proving when those statements were added. At least as to the Party, those statements could be an impediment to proving a violation at all, not just an impediment to injunctive relief.

What type of injunctive remedy should be sought. Certainly, we have established a sufficient basis for the very limited injunctive relief that is recited in the proposed order dated April 30 against defendants King Samir Shabazz and Jerry Jackson. But I understand that such a limited injunction will not accomplish very much.

As to those "Philadelphia" defendants, however, the proposed order dated May 6 goes somewhat further. It seeks to enjoin defendants "from deploying or appearing within 200 feet of any polling location on any election day in the United States with weapons." Presumably, both deploying and appearing are meant to be modified by "with weapons." It is not clear what we mean by deploying, especially since the Voting Section indicated in its May 1, 2009, email that, in light of discussions with the Front Office, it does "not seek to enjoin the wearing of the NBPP uniforms at the polls." According to most dictionary definitions, the term "deploy" is used mainly in the context of

troops. I think it suggests that the military-type uniforms used by the Party are an integral part of what we want to enjoin, regardless of our stated intent not to seek to enjoin the wearing of those uniforms.

It appears that, at least as to the Philadelphia defendants, the violation we have alleged encompasses not only bringing the weapon, but also the intimidating atmosphere created by the uniforms, the military-type stance, and the threatening language used. I have not had time to do a comprehensive analysis of the First Amendment implications of attempting to enjoin members of the New Black Panther Party (or any other hate group, such as the American Nazi Party or the Klan) from wearing their uniforms at the polls on election day. The Supreme Court has stated that “[t]he government generally has a freer hand in restricting expressive conduct than it has in restricting the written or spoken word.” *Texas v. Johnson*, 491 U.S. 397, 406 (1989) (flag-burning case). It may not, however, “proscribe particular conduct *because* it has expressive elements.”

In this case, Party members’ wearing of the uniform would likely be viewed as “expressive conduct.” It would be relevant, then, to know whether the government has asserted an interest in regulating the wearing of the uniform that is unrelated to the suppression of expression. Here, the government’s predominant interest, as expressed in 42 U.S.C. 1973i(b), is preventing intimidation, threats, and coercion (or attempts to do so) against voters or persons urging or aiding persons to vote or attempt to vote. Part of the intimidation in this case is wearing a military-style uniform, which suggests some kind of authority to take action. That aspect of the uniform could theoretically be separated from the particular message that this uniform is intended to convey, *e.g.*, racial hatred. Thus, appearing at the polls in such a uniform with a weapon is more intimidating than appearing in street clothes with a weapon. Interestingly, all three of the Declarations that we propose to present to the court focus on a combination of the uniform and the weapon. None of them mentions the third element of intimidation, *i.e.*, the verbal threats and racial taunts and slurs.

The April 30 Memorandum in support of our Motion addresses the

possible First Amendment claims of the Philadelphia defendants in the context of whether injunctive relief would harm them, *i.e.*, the third part of the traditional test for obtaining an injunction. Memo. at 13-14. As to those defendants, our arguments appear to be sufficient to support the narrow injunction that the Voting Section was seeking as of April 30. It is obviously a closer question whether it would also support either Paragraph V of the May 6 proposed order, either as presently worded using the word "deploy," or a proposed order that explicitly mentions the Party uniform in some way.

As discussed above, my problems with applying Paragraph V to the Party and Malik Shabazz involve whether we have enough evidence to show that they violated the statute. If a decision is made that the evidence is sufficient, I would suggest a separate paragraph in the order for injunctive relief against these defendants that is narrowly tailored to the scope of their violation. That violation is described at various points of the Complaint as "deployment of armed and uniformed personnel at the entrance to [a] polling location," which involves the organization and planning of such activities involving the members of the Party. This portion of the injunction should therefore be geared to enjoining those actions. We might also want to ask the court to order these defendants to undertake some type of procedures or training, such as mentioned on page 8 of the May 6 internal Remedial Memorandum, that would make abundantly clear that the national organization and its leaders do not endorse intimidation, threats or coercion of voters or those who are urging or aiding them to vote.

Marie K. McElderry
Appellate Section
Civil Rights Division

¹ As the concurring judge in *Hill* pointed out, the Eighth Circuit does not use

the three-part test outside of the context where a party against whom default has been entered has moved to set aside the judgment. 69 Fed. Appx. at 53.

Memorandum



Subject: Remedial Memorandum Concerning Proposed
Injunction Order
DJ #166-62-22

Date: May 6, 2009

To: Loretta King
Acting Assistant Attorney General

From: Christopher Coates
Chief, Voting Section

Robert Popper
Deputy Chief

J. Christian Adams
Spencer R. Fisher
Trial Attorneys

Summary

This memorandum will discuss whether, under the applicable law and defenses, we believe that an injunction, in the form attached, is appropriate against each of the named defendants in United States v. New Black Panther Party for Self-Defense, No. 09-0065 (E.D. Pa. filed Jan. 7, 2009). In sum, we believe that the attached proposed injunction order is appropriate.

The facts of this case are set out in the Complaint in this action and the j-memo, and in detail in the discussion below where appropriate. In brief, Defendants King Samir Shabazz and Jerry Jackson stood side by side at a polling location at 1221 Fairmount Street in Philadelphia, Pennsylvania, on election day, November 4, 2008. Shabazz brandished a nightstick, or billy club, and pointed it at observers. Shabazz and Jackson uttered racial slurs and taunts in the presence of voters and those aiding voters. When one person aiding voters sought to enter the polling location, Shabazz and Jackson moved to block his path.

On election day, Shabazz and Jackson were members of the New Black Panther Party for Self-Defense, and Shabazz was the head of its Philadelphia chapter. The national chairman is Defendant Malik Zulu Shabazz. The plan to post party members at polling places was announced in advance by the party. After the events at 1221 Fairmount Street on November 4 made national news, Malik Zulu Shabazz defended the conduct of the two men, on television and to Department attorneys. However, the party, on its website, later disclaimed the conduct of the two men, and announced the suspension of the Philadelphia chapter.

The violent and racist views of the New Black Panther Party for Self-Defense are well-documented. The Southern Poverty Law Center has described the party as an active black-separatist group "[e]schewing the health clinics and free breakfast programs of the original [Black] Panthers . . . to focus almost exclusively on hate rhetoric about Jews and whites." S. Poverty Law Ctr., *Intelligence Report: Snarling at the White Man* (2000), <http://www.splcenter.org/intel/intelreport/>

article.jsp?aid=214 (last visited Nov. 10, 2008). In 1993, Khalid Muhammad, then a member of the Nation of Islam, gave a speech at Kean College New Jersey, in which he referred to Jews as "bloodsuckers," labeled Pope John Paul II a "no-good cracker" and advocated the murder of white South Africans. In the ensuing controversy he was dismissed from the Nation of Islam by Minister Louis Farrakhan, who found the statements too extreme. Muhammad then joined the New Black Panther Party for Self-Defense. See J. Blair, K.A. Muhammad, 53, Dies; Ex-Official of Nation of Islam, N.Y. Times, Feb. 21, 2001.

The party's current chairman, Defendant Malik Zulu Shabazz, has made many anti-Semitic statements, duly catalogued by the Anti-Defamation League. See Anti-Defamation League, http://www.adl.org/learn/ext_us/malik_zulu_shabazz/ (follow link to "In His Own Words"; see also link to party) (last visited Dec. 19, 2008). As one of many examples, during a protest in front of B'nai B'rith, a Jewish service organization, in Washington, D.C. (April 20, 2002), he led chants of "death to Israel," "the white man is the devil," and "Kill every goddamn Zionist in Israel! Goddamn little babies, goddamn old ladies! Blow up Zionist supermarkets!" Id.

Defendant King Samir Shabazz "is one of the most recognizable black militants in a city known, since the days of MOVE, for its vocal black-extremism community." Dana DiFilippo, New Panthers' War on Whites, Phila. Daily News, Oct. 29, 2008, at 4, available at http://www.philly.com/philly/news/20081029_New_Panthers_war_on_whites.html. Statements attributed to Samir Shabazz and published in the article include: "the only thing the cracker understands is violence"; "the only thing the cracker understands is gunpowder"; and "I'm about the total destruction of white people. I'm about the total liberation of black people. I hate white people. I hate my enemy." Id.

Our Complaint alleging violations of Section 11(b) of the Voting Rights Act, 42 U.S.C. § 1973i(b), was filed on January 7, 2009. Defendants have defaulted. We now propose seeking a default judgment and the following injunctive relief (see attached proposed order):

Defendants, their agents, and successors in office, and all persons acting in concert with them who receive actual notice of this order, by personal service or otherwise, are permanently enjoined and restrained from deploying or appearing within 200 feet of any polling location on any election day in the United States with weapons, and from otherwise engaging in coercing, threatening, or intimidating behavior in violation of Section 11(b) of the Voting Rights Act, 42 U.S.C. § 1973i(b).

After discussing the propriety of the foregoing relief with respect to each class of defendant in turn, this memorandum will analyze two potential defenses: (1) whether certain defendants' post-complaint renunciation of the conduct of those at the Philadelphia polling station at issue is sufficient to convince the Court not to issue an injunction, and (2) whether First Amendment concerns counsel against an injunction for any of the defendants.

I. The behavior of Defendants King Samir Shabazz and Jerry Jackson warrants the proposed remedy.

A permanent injunction barring the armed presence at polling places clearly may be issued against Defendants King Samir Shabazz and Jerry Jackson. The United States, even without the benefit of discovery, has voluminous evidence that the Defendants King Samir Shabazz and Jackson

violated or attempted to violate Section 11(b). Most obviously, while brandishing a weapon they physically interfered with the lawful ingress of a person aiding voters. The two Defendants were positioned at the entrance to a polling location. Upon observing the approach of Christopher Hill, they formed ranks, that is, stood in a line with the widest point blocking the approach of Hill. Hill would testify that they intentionally blocked his path and sought to intimidate him.

Defendant King Samir Shabazz brandished a weapon and this action alone constitutes intimidation or coercion. The Third Circuit has noted that brandishing a weapon, even without accompanying verbal threats, is an intimidating act because of the potential for violence. "We agree with the [First Circuit] . . . that a person may brandish a weapon to advise those concerned that he possesses the general ability to do violence, and that violence is imminently or immediately available." United States v. Johnson, 199 F.3d 123, 127 (3d Cir. 1999). In fact, Shabazz may have gone beyond merely brandishing the weapon. "Pointing a weapon at a specific person or group of people, in a manner that is explicitly threatening, is sufficient to make out 'otherwise use' of that weapon. We hold this is true when any dangerous weapon is employed: It need not be a firearm." Id. Differentiating the pointing of a stick from mere brandishment allowed the use of sentencing enhancements because the weapon was "otherwise used." Similarly, witness statements demonstrate that Shabazz pointed the weapon and tapped it in his hand while engaging various individuals protected by Section 11(b) in a menacing fashion.

In addition to attempting to physically interfere with the rights of protected voters and the brandishing or use of a weapon, Defendants King Samir Shabazz and Jerry Jackson violated Section 11(b) because a reasonable person would find their actions to be an objective attempt to intimidate voters or those aiding voters. The use of a recognizable uniform of a hate group known to advocate racially-motivated murder, whether or not constitutionally protected, bolsters this finding. Moreover, the Defendants shouted racial slurs at voters and assistants protected by Section 11(b).

The Department should seek a remedy that prevents this behavior from recurring. The Defendants should be prohibited from possessing weapons in proximity to a polling location. The District Court has broad powers to fashion such a remedy. See Local 28 of Sheet Metal Workers' Intern. Assn. v. EEOC, 478 U.S. 421, 482 (1986) (appointment of administrator to oversee union policies upheld.); see also United States v. Brown, 561 F.3d 420, 435-437 (5th Cir. 2009).

II. The behavior of the Defendant Malik Zulu Shabazz warrants the proposed remedy.

Defendant New Black Panther Party for Self-Defense chairman Malik Zulu Shabazz should be enjoined from organizing and participating in future deployment of an intimidating party presence at the polls. His culpability in this case is not simply because he is chairman of the New Black Panther Party for Self-Defense or that he made statements about the matter. Instead, a remedy against Malik Zulu Shabazz is warranted not only because he oversaw and helped organize the deployment, but also because he endorsed and ratified the events in Philadelphia.

Prior to the election, the New Black Panther Party for Self-Defense announced a polling place deployment of party members. "We will be at the polls in the cities and counties in many states to ensure that the enemy does not sabotage the black vote, which was won through the blood of the martyrs of our people," said one party official. Statements by the New Black Panther Party on election day confirm this intention. A "Statement by Dr. Malik Shabazz, Esq, leader of Black Lawyers For Justice and attorney for the New Black Panther Party for Self-Defense" was published on

November 4, 2008. It said: "The NBPP will also patrol election sites nationwide to counter voter intimidation & other threats of violence against Blacks. . . . ON ELECTION DAY, TUESDAY, NOVEMBER 4th, We will be at the polls in the cities and counties in many states."

On November 7, 2008 Defendant Malik Zulu Shabazz endorsed the behavior by the two Philadelphia defendants, simultaneously and continuously identifying them as party members. He said "one of the members of the party" was in Philadelphia at the polls. "Those men were there to stop something, not start something." See FOXNews.com, The Strategy Room, <http://www.foxnews.com/story/0,2933,65535,00.html> (last visited May 4, 2009). "We were there to counter" skinhead activity. *Id.* (emphasis added). "There were members of the party not only in Pennsylvania but in many areas. Obviously we don't condone bringing billy clubs to polling sites. But when we found out this was an emergency response to some other skinheads . . . there was some explanation for that. That's not something that we normally do, but it was an emergency response."¹ *Id.* (emphasis added). When asked how many members are in the party, Malik Zulu Shabazz said on November 7, 2008, "there are thousands. There are thousands of us and our supporters all around the country." *Id.*

Aside from these public statements, Malik Zulu Shabazz admitted to us directly his involvement in the events in Philadelphia and stated that they were part of a nationwide effort. We interviewed Shabazz by telephone on December 4, 2008. He told us, "there were members of the party in many areas [on election day]." He also endorsed the use of the nightstick. Zulu Shabazz's statements constitute evidence of his involvement with the deployment of party members both in Philadelphia and around the nation.

Malik Zulu Shabazz admitted that he was involved in the polling place deployment plan, and subsequently endorsed and ratified the behavior in Philadelphia, defending the actions in Philadelphia even after the full extent of the behavior was known. "[U]nder general rules of agency law, principals are liable when their agents act with apparent authority." American Soc. of Mech. Eng'rs, Inc. v. Hydrolevel Corp., 456 U.S. 556, 566 (1982). The Supreme Court in the antitrust case of American Society of Mechanical Engineers, Inc. noted that liability could be imparted to a principal for statements of an agent. "The apparent authority theory has long been the settled rule in the federal system." *Id.* at 567. While these cases usually involve torts, contracts or commercial transactions, "[i]n a wide variety of areas, the federal courts, . . ., have imposed liability upon principals for the misdeeds of agents acting with apparent authority." *Id.* Other cases noted by the Supreme Court where apparent authority applies range from common law fraud to statutory securities fraud. *Id.* The Voting Rights Act, with Congress' broad remedial protections, should not be interpreted more narrowly than these other areas of law.

Therefore, Defendant Malik Zulu Shabazz should be subject to an injunction for two reasons. First, he is liable because of his admitted involvement and supervision as chairman of a plan to deploy party members to polling locations, and, in the case in Philadelphia, armed party members. Second,

¹ Based on our interviews we did not find merit to the claims that there were white supremacists active at the polling location at 1221 Fairmount Street or anywhere else in the City of Philadelphia on November 4, 2008. There are also no press or police reports, or reports to the Voting Section, indicating that any such activity took place.

he is liable because he ratified and endorsed the illegal behavior of his agents in Philadelphia and well-settled principals of agency justify an injunction lying against him.

III. The New Black Panther Party for Self-Defense is properly enjoined by the proposed remedy.

Under Rule 17(b)(3)(A) of the Federal Rules of Civil Procedure, the New Black Panther Party for Self-Defense, an unincorporated association, is a jural entity subject to suit and injunctive relief based upon the relief sought in this case under federal law.² See Underwood v. Maloney, 256 F.2d 334, 337-38 (3d Cir. 1958) (“It follows, therefore, that under Rule 17(b) an unincorporated association must sue or be sued as an entity in the United States District Court for the Eastern District of Pennsylvania.”); see also Satterfield v. Borough of Schuylkill Haven, 12 F. Supp. 2d 423, 431 (E.D. Pa. 1998). “Unincorporated associations are generally formed by the voluntary action of a number of individuals or corporations who associate themselves together under a common name for the accomplishment of some lawful purpose.”³ 6 Am. Jur. 2d Associations and Clubs § 5 (2008); see also United States v. The Rainbow Family, 695 F. Supp. 294 (E.D. Tex. 1988) (order determining the Rainbow Family, although informal and loosely-knit, had sufficiently tangible structure to render it subject to suit under Rule 17(b)).

The scope of the injunctive relief the United States seeks is proper because the United States is not seeking to hold members or individuals associated with the New Black Panther Party for Self-Defense liable for mere membership in the party. In other words, the injunctive relief the United States seeks is a prospective remedy, and would only be enforced against members of the party not named in the Complaint in the circumstance of future violations.⁴ Cf. Town of W. Hartford v. Operation Rescue, 792 F. Supp. 161, 170 (D. Conn. 1992) (issuing a permanent injunction against, *inter alia*, Operation Rescue, named members involved in the actions in the case, and “officers, agents, servants, employees and attorneys, and upon those persons in active concert or participation with them, or any one or more of them who receive actual notice of this order by personal service or otherwise.”); see also Ne. Women’s Center, Inc. v. McMonagle, 868 F.2d 1342, 1347-48 (3d Cir. 1989) (finding a district court’s determination that it could not enjoin concerted conduct under Pennsylvania law in error and remanding for further consideration).

In any future effort to enforce this injunction, the United States would likely be required to establish its case by demonstrating that such persons had notice and were acting in concert with, or in

² The law was designed to permit an unincorporated association to be dealt with as an entity or as a class. See United Mine Workers of Am. v. Coronado Coal Co., 259 U.S. 344 (1922).

³ “Historically, labor unions, political parties, social clubs, religious organizations, environmental societies, athletic organizations, condominium owners, lodges, stock exchanges, and veterans have all been recognized as unincorporated associations.” Scott E. Atkinson, The Outer Limits of Gang Injunctions, 59 Vand. L. Rev. 1693, 1700-01 (2006).

⁴ Rule 65(d) of the Federal Rules of Civil Procedure provides that an injunction is binding upon “parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.”

support of, the party.⁵ Such evidence would likely be similar in many respects to the evidence the United States has collected in the case at bar regarding the activities of Defendants King Samir Shabazz, Jerry Jackson, and Malik Zulu Shabazz. Instructive is Aradia Women's Health Center v. Operation Rescue, 929 F.2d 530, 531 (9th Cir. 1991), in which the Ninth Circuit Court of Appeals addressed an appeal from an order imposing civil contempt sanctions upon individuals who took part in a demonstration blocking access to an abortion clinic. A previous district court order had "provided for sanctions . . . for each prospective violation of the order by any defendant or person acting in concert with any defendant having notice of the injunction." Id. The Ninth Circuit affirmed the district court's determination that the individuals, none of whom had been parties to the injunction action, had acted in concert with Operation Rescue (an unincorporated association). Id. at 533. The court noted that "the record [was] replete with evidence of Operation Rescue's activities, including publication of a newsletter, showing it to be an organization with stated purposes and operating through affiliates in numerous states Nor can there be any question from this record that these appellants acted in concert with Operation Rescue." Id.

IV. The apparent renunciation of the events of election day and the suspension of the Philadelphia chapter are not impediments to the United States' proposed remedy.

Internet statements on the New Black Panther Party's website posted after the Complaint in this action was filed disclaim the behavior of King Samir Shabazz and Jerry Jackson in Philadelphia. The disclaimers appear in two places. The first is in a section dated "11/04/08," though the following statement (among others) was added after this lawsuit was filed on January 7, 2009:

Specifically, in the case of Philadelphia, the New Black Panther Party wishes to express that the actions of people purported to be members do not represent the official views of the New Black Panther Party and are not connected nor in keeping with our official position as a party. The publicly expressed sentiments and actions of purported members do not speak for either the party's leadership or its membership.

New Black Panther Party for Self-Defense, http://www.newblackpanther.com/statement-voterintimidation_phillychapter.html (last visited May 5, 2009). The second statement is contained in a section entitled, "Public Notice Regarding Philadelphia Chapter Suspension 1/7/09 NBPP Official Statement." It says:

Philadelphia Chapter of the New Black Panther Party is suspended from operations and is not recognized by the New Black Panther Party until further notice.

The New Black Panther Party has never, and never will, condone or promote the carrying of nightsticks or any kind of weapon at any polling place. Such actions that were taken were purely the individual actions of Samir Shabazz and not in any way representative or connected to the New Black Panther Party. On that day November 4th, Samir Shabazz acted purely on his own will and in complete contradiction to the code

⁵ "Injunctions that purport to apply to all persons with actual notice of the injunction—regardless of whether or not those persons are acting in concert with or on behalf of those enjoined—have been struck down as overbroad." Atkinson, supra, at 1700-01.

and conduct of a member of our organization. We don't believe in what he did and did not tell him to do what he did, he moved on his own instructions.

It is true that volunteers in the New Black Panther Party successfully served as poll watchers all over the country and helped get the Black vote out. We were incident free. We are intelligent enough to understand that a polling place is a sensitive site and all actions must be carried out in a civilized and lawful manner.

Certainly no advice from the leadership of the New Black Panther Party was given to Samir Shabazz to do what he did, he acted on his own. This will be the New Black Panther Party's Only Statement on the matter.

Id.

We do not know at present the precise extent to which these statements were drafted by, or represent the views, of Malik Zulu Shabazz. Nevertheless, it is reasonable to conclude that his position as chairman means that these statements would not have been posted without some form of approval from him (or other officers of the organization).

The disclaimers conflict both with Malik Zulu Shabazz's televised statements and with his private statements to Department lawyers, insofar as he volunteered on those occasions that the actions were taken by party members and that he endorsed them. The two statements also conflict with each other, in that the first statement refers to the actors as "purported members," while the second statement says that the Philadelphia chapter is "suspended." A chapter can only be suspended if previously it was affiliated. Indeed, we plan to introduce the second statement at any hearing in order to establish that a relationship did exist on election day.

In any event, these statements would not form a basis for a court to deny our requested injunction. In all cases where it seeks an injunction, a plaintiff retains the burden to "satisfy the court that relief is needed. . . . that there exists some cognizable danger of recurrent violation, something more than the mere possibility which serves to keep the case alive." United States v. W.T. Grant Co., 345 U.S. 629, 633 (1953). "In determining whether there is a danger of recurrence, a court may consider the bona fides of the expressed intent to comply, the effectiveness of the discontinuance, and, in some cases, the character of past violations." FTC v. Davison Assocs., Inc., 431 F. Supp. 2d 548, 560 (W.D. Pa. 2006) (action under section 13(b) of the Federal Trade Commission Act; citing W.T. Grant Co.). On the other hand, it is a defendant's burden to show that a case is moot on account of remedial action.⁶ That burden is substantial:

⁶ Note that we are considering here the potential mootness challenge specifically based on Defendants' remedial statements and action. We are not considering a potential broad-based mootness challenge based on the fact that electoral events are inherently short-lived and the election is over. That kind of challenge would be addressed by invoking the doctrine that Defendants' conduct is "capable of repetition yet evading review," which doctrine applies where "(1) the challenged action is, in its duration, too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." Merle v. United States, 351 F.3d 92, 95 (3d Cir. 2003) ("This controversy, like most election cases, fits squarely within the 'capable of repetition yet evading review' exception to the mootness doctrine.")

The standard for “determining whether a case has been mooted by the defendant’s voluntary conduct is stringent: A case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.” . . . Moreover, the party alleging mootness bears the “heavy,” even “formidable” burden of persuading the court that the challenged conduct cannot reasonably be expected to resume.

United States v. Gov’t of V.I., 363 F.3d 276, 285 (3d Cir. 2004) (citations omitted).

In particular, remedial actions that appear to be responses to threatened or pending litigation do not favor a finding that conduct will not recur. “It is the duty of the courts to beware of efforts to defeat injunctive relief by protestations of repentance and reform, especially when abandonment seems timed to anticipate suit, and there is probability of resumption.” United States v. Or. State Med. Soc’y, 343 U.S. 326, 333 (1952); *see also* Bowers v. City of Phila., No. 06-CV-3229, 2007 WL 219651 at *32 (E.D. Pa. Jan. 25, 2007) (cessation of conduct “strongly suggests that the cessation was connected in large part to the instant litigation, a circumstance that does not favor a finding that the conduct is unlikely to recur.”); Gov’t of V.I., 363 F.3d at 285 (“The timing of the contract termination – just five days after the United States moved to invalidate it, and just two days before the District Court’s hearing on the motion – strongly suggests that the impending litigation was the cause of the termination.”).

Applying this law to the facts of the instant case, it is clear that the post-complaint disclaimers will not enable Defendants to avoid our injunction. We can show “some cognizable danger of recurrent violation, something more than the mere possibility” of recurrence. W.T. Grant Co., 345 U.S. at 633. We have Defendants’ repeated expressions of violent intentions and of approval of violent methods. Aside from their very explicit statements, we have photographic evidence documenting the party’s propensity to pose with and brandish weapons. We know and can document, for example, that they brought weapons to a political rally in Texas. We can offer expert opinion that one of the party’s distinguishing characteristics is its proclivity to send members to political hot spots with weapons.

[REDACTED]

We know that Defendants have not renounced their violent exhortations and images, their racial rhetoric, or their intention to get their members to the polls in future elections. While it has denounced the events in Philadelphia, the party has not described any practical steps, procedures, or training it will implement to avoid this kind of incident. This entire discussion, moreover, takes place in the context of strong indications that the disclaimers are not trustworthy, because (1) they are inconsistent with endorsing statements made by Malik Zulu Shabazz both on television and to Department attorneys, (2) they are inconsistent with each other, (3) they are inconsistent with earlier versions, and were back-dated, and (4) they were issued the same day as, and obviously in response to, the filing of this lawsuit. *See Davison Assocs., Inc.*, 431 F. Supp. 2d at 560 (“a court may consider the bona fides of the expressed intent to comply”).

For their part, Defendants cannot meet their “heavy,” “formidable,” and “stringent” burden of establishing mootness by making it “absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.” Gov’t of V.I., 363 F.3d at 285 (citations omitted). Even if Defendants were to appear at the default hearing, we do not know how they possibly could show this.

They certainly would be unable to do so by means of statements and a suspension issued after the lawsuit was commenced.

V. The First Amendment is not an impediment to the United States' proposed remedy.

The proposed injunction may be defended against a First Amendment challenge in two different ways.

A. The Defendants' conduct is not protected speech.

We can argue that the First Amendment is not implicated by the proposed remedy because First Amendment speech is not affected as Defendants' were not engaged in activity typically deserving of protections. Simply put, there is no First Amendment right to violate the law by illegitimately engaging in voter intimidation during an election directly in front of a polling place.⁷

Defendants in another case, United States v. Brown, made a similar First Amendment argument to the district court and Fifth Circuit Court of Appeals. The Court of Appeals rejected the Defendants' First Amendment arguments and upheld injunctions against presence at the polls and communication with poll workers. Brown, 561 F.3d at 436-38. In Brown, the United States sought and obtained a remedy that barred the defendant from the polling location and prohibited him from speaking with poll workers about the administration of the election. This remedial request was based on a liability finding that the defendant had improperly run primary elections in violation of Section 2 of the Voting Rights Act. The United States also sought the ban on defendant's polling place presence, save to vote, as a way to ensure that the defendant would not meddle with the administration of the election. The United States also sought and obtained an injunction stripping the defendants of all powers of election administration.

Both the district court and Fifth Circuit rejected arguments that any First Amendment liberty interest was implicated by the injunction. It is important to note that neither the district court nor the Fifth Circuit engaged in any heightened scrutiny analysis, and did not require any compelling interest to justify the remedy. Instead, the courts found that no First Amendment rights were implicated by the remedy.

The Fifth Circuit upheld the polling place ban and prohibition on speaking with poll workers. "Brown is only enjoined from communicating with poll managers regarding their electoral duties and the counting of ballots. The facts of the 2003 and 2007 elections make plain the need for these limitations; in both instances, Brown's statements, whether spoken or scribbled on post-it notes, resulted in poll managers improperly terminating the counting of absentee ballots and selectively rejecting absentee ballots." Brown, 561 F.3d at 438. Because Brown had violated the Voting Rights Act by speaking with poll workers and giving them instructions in violation of the law, there was no First Amendment liberty interest in banning future communications with poll workers. Similarly, the remedy sought against the Defendants in this case would prohibit them from again intimidating voters by creating an intimidating presence at the polls. Creating an intimidating presence at a polling place

⁷ Similarly, fighting words are punishable because they amount to an assault rather than communication of ideas. See Chaplinsky v. New Hampshire, 315 U.S. 568, 572 (1942) (characterizing fighting words as "personal abuse").

by blocking the entrance, shouting threatening statements, and brandishing a weapon is simply not protected by the First Amendment.

The Fifth Circuit in Brown also upheld an injunction against defendant's mere presence at the polls and at the circuit clerk's office two weeks prior to an election. In Mississippi, there is no prohibition on anyone being allowed at the polls during the counting of the votes and processing of absentee ballots. "Similarly necessary based on Brown's conduct is the order's restricting Brown's presence at the polling place [except to vote or if appointed as a poll watcher.]" Brown, 561 F.3d at 438. The Fifth Circuit found this physical ban did not implicate the First Amendment. "Again, insofar as defendants assert that these provisions restrict their freedom of expression, they fail to explain what expressive conduct Brown will engage in at the Circuit Clerk's office or within the polling places at the specifically restricted times." Id. at 438.

Finally, the Fifth Circuit upheld stripping the defendants of all powers to administer primary elections. Defendants argue the injunction stripping them of all power to run primary elections "is too broad and deprives them of their First Amendment rights to free expression and association. Defendants, however, fail to explain how delegating these duties to the Referee-Administrator interferes with such rights." Brown, 561 F.3d at 437. Because the remedy affected the "mechanics of administering a primary election," the First Amendment was not implicated. Id. Similarly, there is no First Amendment right to be positioned at the entrance of a poll with an intimidating weapon. Restrictions on this sort of behavior impairs the mechanics of how close one may get to voters when seeking to intimidate and threaten them.

The Third Circuit adopted similar reasoning and characterized criminal or illegal behavior as outside the protection of the First Amendment in United States v. Dickens, 695 F.2d 765, 772 (3d Cir. 1982). In upholding a conviction under RICO over defendants' objection to the government's contention that the robberies were committed to finance defendants' religious Black Muslim organization, this court stated, "[t]he First Amendment, which guarantees individuals freedom of conscience and prohibits governmental interference with religious beliefs, does not shield from government scrutiny practices which imperil public safety, peace or order." Id.

In Brown, the Fifth Circuit noted, "defendants' own conduct has rendered the remedial order's terms necessary to right the § 2 violation." 561 F.3d at 436. In this case, the Defendant New Black Panther Party for Self-Defense and its named members have rendered a remedial order necessary which prohibits them from repeating their behavior from election day 2008. Any proposed future remedy would enjoin specific illegal behavior from the past.

B. Assuming Defendants' conduct is protected speech, the proposed injunctive remedy would be upheld.

Even if the Defendant's conduct is categorized as speech protected by the First Amendment, it can be restricted in the manner set out in the proposed order as a viewpoint-neutral and content-neutral time, place, and manner restriction because the order "burdens no more speech than necessary to serve a significant government interest." Madsen v. Women's Health Center, 512 U.S. 753, 765 (1994) (upholding a 36-foot buffer zone as applied to the street, sidewalks, and driveways "as a way of ensuring access to the clinic" where throngs of protesters would congregate in close proximity to the clinic); see also Schenk v. Pro-Choice Network of W. N.Y., 519 U.S. 357, 380 (1997) (upholding 15-foot fixed buffer zones necessary to ensure access, but striking down floating buffer zones around

people entering and leaving abortion clinics). Here, the significant governmental interests are many, including: ensuring the right of individuals to vote freely for the candidate of their choice without being threatened, intimidated, or coerced and, more generally, providing access to polling places and ensuring the public safety of polling sites.⁸ The proposed injunction is appropriately tailored to this end preventing coercing, threatening, or intimidating behavior, thus closely tracking the requirements of federal law under Section 11(b), at polling locations during elections.

The injunction includes a prohibition on appearing with weapons within 200 feet of open polling locations during elections by Defendants. These restrictions, unlike the floating buffer zones around individuals struck down in Schenk, are fixed at open polling locations during the conduct of elections and would burden no more speech than necessary to ensure that federal law, under Section 11(b), is not violated. A proposed injunction need not be the least restrictive or the least intrusive means of furthering the government's interests. See Ward v. Rock Against Racism, 491 U.S. 781, 798-99 (1989). The proposed injunctive relief here has no application outside of the area in the direct proximity to entrances to polling places during the conduct of elections and does not "burden substantially more speech than is necessary to further the government's legitimate interests." Id. at 799. Absent such limitations it is likely that the Defendants' activities, if considered speech, would constitute prohibited voter intimidation. Thus, the scope of the restrictions constitute a proper fit to remedy the substantial violations alleged.

In Northeast Women's Center, Inc. v. McMonagle, 939 F.2d 57 (3d Cir. 1991), a case pre-dating the Supreme Court's decisions in Madsen and Schenk, the Third Circuit addressed the constitutionality of an injunctive remedy issued against a group of anti-abortion activists.⁹ Id. at 60. The McMonagle court noted that the plaintiff had not challenged the protesters' rights to free speech, but their illegal and tortious conduct. Id. The McMonagle court affirmed the injunctive remedy issued by the district court in nearly all respects finding no abuse of the district court's discretion.¹⁰ Id. at 65. In response to the defendant's challenge under the First Amendment, the court first stated that "[t]he district court found that McMonagle, and his group had engaged in acts of violence,

⁸ The Madsen Court found that numerous significant government interests were protected by the injunction in that case. These included the State's interest in: (1) protecting a woman's freedom to seek lawful medical or counseling services in connection with her pregnancy; (2) ensuring public safety and order, promoting the free flow of traffic on public streets and sidewalks, and protecting the property rights of all citizens; (3) ensuring residential privacy; and (4) analogously, protecting "captive" patients from targeted picketing. See Madsen, 512 U.S. at 767-69.

⁹ The McMonagle court previously noted that the district court properly instructed the jury that "the First Amendment does not offer a sanctuary for violators. The same constitution that protects the defendants' right to free speech, also protects the Center's right to abortion services and the patients' rights to receive those services." 868 F.2d at 1349.

For a complete recitation of the detailed injunctive remedy issued in the McMonagle case see Ne. Women's Center, Inc. v. McMonagle, 749 F. Supp. 695, 698 (E.D. Pa. 1990).

¹⁰ The remedy "barred, inter alia, 'picketing, demonstrating, or using bullhorns or sound amplification equipment at the residences of plaintiff's employees or staff.'" The court remanded the district court's selection of a 2500-foot protected zone on this type of home picketing. See McMonagle, 939 F.2d at 65.

intimidation, and trespass. The right of a court to enter an injunction restricting the form and location of expressive activity is particularly clear in such a context.” Id. at 62. The court then determined that the injunction was content-neutral. Id. at 63. It regulated when, where, and how an anti-abortion activist could speak, not what he could say and “ma[d]e no mention whatsoever of abortion or any other substantive issue,” but “merely restrict[ed] the volume, location, timing, and violent or intimidating nature of his expressive activity.” Id. Further, the injunctive remedy, permitting inter alia, six protesters at a time within 500 feet of the Center, was narrowly tailored and left open alternative methods of communication. Id. at 64-65.

The Supreme Court has also upheld even content-based restrictions on electioneering in close proximity to the polls: See Burson v. Freeman, 504 U.S. 191, 193 (1992). In striking down a law which prohibited election day endorsements by newspapers, the Court noted the challenged statute “in no way involve[d] the extent of a State’s power to regulate conduct in and around the polls in order to maintain peace, order and decorum there.” Mills v. Alabama, 384 U.S. 214, 218 (1966).

In Burson, the Court held that, even where the establishment of a 100-foot zone in which no political campaigning could occur was not a content-neutral time, place, and manner restriction, Tennessee had a compelling interest in protecting the right of citizens to vote freely for candidates of their choice, and a compelling interest in election integrity. Id. at 197-99. The campaign-free zone was narrowly tailored to achieve the compelling interest of preventing the harassment of voters. “This Court has recognized that the right to vote freely for the candidate of one’s choice is of the essence of a democratic society.” Burson, 504 at 199 (internal citation omitted). Further,

[a]pproaching the polling place under this system [unregulated elections of the 19th Century] was akin to entering an open auction place. As the elector started his journey to the polls, he was met by various party ticket peddlers who were only too anxious to supply him with their party tickets. Often the competition became heated when several such peddlers found an uncommitted or wavering voter. [] Sham battles were frequently engaged in to keep away elderly and timid voters of the opposition. [] In short, these early elections were not a very pleasant spectacle for those who believed in democratic government.

Id. at 202 (internal citations & quotations omitted). The electioneering restrictions were upheld because they helped ensure the right to vote freely. “Today, all 50 States limit access to the areas in or around polling places In sum, an examination of the history of election regulation in this country reveals a persistent battle against two evils: voter intimidation and election fraud.” Id. at 206.

Conclusion

We request authorization to file a motion for default judgment seeking the issuance of the proposed injunction order against Defendants Minister King Samir Shabazz, Jerry Jackson, Malik Zulu Shabazz, and the New Black Panther Party for Self-Defense.

Memorandum



Subject: Recommended Lawsuit Against the New Black Panther Party for Self-Defense and Three Individual Members for Violations of Section 11(b) of the Voting Rights Act DJ #166-62-22	Date: December 22, 2008
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To: Grace Chung Becker Acting Assistant Attorney General	From: Christopher Coates Chief, Voting Section Robert Popper Deputy Chief J. Christian Adams Trial Attorney Spencer R. Fisher Law Clerk
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Recommendation

We recommend that you authorize us to file the attached complaint against the New Black Panther Party for Self-Defense, an unincorporated association, Chairman Malik Zulu Shabazz, Minister King Samir Shabazz, and Jerry Jackson. On Election Day, Tuesday, November 4, 2008, two members of the New Black Panther Party for Self-Defense ("NBPP") deployed at the entrance to a polling place in Philadelphia, Pennsylvania wearing military-style uniforms. They possessed and brandished a weapon. They directed racially-based threats at poll watchers. The national leader of the NBPP subsequently endorsed the Election Day behavior of the party members and said their deployment was part of a larger NBPP effort. We believe the deployment of uniformed members of a well-known group with an extremely hostile racial agenda, combined with the brandishing of a weapon at the entrance to a polling place, constitutes a violation of Section 11(b) of the Voting Rights Act which prohibits types of intimidation, threats, and coercion. We propose seeking a remedy that prohibits the members of the NBPP from deploying athwart the entry of polling places in future elections.

I. Factual Background

A. The New Black Panther Party for Self-Defense is a well organized and well known group with an openly hostile racial agenda.

The NBPP's members and leaders openly advocate violence against members of a particular racial group. As part of its on-going monitoring activities of various groups, the Southern Poverty Law Center has described the NBPP as an active black-separatist group constituting a "federation of as

many as 35 chapters in at least 13 cities with informal links to certain Black Muslims.” S. Poverty Law Ctr., Intelligence Report: Snarling at the White Man (2000), <http://www.splcenter.org/intel/intelreport/article.jsp?aid=214> (last visited Nov. 10, 2008). The NBPP is recognized as a group “[e]schewing the health clinics and free breakfast programs of the original [Black] Panthers . . . to focus almost exclusively on hate rhetoric about Jews and whites.” *Id.* The Anti-Defamation League has cataloged a lengthy list of anti-Semitic statements by the NBPP’s current chairman, Dr. Malik Zulu Shabazz. See Anti-Defamation League, http://www.adl.org/learn/ext_us/malik_zulu_shabazz/ (follow link to “In His Own Words”; see also link to NBPP) (last visited Dec. 19, 2008). Bobby Seale, a founding member of the original Black Panther Party, has accused the NBPP of being a “black racist hate group,” as evidenced by the NBPP showing up heavily armed at demonstrations and preaching violent, racist, and extremist views on its web site. See S. Poverty Law Ctr., *supra*; see also FOXNews.com, New Black Panthers of a Different Stripe, <http://www.foxnews.com/story/0,2933,65535,00.html> (last visited Nov. 10, 2008).

The leadership and organization of the NBPP extends to a women’s league called the “Panther Queens” and a children’s organization called the “Panther Youth” which their website characterizes as “the future of our people.” (Attach. B, photographs of the leadership and organization of the NBPP.) The leadership includes, as described at the NBPP website, [Chairman and] Attorney-at-War Malik Zulu Shabazz, National Field Marshall Najee Muhammad, National Minister of Culture Zayid Muhammad, National Youth Minister Divine Allah, and National Minister of Justice Imam Akbar Bilal. *Id.* A tribute to deceased NBPP “Black Power General Dr. Khallid Abdul Muhammad” is also located on the leadership page.¹

Minister King Samir Shabazz, a.k.a. Maurice Heath, is the chairman of the Philadelphia chapter of the NBPP. (Attach. A, Figure 1.) He identifies his rank within the NBPP as a “Field Marshall.” Samir Shabazz is also a recognized presence in Philadelphia street politics.

A Philadelphia Daily News article pertaining to the Philadelphia chapter of the NBPP was published the week before the election on October 29, 2008. The article stated that Samir Shabazz “is one of the most recognizable black militants in a city known, since the days of MOVE, for its vocal black-extremism community.” Dana DiFilippo, New Panthers’ War on Whites, Phila. Daily News, Oct. 29, 2008, at 4, available at http://www.philly.com/philly/news/20081029_New_Panthers

¹ In 1993, following a speech at Kean College New Jersey, in which he referred to Jews as “bloodsuckers”, labeled Pope John Paul II a “no-good cracker” and advocated the murder of white South Africans, the United States Senate voted 97-0 to censure Muhammad, and the United States House of Representatives in a special session passed a House Resolution. After Muhammad was dismissed from the Nation of Islam by Minister Louis Farrakhan, who found the statements too extreme, Muhammad formed the New Black Panther Party for Self-Defense. See J. Blair, K.A. Muhammad, 53, Dies; Ex-Official of Nation of Islam, N.Y. Times, Feb. 21, 2001.

war_on_whites.html. Statements attributed to Samir Shabazz were published in the article. The article stated: “the only thing the cracker understands is violence,” said Samir Shabazz, whose face also bears the tattoos ‘Freedom,’ ‘BPG’ (Black Power Gang) and ‘NBPP.’” Id. Further, the article attributed to Samir Shabazz the statements “the only thing the cracker understands is gunpowder” and “I’m about the total destruction of white people. I’m about the total liberation of black people. I hate white people. I hate my enemy.” Id. The article also attributed a statement to Samir Shabazz that he “listens to ‘revolutionary, cracker-killing hip-hop’ on his headphones.” Id.

B. The NBPP’s presence at a Philadelphia polling place on Election Day was well documented.

On Election Day, November 4, 2008, at a polling place in Philadelphia, PA in Ward 14, Division 4 (The Guild House, 1221 Fairmount St.) two members of the NBPP, Samir Shabazz and Jerry Jackson, were positioned directly in front of (approximately 8 to 15 feet), and close to, the entrance to the polling location. (Attach. A, Figures 2 & 3.) Because of the configuration of the sidewalk and landscaping, every voter entering the polling place would necessarily pass within a few feet of the men.² Further, the men were standing side-by-side, facing outward, as if stationed there as guards or sentries. They were not milling about or deployed askew to the entrance. Instead, they were positioned such that any voter would necessarily pass within their radius. Moreover, as discussed in detail below, the men brandished a weapon. Consequently, every voter necessarily had to pass within the mens’ armed purview, and within a distance at which the weapon could potentially be swung to hit them.³

Both Samir Shabazz and Jackson were wearing the NBPP’s uniform. Their uniforms consisted of black berets, black tunics with various NBPP insignia, and battle dress uniform (BDU) pants which were bloused into black combat boots. Samir Shabazz wore rank insignia on his collar consistent with a Captain in the United States Armed Forces. Samir Shabazz also possessed a black billy club, or baton, approximately two feet in length. The grip of the baton was contoured and there was a leather lanyard, or a thong, on the end to wrap around his wrist. Witness Chris Hill, a Republican poll watcher and Army infantry veteran, indicated that Samir Shabazz deployed his hand through the thong and wrapped the slack tight around his wrist.⁴

The presence of the uniformed Black Panthers at the entrance to the polling place was documented by Republican Party videographer Steve Morse. See Google Video,

² Samir Shabazz and Jackson were both at times within and beyond the state statutory limit which prohibits unauthorized parties within ten feet of the entrance to a polling place. This is a matter of state law, however, and irrelevant in this case for the purposes of analyzing the behavior under the Voting Rights Act.

³ The best estimate of the total number of those who voted at the precinct is 580. This is the sum of the number of votes for Senator Barack Obama (568) and Senator John McCain (12). This is the highest total of votes for any of the contests on the ballot. It is unclear, however, if this sum includes any absentee votes.

⁴ These details are not insignificant. According to Hill, the grip and the leather thong allow the person using a baton to swing and thrust with more force and greater abandon without the fear of dropping the weapon.

<http://video.google.com/> (search "Black Panthers Philadelphia"; then follow "Black Panther patrols intimidating voters in Philadelphia" hyperlink) (last visited Dec. 7, 2008). We also have obtained original digital files of Samir Shabazz's deployment and brandishing of the baton or nightstick. These digital files have a higher level of definition and clarity than the videos placed on Google Video, Youtube, and other internet video sites. As Morse approached and asked the men what they were doing at the polling place, Samir Shabazz began tapping the baton in his hand and identified himself as "security." Id. The weapon was never holstered, but was moved about and at times tapped against his leg. The baton was also used to point at individuals with whom the Black Panthers were having antagonistic discussions.

A second video, apparently shot a short time later, showed Philadelphia police arriving on the scene and approaching the two men. See Google Video, <http://video.google.com/> (search "Black Panthers Philadelphia"; then follow "Police confront Black Panthers who are intimidating voters in Philadelphia" hyperlink) (last visited Nov. 10, 2008). Police officer Richard Alexander is seen in the video. We interviewed Officer Alexander and he told us that he received a call from police dispatch about reports of "voter intimidation" at a polling place. Officer Alexander arrived with a partner, Officer Hazel. Officer Alexander said that when he arrived he saw Samir Shabazz and Jackson 10 to 12 feet from the entrance to the polling place. The video shows Officer Alexander and Officer Hazel, approach the Black Panthers and requesting that they "step over to the car." Jackson does not comply and Officer Hazel says "we aren't asking." The men then follow. Officer Alexander told us that he said to Samir Shabazz and Jackson, "you can't be out here intimidating voters." Samir Shabazz and Jackson denied they were intimidating voters. Officer Alexander said that Samir Shabazz wore various NBPP insignia on his uniform. Officer Alexander told us he concluded that they should not be standing athwart the entrance to a polling place with a weapon and ordered them to disperse. Samir Shabazz did so, but Jackson had poll watching credentials allowing him to stay. Jackson did not retain the weapon when Samir Shabazz departed. Republican poll watcher Mike Mauro, an attorney, recalls that he saw the police officers confiscate the weapon from Samir Shabazz. Officer Alexander stated that Shabazz complained to him that his removal from the polling location was "another white man trying to bring the black man down."

A FOX News reporter also responded to the scene and shot video. See Google Video, <http://video.google.com/> (search "Black Panthers Philadelphia"; then follow "Rick Leventhal of Fox News confronts Black Panther" hyperlink) (last visited Nov. 10, 2008). Video from that encounter (also readily available on elsewhere on the internet) shows the news team approaching and questioning the remaining man, Jackson, who was still standing in front of the entrance to the polling place. Id. When questioned about the presence of the other man and the baton, Jackson said no one had ever been at the polling station with a baton and claimed he didn't know what the reporter was talking about. Id. Witnesses we spoke with indicated that Samir Shabazz and Jackson were deployed at the poll for some time with the baton prior to the video being taken.

C. Poll watchers and attorneys were deployed to various polling locations on Election Day both to observe and to aid voters.

Attorney Joe DeFelice, an employee of the Pennsylvania Republican Party, was responsible for the deployment of poll watchers to polling locations in Philadelphia on Election Day. This program deployed both attorneys and non-attorneys as poll watchers. While the primary purpose of the Election Day monitoring program was to observe and document any behavior at the polls which was illegal or unwelcome, another purpose was to aid voters, according to DeFelice and others. Attorney

John Giordano, the Election Day operations director for southeastern Pennsylvania, trained the poll watchers. He said that one of the purposes of the poll watching program was to aid particular voters should they encounter difficulties in casting a ballot.⁵

Wayne Byman, an African-American, was a Republican Party poll watcher deployed in the program managed by DeFelice. He described how he would aid voters on Election Day. Byman noted that, in Pennsylvania, he could identify the political party of a voter through the registration books at a polling location. He also has identified voters' party affiliations by speaking to them. Byman said he "would introduce myself to the voter if I saw they had any problem casting a ballot." He attempted to resolve their problems with the goal of allowing them vote. He made direct appeals to the election officials on behalf of voters, both at the polling location and by telephone to the Board of Elections. Byman stated that he "help[ed] the voter by telling the voter what they need to do to get their vote counted. I can [also] get the voter to present their case to the election judges." Byman could testify in detail about how was trained to, and how he did, aid voters on Election Day.

Mauro said that, during his training, he was "specifically instructed that part of their job was to help voters." He stated "we were told that if a voter was denied the right to vote, we were allowed to speak to the voter and answer questions." In sum, Giordano, Defelice, Byman, and Mauro are witnesses with knowledge of how aiding voters was one of the purposes of the poll watcher program.

D. Reports concerning the NBPP's presence at the polling place were made by poll watchers on the scene.

The events which precipitated reports about the Black Panthers' presence were statements made by Samir Shabazz or Jackson, or both, to poll watchers for the Republican Party, and a complaint by an unspecified voter about the presence of the Black Panthers. Byman was at 1221 Fairmount Street for a short time and saw the Black Panthers. He characterized their presence as "menacing and intimidating." Byman told us they "were the type you don't confront unless you are ready for a confrontation." He reported their presence to Joe Fischetti, an attorney poll watcher for the Republican Party. Fischetti then arrived at 1221 Fairmount Street and encountered the Black Panthers and two African-American poll watchers for the Republican Party, Larry Counts and his wife Angela Counts, who were assigned there. The Counts' had credentials entitling them to enter and remain in the polling place. Fischetti described Larry Counts as scared and worried about his safety at the polling place. Counts, according to Fischetti, huddled away from the Panthers' presence and kept looking over his shoulder as he spoke to Fischetti. Counts described to Fischetti his concern about leaving the polling place at the end of the day given the presence of the Panthers. Fischetti also described the Black Panthers' presence as alarming and said members of the local community present at the time also seemed alarmed and annoyed by the Panthers. Fischetti made a call concerning the situation to the Philadelphia Republican Party headquarters that resulted in an incident report. Morse, back at headquarters, also separately received a telephone complaint from a voter concerning a man with a "billy club" at 1221 Fairmount Street.

Larry and Angela Counts, the husband and wife poll workers, confirmed that they were afraid to leave the polling place until the Black Panthers had departed. This is consistent with the behavior

⁵ Giordano was recently Counsel to the Assistant Attorney General in the Environmental and Natural Resources Division and an Assistant United States Attorney in the Eastern District of Virginia before that.

of Counts as described to us by Fischetti. Angela Counts said she kept looking out the window at the Black Panthers with concern. She said she wondered what might occur next and if someone might "bomb the place." Lunch was brought to them, instead of them leaving to get it themselves. Larry and Angela Counts told us that when they finally departed the polling place, they first checked to see if the Black Panthers were still deployed outside. They told us that they left only because the Black Panthers had departed.

After these complaints were received, Mauro, Justin Myers, and Hill were deployed to the polling location by headquarters. Mauro stated that they were deployed because of a report that "one of our poll watchers was being harassed [by the Black Panthers]." Hill noted that he received a report that the Black Panthers had confronted Counts and called him a "race traitor." After Mauro, Myers, and Hill arrived, they approached the entrance to the polling place. Samir Shabazz, when engaging and speaking with Mauro and his fellow poll watchers, tapped the baton in the palm of his other hand. Hill told us that the leather thong on the end of the baton was wrapped around Shabazz's hand while he did this. Mauro heard the Black Panthers call him and his poll watching colleagues "white supremacists." Mauro said that Samir Shabazz also yelled at the poll watchers "fuck you cracker" as he alighted. When Hill sought to enter the polling location, he said Jackson and Shabazz formed ranks, meaning stood side by side to create a larger obstacle to Hill's entry into the polls.⁶ The weapon was in plain view as Hill approached. Hill reported that as he departed the polling place, Samir Shabazz yelled "how you [sic] white mother fuckers gonna like being ruled by a black man?" Meyers told us the Black Panthers called him a "cracker" and opined that Meyers would "soon know what it was like to be ruled by the black man." Meyers, "found the guy to be intimidating." Morse, the videographer, also said that he was "scared to death" of the Black Panthers. Hill, Meyers, Mauro, Byman, and Morse are witnesses with knowledge concerning intimidation and threats by NBPP members.

E. Witnesses observed voters reacting to the Black Panthers at the polling place.

Mauro told us that he watched voters arrive at the polling location and exhibit manifest surprise and apprehension at the presence of the Black Panthers. Mauro also stated that he saw black voters congregate away from the entrance to the polling location and speak about the presence of the Black Panthers. He recalls them saying words to the effect of "what is going on there?" Mauro also witnessed an elderly black woman approaching the polls and exhibiting apprehension as she approached the scene. Attorney poll watcher Harry Lewis told us he saw voters appear apprehensive about approaching the polling location entrance behind the Black Panthers. We received similar information from Fischetti. Officer Alexander said that he received a call from dispatch about reports of "voter intimidation" at the polling place. He said he saw individuals gathered within sight of the polling entrance, but they did not attempt to enter. Officer Alexander did not interview any voters while he was at the polling location.

⁶ Hill had credentials allowing him inside the polling location. He successfully entered the building.

F. The leadership of the NBPP endorsed the polling place deployment in Philadelphia.

We interviewed by telephone Chairman Malik Zulu Shabazz from his Washington D.C. law office.⁷ He told us, "there were members of the party in many areas [on Election Day]." According to an interview with Fox News Zulu Shabazz, said that there were more than 300 Panthers deployed in several cities across the U.S. to ensure the voting process went fairly and smoothly.⁸ See AOL Video, <http://video.aol.com/video-detail/dr-malik-shabazz/1916264308/?icid=VIDLRVGOV07> (follow hyperlink to FoxNews) (last visited Dec. 18, 2008). Zulu Shabazz told Fox News that the NBPP is comprised "of thousands" with a "very active grass roots." *Id.* Zulu Shabazz also specifically endorsed the use and display of the weapon at 1221 Fairmount Street by Samir Shabazz in our telephone conversation with him as well as in an the interview with Fox News. See *id.* For his part, the NBPP leader has claimed that his members were at the polling place merely to quell voter intimidation by white supremacists. See *id.*; see also FOXNews.com, Party Leader Says Black Panther Presence at Polls Provoked by 'Neo-Nazis', <http://elections.foxnews.com/2008/11/07/party-leader-says-black-panther-presence-polls-provoked-neo-nazis/> (last visited Nov. 10, 2008).

No witness we interviewed said they saw any skinheads or white supremacists at 1221 Fairmount Street. When we spoke by telephone to Zulu Shabazz on December 5, 2008, he said he was still gathering facts about the presence of skinheads at the polls. We also attempted to contact Jackson to obtain his version of events. Jackson did not return our telephone call. We were unable to find contact information for Samir Shabazz. Based on our interviews with poll watchers, Officer Alexander, and Zulu Shabazz, we do not find merit to the claims that there were white supremacists active at the polling location at 1221 Fairmount Street or anywhere else in the City of Philadelphia on November 4, 2008. This excuse would likely be presented by the defendants to offer a motivation other than an intent to intimidate; but this reason must be plausible to have any weight, and in our investigation we found it to be implausible.

II. Section 11(b) of the Voting Rights Act

Section 11(b) of the Voting Rights Act (VRA) of 1965, 42 U.S.C. § 1973i(b) (2000), provides as follows:

No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 1973a(a), 1973d, 1973f, 1973g, 1973h, or 1973j(e) of this title.

⁷ As Shabazz is not the given name of either Malik Zulu Shabazz or Samir Shabazz, they are apparently unrelated.

⁸ We were unable to ascertain where or whether the NBPP actually deployed any other members at polling locations throughout the United States.

Section 11(b) protects both voters and those "aiding" voters. Unlike other sections of the Voting Rights Act, it does not require state action. It is a broad prohibition against intimidating, threatening, or coercive behavior pertaining to the process of voting.

Cases brought under Section 11(b) have been uniformly unsuccessful. But see Jackson v. Riddell, 476 F.Supp. 849, 859-60 (N.D. Miss. 1979) (finding that Section 11(b) "is to be given an expansive meaning."); Whatley v. City of Vidalia, 399 F.2d 521, 525-26 (5th Cir. 1968) (noting that Section 11(b) was intended to expand rights protected by 42 U.S.C. § 1971(b)). In fact, of the fewer than ten cases reported as being brought under Section 11(b), no plaintiff has ever won.

Cases brought under Section 11(b) have failed for two reasons. First, courts have held that the behavior alleged does not constitute a genuine threat, coercion, or intimidation. At one extreme, actual violence would seem to be the clearest example of a Section 11(b) violation. But no plaintiff has brought a case alleging actual violence. Second, courts have at times read into the statute an additional requirement that neither its plain language nor its legislative history supports, namely, that plaintiffs must prove racial intent. See, e.g., Willing v. Lake Orion Cmty. Schs., 924 F.Supp. 815, 820 (E.D. Mich. 1996) (finding that no claim exists under Section 11(b) "[a]bsent a claim of any racial or other intentional invidious discrimination[.]") Indeed, the legislative history of 11(b) suggests that Congress specifically intended to eliminate any necessity to prove racial intent.⁹ Regardless, we believe that both of these historic barriers to plaintiffs' success in Section 11(b) cases are overcome in this matter. First, the deployment of armed and uniformed members of the NBPP who brandish a weapon will likely satisfy the high factual burden placed on plaintiffs to show a genuine threat, coercion, or intimidation. Second, if a court were to require evidence of racial intent, it would likely be established by the express racist agenda of the NBPP and the racial slurs and comments directed at various individuals by Samir Shabazz and Jackson at the polls.

Most recently, the Department litigated and lost a Section 11(b) claim in United States v. Brown, 494 F. Supp.2d 440, 477 n. 56 (S.D. Miss. 2007).¹⁰ In Brown, the Department presented two sets of evidence to establish a violation of Section 11(b). First, the defendant, Ike Brown, published a list of 174 voters in a newspaper. Brown stated that they might be subject to challenge if they attempted to vote. A witness for the United States whose name appeared on the list testified at trial that she feared she would be arrested if she attempted to vote. She therefore stayed home on Election Day. Second, "Brown confronted [a white voter attempting to vote] and in a loud voice, ordered him to get away from the entrance to the building. When [the voter] refused, Brown summoned law enforcement, and [Deputy Sheriff] Terry Grasseree appeared." Id. at 472.

⁹ On June 1, 1965, the House Judiciary Committee reported its version of the bill which would become the Voting Rights Act of 1965. Section 11(b) of the House committee bill was similar to the provision in the Senate-passed bill. In discussing Section 11(b), the House report stated that:

The prohibited acts of intimidation need not be racially motivated; indeed, unlike 42 U.S.C. 1971(b) (which requires proof of a 'purpose' to interfere with the right to vote) no subjective purpose or intent need be shown.

H.R. Rep. at 30 (1965). One difference between the two versions of Section 11(b) was that the House committee extended coverage to persons urging or aiding others to vote.

¹⁰ The Department won a claim brought under Section 2 in this case.

The district court ruled against the United States and found that this evidence was not sufficient to find a violation Section 11(b). The court noted:

The Government contends that Brown's public 'threat' to challenge persons on the list of 174 white voters if they attempted to vote in the 2003 Democratic primary violates Section 11(b) of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973i(b), which prohibits anyone from intimidating, threatening or coercing any person from attempting to vote. Although the court does conclude that there was a racial element to Brown's publication of this list, the court does not view the publication as the kind of threat or intimidation that was envisioned or covered by Section 11(b).

Id. at 472.

Regarding the threat to arrest the voter attempting to vote and the subsequent appearance of law enforcement, the district court noted Brown may have "mistakenly believed Coleman [a candidate] was in violation of the thirty-foot rule." Id. at 472. Instead of finding Brown liable for violating Section 11(b), the district court merely suggested that a "fair-minded person" would "have inquired before ordering [Coleman] to leave, and certainly before calling for law enforcement." Id.¹¹

In United States v. Harvey, 250 F. Supp. 219 (E.D. La. 1966), the court heard another case brought under section 11(b) by the Department. The Department alleged that, in violation of Section 11(b) and § 1971(b), the defendants terminated sharecropping and tenant-farming relationships with blacks who had registered to vote, evicted such persons from rental homes, and discharged them from salaried jobs. Id. at 221-22. The court first concluded the applicability of the intimidation statutes to state and local elections exceeded Congress' power. See id. at 225-26, 236-37; but see United States v. Simms, 508 F. Supp. 1179, 1186-87 (W.D. La. 1979) (rejecting Harvey's constitutional analysis). The court further held that even if Congress had such power, the plaintiff had failed to prove the intimidation allegation since its entire claim rested on nothing more than the termination of a business relationship shortly after the complainants registered to vote. Id. at 231-37.

In Gremillion v. Rinaudo, 325 F. Supp. 375, 376-77 (E.D. La. 1971), an unsuccessful black candidate brought an action to set aside the results of a 1970 primary election for school board, alleging various irregularities, including intimidation by a uniformed police officer who assisted white and black voters in the voting booth. The court stated that the purpose of the VRA was to "protect voters from an actual or potential denial or abridgement of their right to vote only where the basis for the infringement was racial discrimination." Id. at 378. The court dismissed the only claim brought by plaintiffs which implicated Section 11(b) (the claim of intimidation based on assistance from a uniformed, white officer), holding that the officer's presence, without anything more, did not constitute a general violation of the VRA on its face. Id.

¹¹ The Department approved the filing of a complaint in United States v. North Carolina Republican Party, (E.D.N.C., No. 91-161-CIV-5-F, filed February 26, 1992) under Section 11(b). This case involved the potential of an election day challenge program. The challenge program included a mailing to voters which stated they may be asked on election day about how long they resided at their residence. The case was not litigated and the defendants entered into a consent decree before discovery began.

In Pincham v. Illinois Judicial Inquiry Board, 681 F. Supp. 1309, 1314-17 (N.D. Ill. 1988), the district court refused to allow the plaintiff to amend his complaint to include a claim under Section 11(b). The court made its finding on a number of bases, including the fact that the plaintiff had made "no allegation that the defendants intended to intimidate, threaten, or coerce Justice Pincham." Id. at 1317. The Section 11(b) claim was based on the defendant Board bringing a disciplinary action against the black plaintiff, Judge Pincham, for statements he made in a political campaign. Id. at 1312.

What actions constitute satisfaction of the statutory terms "intimidate, threaten, or coerce" in Section 11(b) have never been precisely defined. As discussed above, courts have opined what does not constitute "intimidate, threaten or coerce" under Section 11(b). Based on these cases, the following facts would most likely not constitute violations of Section 11(b): termination of a voter's lease contracts, contractual eviction from homes, termination of employment, or termination of a business relationship for exercising the franchise (Harvey), police officers in a polling place assisting voters (Gremillion), election improprieties (Willing), regulatory enforcement actions for statements made in political campaigns (Pincham), threats to arrest voters and the summoning of law enforcement officials, in the absence of clear evidence of intent; published threats to challenge named voters; and subjective fears that said named voters might be arrested if they tried to vote (Brown).

The meaning of "intimidate, threaten, or coerce" was explored, however, in a case not brought under Section 11(b), United States v. McLeod, 385 F.2d 734, 741 (5th Cir. 1967).¹³ In McLeod, the Fifth Circuit reversed the district court's dismissal of an action seeking an injunction against the mass arrest of blacks seeking to vote or register to vote as well as police surveillance of private associations active in registering black voters. The district court had found "that each of the allegedly coercive acts was justified - that the surveillance of the mass meetings was necessary to keep order and to protect the Negroes" and that the mass arrests were warranted. Id. at 739. On appeal, the Fifth Circuit said "[i]t is difficult to imagine anything short of physical violence which would have a more chilling effect on a voter registration drive than the pattern of baseless arrests and prosecutions revealed in this record." Id. at 740-41. "We hold that the trial judge clearly erred in failing to find that the defendants' acts threatened, intimidated, and coerced the prospective Negro voters in Dallas County." Id. at 741; see also NAACP v. Thompson, 357 F.2d 831, 838 (5th Cir. 1966) (characterizing "arrest[s] en masse on frivolous or unfounded charges" as intimidation.).

III. Legal & Factual Analysis

A. Brandishing a deadly weapon at the entrance to a polling place and related actions and statements by the uniformed members of the NBPP constituted acts designed to intimidate, threaten, or coerce those voting or attempting to vote.

Section 11(b) broadly prohibits intimidation pertaining to voting. It states: "No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce . . . any person for voting or attempting to vote." § 1973i(b). Standing athwart the entrance to a polling place in formation and brandishing a weapon in the presence of voters and poll watchers objectively violates Section 11(b), because a fact-finder would likely conclude that brandishing a weapon could have no

¹³ McLeod was an action brought under, among others, § 1971(b). Both § 1971(b) and Section 11(b), § 1973i(b), use the same language, "intimidate, threaten, or coerce" pertaining to voting.

effect other than to intimidate, threaten, or coerce.¹⁴ The well-recognized military-style uniform, complete with insignia, patches and bloused combat boots; the notoriety of the party and the individuals involved; and the many statements advocating racially-motivated violence made by the party and the individuals involved, would all reinforce this conclusion.

The evidence at trial obviously would include the many, nationally publicized digital video recordings of the incident, as well as the direct testimony of the many eyewitnesses named herein. The statements and racial comments by the NBPP members involved in the incident, both prior to and on Election Day, are very likely to be deemed non-hearsay admissions by a party opponent. The evidence would include the testimony of the Philadelphia police, who concluded that the NBPP members were sufficiently intimidating to the poll watchers, the voters, or both, to order them dispersed and to confiscate their weapon. The evidence also would include expert testimony about the NBPP, their stated mission, and their rhetoric.

We would argue at trial that the evidence objectively establishes a violation of Section 11(b). It is shocking to think that a United States citizen might have to run a gauntlet of billy clubs in order to vote. Where this occurs, we would argue that no further, special, or subjective harm need be proved. Stated differently, we would argue that all voters arriving at this polling location were subject to intimidation by the very fact of having to endure the implied physical threat posed by armed, uniformed individuals, of uncertain intentions, standing in formation in front of the polling place.

Notwithstanding this point, we also would proffer evidence showing that the intimidating behavior was particularly directed at two classes of voters, who were, in fact, intimidated. The most obvious targets of intimidation were the white voters in the precinct, a class of citizens about whom Shabazz and the NBPP have made statements expressing extreme racial hostility. Further, the NBPP's actions were directed at African-American voters who were not inclined to vote for the candidate favored by the NBPP. The threatening actions described represent an effort to impose racial solidarity on black voters in an election where race was regularly discussed. Accordingly, the evidence at trial would include testimony concerning the reactions of both white and black voters who came to the polling station to vote.

¹⁴ Deployment and movement of the baton by Samir Shabazz likely constitutes "brandishment" of a deadly weapon. See United States v. Johnson, 931 F.2d 238, 240 (3d Cir. 1991) ("dictionary defines 'brandish' as 'to shake or wave (a weapon) menacingly,' and gives as synonyms 'flourish' and 'wave.'"); see also United States v. Marin, 523 F.3d 24, 30 (1st Cir. 2008) (United States argued exiting a vehicle with a billy club constituted admissible evidence creating inference that drug dealer recognized potential use of weapon may further drug business.); United States v. Koon, 833 F. Supp. 769, 781 (C.D. Cal. 1993) (United States argued and district court agreed that single handed baton was a dangerous weapon capable of inflicting death or serious bodily injury under sentencing guidelines.) Pennsylvania does not specifically criminalize the act of brandishing so no state statute or case defines what constitutes brandishing. Cf. Iowa Code § 723A.1(h)(1) (criminal brandishment is "display of a dangerous weapon, with intent to . . . intimidate."). The federal sentencing guidelines, however, define brandishing as "all or part of the weapon was displayed, or the presence of the weapon was otherwise made known to another person, in order to intimidate that person, regardless of whether the weapon was directly visible to that person." U.S. Sentencing Guidelines Manual § 1B1.1.

Finally, we would assert a second claim under Section 11(b), on the ground that Samir Shabazz, Jackson, and the NBPP attempted to intimidate, threaten or coerce voters. Section 11(b) provides that “[n]o person, . . . shall . . . attempt to intimidate, threaten, or coerce any person for voting or attempting to vote,” regardless whether the attempt was successful. This language, which was specifically added by the House of Representatives, was designed to give Section 11(b) a broader reach. Whatever the actual effect of the defendants’ conduct, the foregoing evidence amply demonstrates that they attempted to intimidate, threaten, and coerce voters.

The totality of the evidence should make a compelling case for a violation of Section 11(b). Indeed, it is difficult to imagine what could constitute a violation of Section 11(b) if armed, uniformed men standing in formation at the entrance to a polling location making racial slurs does not violate the statute. The facts in this case may present the clearest case for a violation of Section 11(b) that any plaintiff has brought in the 44-year history of the law.

B. Brandishing a deadly weapon at the entrance to a polling place and related actions and statements by the uniformed members of the NBPP constituted acts designed to intimidate, threaten, or coerce those aiding voters.

Section 11(b) also protects those who aid voters or urge them to vote. Section 11(b) of the Voting Rights Act provides that: “No person . . . shall . . . intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote.” § 1973i(b). The statute prohibits both the attempt to intimidate those aiding voters, as well as actual intimidation. We believe that the evidence supports a separate cause of action against the NBPP concerning the intimidation of those deployed to aid voters.

Republican poll watchers were, in part, deployed to aid voters. It is true that the deployment had broader purposes, but there is cumulative and credible evidence that aiding voters was one purpose of the deployment. Byman provided specific detail about how he identified and aided voters who encountered difficulty at the polls.

Many of the threatening actions and statements by the NBPP members were specifically directed at poll watchers. Republican Party poll watcher Larry Counts was subject to abuse. Videos show that Samir Shabazz, when engaging and speaking with Mauro and his fellow poll watchers, tapped the baton in the palm of his other hand. Other shots show Samir Shabazz using the baton to point at them. The Black Panthers also altered their positioning to threaten poll watchers. When Hill sought to enter the polling location, he said both Samir Shabazz and Jackson formed ranks, meaning stood side by side in front of Hill to create a larger obstacle to his entry into the polls. Meyers said the Black Panthers called him a “cracker” and opined that Meyers would “soon know what it was like to be ruled by the black man.” The Black Panthers directed racially tinged profanity at nearly all of the poll watchers at one time or another. This evidence should demonstrate both that the defendants attempted to, and they did, intimidate, threaten, and coerce those aiding others who were trying to vote.

IV. Conclusion

For the reasons given above, we believe that Section 11(b) was violated by Samir Shabazz, Zulu Shabazz, Jackson, and the NBPP when armed and uniformed members were deployed at the entrance to polling place. Section 11(b) was violated because their behavior was objectively intimidating and threatening to voters; because they attempted to intimidate and threaten, and did, in

fact, intimidate and threaten, voters, and those attempting to assist voters. We recommend authorization to file the attached complaint against the New Black Panther Party for Self-Defense, an unincorporated association, Chairman Malik Zulu Shabazz, Minister King Samir Shabazz, and Jerry Jackson.¹⁵ We propose seeking a remedy that prohibits members of the NBPP from deploying in front of polling places in future elections.

Approved: _____

Disapproved: _____

Comments:

¹⁵ We have attached a notice letter and consent decree as per our usual practice. We recommend, however, that you consider foregoing the sending of the notice letter and the attempt to negotiate the consent decree in this case. The nature of the NBPP is such that the letter and consent decree may not be received seriously or addressed in good faith by the defendants, who may instead seek to gain favorable publicity by publishing these documents and/or characterizing their contents in a tendentious manner. Accordingly, we recommend that you consider simply authorizing the commencement of a lawsuit.

U.S. COMMISSION ON CIVIL RIGHTS

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HEARING:

THE DEPARTMENT OF JUSTICE'S ACTIONS RELATED
TO THE NEW BLACK PANTHER PARTY LITIGATION
AND ITS ENFORCEMENT OF
SECTION 11(b) OF THE VOTING RIGHTS ACT

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FRIDAY, SEPTEMBER 24, 2010

+ + + + +

The Commission convened in Room
540 at 624 Ninth Street, Northwest,
Washington, D.C. at 10:00 a.m., GERALD A.
REYNOLDS, Chairperson, presiding.

PRESENT:

GERALD A. REYNOLDS, Chairperson
ABIGAIL THERNSTROM, Vice Chairman
TODD F. GAZIANO, Commissioner
GAIL L. HERIOT, Commissioner
PETER N. KIRSANOW, Commissioner
ARLAN D. MELENDEZ, Commissioner
ASHLEY L. TAYLOR, JR., Commissioner
MICHAEL YAKI, Commissioner

MARTIN DANNENFELSER, Staff Director

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel, OGC
TERESA BROOKS
CHRISTOPHER BYRNES, Director, RPCU
DEMITRIA DEAS
PAMELA A. DUNSTON, Chief, ASCD
LATRICE FOSHEE
LENORE OSTROWSKY
EILEEN RUDERT
KIMBERLY TOLHURST
AUDREY WRIGHT

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COLTEN
ALEC DEULL
TIM FAY
DOMINIQUE LUDVIGSON
JOHN MARTIN
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P-R-O-C-E-E-D-I-N-G-S

(9:51 a.m.)

I. INTRODUCTION BY CHAIR

CHAIRMAN REYNOLDS: This hearing is called to order. Today we continue the hearing first initiated on April 23rd, 2010. At our April hearing, we took the testimony of fact witnesses who were present at the scene in Philadelphia on Election Day 2008 and also heard from former DOJ official Greg Katsas and the honorable Frank Wolf, congressman from Virginia.

On May 14th, 2010, Assistant Attorney General for Civil Rights Thomas Perez appeared before the Commission, testifying that after a review of the facts and the law, the Department of Justice concluded that they did not support the charges against three of the four original defendants, nor the remedy originally sought by DOJ.

He also testified this decision was made by two career attorneys. "This is a case about career people disagreeing with career people," he testified.

On July 6th, 2010, the Commission heard testimony from former Voting Section employee and member of the *Black Panther* trial team Christian

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1 Adams. Mr. Adams had been under a Commission subpoena
2 to testify but had been directed by the Department not
3 to comply. He resigned and fulfilled his obligation
4 to appear before the Commission, alleging essentially
5 that the decision to change course in the *New Black*
6 *Panther Party* was but one symptom of a larger problem
7 at the Civil Rights Division.

8 A culture of hostility to the race-neutral
9 enforcement of the nation's civil rights laws, he
10 provided examples of this alleged culture and
11 repeatedly asserted that, if Christopher Coates,
12 former Chief of the Voting Rights Section, were
13 allowed to testify, he could support Adams'
14 allegations.

15 Since Mr. Adams' testimony, a lawsuit by a
16 private organization for the Justice Department to
17 produce a log of privileged communications related to
18 the Department's reversal in the *New Black Panther*
19 *Party* case, a log which the Commission had previously
20 requested from DOJ but which the Department refused to
21 provide, that log reveals the existence of extensive
22 communications at high levels within the Department on
23 the status of the *New Black Panther Party* case,
24 including e-mails by the number three official at the
25 Justice Department, Thomas Perrelli, one of which

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1 discusses the thoughts of the office of the number two
2 official at DOJ, the Deputy Attorney General on the
3 case.

4 DOJ's Office of the Inspector General
5 declined to investigate the *New Black Panther Party*
6 case dismissal, citing limits on its jurisdiction. On
7 September 13th, IG Glenn Fine sent a letter to
8 Representatives Smith and Wolf, stating his intention
9 to initiate a review of the enforcement of civil
10 rights laws by the Voting Rights Section.

11 The Office of Professional Responsibility
12 at DOJ continues its own investigation of the
13 circumstances surrounding the dismissal of the New
14 Black Panther Party case.

15 Late Wednesday, I received a letter from
16 Mr. Coates asking for the opportunity to fulfill his
17 obligations under the Commission's subpoena to
18 testify. The Department has refused to allow him to
19 testify, despite repeated requests from this
20 Commission. He appears here at great personal risk to
21 himself. I would like to thank Mr. Coates for his
22 courage in appearing today.

23 We will proceed as follows. Mr. Coates
24 will give his opening statement. Our General Counsel,
25 Mr. Blackwood, will initiate questioning. Following

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1 Mr. Blackwood, each commissioner will have five
2 minutes each to question the witness. I will lead off
3 the questioning, followed by the Vice Chair and then
4 the remaining commissioners in order of seniority.
5 Commissioners may, of course, yield their time to one
6 another. I will allow additional rounds of
7 questioning as needed.

8 Mr. Coates, please raise your right hand.

9 Whereupon,

10 CHRISTOPHER COATES

11 was called as a witness by the U.S. Commission on
12 Civil Rights and, having been first duly sworn, was
13 examined and testified as follows:

14 CHAIRMAN REYNOLDS: Thank you.

15 Mr. Coates, after you retrieve your mike,
16 please proceed.

17 II. TESTIMONY OF CHRISTOPHER COATES,
18 DEPARTMENT OF JUSTICE ATTORNEY
19 FORMERLY IN THE VOTING RIGHTS SECTION

20 MR. COATES: Good morning, Chairman
21 Reynolds, Madam Vice Chairman Thernstrom, and other
22 members of the Commission. I am here today to testify
23 about the Department of Justice's final disposition of
24 the *New Black Panther Party* case and the hostility in
25 the Civil Rights Division and the Voting Section

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1 towards the equal enforcement of some of the federal
2 voting laws.

3 This Commission served me with a subpoena
4 in December 2009 to testify in its investigation.
5 Since service of that subpoena, I have been instructed
6 by DOJ officials not to comply with it.

7 I have communicated with these officials,
8 including the Assistant Attorney General for Civil
9 Rights, Thomas Perez, and expressed my view that I
10 should be allowed to testify concerning this important
11 civil rights enforcement issue. I have pointed out
12 that I have personal knowledge that is relevant to
13 your investigation, personal knowledge that Mr. Perez
14 does not have because he was not serving as the
15 Assistant Attorney General for Civil Rights at the
16 time of the final disposition of the Panther case.

17 My requests to be allowed to testify and
18 your repeated requests to the DOJ for me to be allowed
19 to respond to your lawfully issued subpoena have all
20 been denied.

21 Furthermore, I have reviewed the written
22 statements and the testimony of Mr. Perez and others
23 from the DOJ given to this Commission and to Congress
24 concerning the Division's enforcement activities,

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1 including its enforcement activities in the Panther
2 case.

3 In addition, I have reviewed Mr. Perez's
4 August 11th letter to the Chairman, in which he again
5 denied your request that I be allowed to testify and
6 in which he made various representations concerning
7 the Department's enforcement practices.

8 Based upon my own personal knowledge of
9 the events surrounding the Division's actions in the
10 *Panther* case, and the atmosphere that has existed and
11 continues to exist in the Division and in the Voting
12 Section against fair enforcement of certain federal
13 voting laws, I do not believe these representations to
14 this Commission accurately reflect what occurred in
15 the Panther case and do not reflect the hostile
16 atmosphere that has existed within the Division for a
17 long time against race-neutral enforcement of the
18 Voting Rights Act.

19 In giving this testimony, I do not claim
20 that Mr. Perez has knowingly given false testimony to
21 either this Commission or to Congress. Indeed, as I
22 have previously indicated, Mr. Perez was not present
23 in the Division at the time the decisions were made in
24 the *Panther* case, and he may not be fully aware of the
25 long-term hostility to race-neutral enforcement of the

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1 Voting Rights Act in either the Division or the in the
2 Voting Section. Instead, my testimony claims that the
3 DOJ's public representations to this Commission and
4 other entities do not accurately reflect what caused
5 the dismissals of the three defendants in the Panther
6 case and the very limited injunctive relief we were
7 instructed to obtain against the remaining defendant.
8 And those representations do not accurately describe
9 the longstanding opposition to the Division and in the
10 Voting Section to the equal enforcement of the
11 provisions of the Voting Rights Act.

12 I do not lightly decide to comply with
13 your subpoena in contradiction to the DOJ's directives
14 to me not to testify. I had hoped that this
15 controversy would not come to this point. However, I
16 have determined that I will not fail to respond to
17 your subpoena and thereby fail to give this Commission
18 accurate information pertinent to your investigation.

19 Quite simply, if incorrect representations
20 are going to successfully thwart inquiry into the
21 systemic problems regarding race-neutral enforcement
22 of the Voting Rights Act by the Civil Rights Division,
23 problems that were manifested in the DOJ's disposition
24 of the *New Black Panther Party* case, that end is not
25 going to be furthered or accomplished by my sitting

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1 idly or silently by at the direction of my supervisors
2 while incorrect information is provided.

3 I do not believe that I am professionally,
4 ethically, legally, much less morally bound to allow
5 such a result to occur. In addition, in giving this
6 testimony, I am claiming the protections of all
7 applicable whistleblower statutes.

8 On the other hand, in giving the
9 testimony, I will not answer questions which will
10 require me to disclose communications in the Panther
11 case that are protected by the deliberative process
12 privilege.

13 That privilege that the DOJ has asserted
14 in this matter can, in my opinion, be protected, while
15 at the same time I can provide you information that
16 you need to conduct your investigation; indeed,
17 firsthand information that you will not have if I do
18 not testify, that also respects the privilege.

19 To understand what occurred in the Panther
20 case, those actions must be placed in the context of
21 *United States v. Ike Brown*. Prior to the filing of
22 the *Brown* case in 2005, the Civil Rights Division had
23 never filed a single case under the Voting Rights Act
24 in which it claimed that white voters had been
25 subjected to racial discrimination by defendants who

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1 were African American or members of other minority
2 groups.

3 Moreover, the Division and the Section had
4 never objected to any change under the pre-clearance
5 requirements of Section 5 of the Voting Rights Act on
6 the ground that the voting change had a racially
7 discriminatory purpose or effect on white voters. No
8 such objection, even in jurisdictions that have
9 majority-minority populations, has been interposed to
10 date.

11 I am very familiar with the reaction of
12 many employees, both the line and management attorneys
13 and support staff in both the Division and the Voting
14 Section, to the *Ike Brown* investigation and the filing
15 of that case, because I was the attorney who initiated
16 and led the investigation in that matter and I was the
17 lead attorney throughout the case in the trial court.

18 Opposition within the Voting Section was
19 widespread to taking actions under the Voting Rights
20 Act on behalf of white voters in Noxubee County,
21 Mississippi, the jurisdiction in which Ike Brown is
22 and was the Chairman of the local Democratic Executive
23 Committee.

24 In 2003, white voters and white candidates
25 complained to the Voting Section of the Civil Rights

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1 Division that elections had been administered in a
2 racially discriminatory manner and asked that federal
3 observers be sent to the primary run-off elections.
4 Career attorneys in the Voting Section recommended
5 that we not even go to Noxubee County for the primary
6 run-off to do election coverage, but that opposition
7 to going to Noxubee was overridden by the Bush
8 administration's Civil Rights Division.

9 I went on coverage and, while traveling to
10 Mississippi, the Deputy Chief from the Voting Section,
11 who was leading that election coverage, asked me, "Can
12 you believe we are going to Mississippi to protect
13 white voters?"

14 What I observed on election coverage in
15 Noxubee County was some of the most outrageous and
16 blatant racially discriminatory behavior at the polls
17 committed by Ike Brown and his allies that I have seen
18 or had reported to me in my 33 years plus as a voting
19 rights litigator.

20 A description of this wrongdoing is
21 well-summarized in Judge Tom Lee's opinion in that
22 case and in the Fifth Circuit Court of Appeals'
23 opinion affirming the judgment and the injunctive
24 relief against Mr. Brown and the local Democratic
25 Executive Committee.

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1 Some time, as best I recall, in the Winter
2 of 2003 or 2004, after I returned from election
3 coverage in Noxubee County, I wrote a preliminary
4 memorandum summarizing the evidence that we had to
5 that point and made a recommendation as to what action
6 to take in Noxubee County. In that memorandum, I
7 recommended that the Voting Section go forward with
8 an investigation under the Voting Rights Act and
9 argued that a civil injunction against Ike Brown and
10 the local Democratic Committee was the most effective
11 way of stopping the pattern of voting discrimination
12 that I had observed.

13 I forwarded this memorandum to Joe Rich,
14 who was Chief of the Voting Section at that time. I
15 later found out that Mr. Rich had forwarded the
16 memorandum to the Division front office, but he had
17 omitted the portion of the memorandum in which I
18 discussed why it was best to seek a civil injunction
19 in the *Brown* case.

20 Because I am aware that Mr. Rich and Mr.
21 Hans von Spakovsky have filed conflicting affidavits
22 on this point with this Commission, I believe that I
23 am at liberty to address this issue without violating
24 DOJ privileges.

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1 I want to underscore that my memorandum in
2 which Mr. Rich omitted portions was not the subsequent
3 justification memorandum that sought approval to file
4 the case in Noxubee County, but was a preliminary
5 memorandum that sought permission to go forward with
6 the investigation.

7 Nevertheless, it is my clear recollection
8 that Mr. Rich omitted a portion of my memorandum, a
9 highly unusual act, and that I was later informed by
10 the Division front office that Mr. Rich had stated
11 that the omission was because he did not agree with my
12 recommendation that the investigation needed to go
13 forward or that a civil injunction should be sought.
14 Nevertheless, approval to go forward with the
15 investigation was obtained from the Bush
16 administration Civil Rights Division front office in
17 2004.

18 Once the full investigation into Brown's
19 practices commenced, opposition to it by career
20 personnel in the Voting Section was widespread.
21 Several examples will suffice.

22 I talked with one career attorney with
23 whom I had previously worked successfully in a voting
24 case and asked him whether he might be interested in
25 working on the *Ike Brown* case. He informed me in no

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1 uncertain terms that he had not come to the Voting
2 Section to sue African-American defendants.

3 One of the social scientists who worked in
4 the Voting Section and whose responsibility it was to
5 do past and present research into a local
6 jurisdiction's history flatly refused to participate
7 in the investigation.

8 On another occasion, a Voting Section
9 career attorney informed me that he was opposed to
10 bringing voting rights cases against African-American
11 defendants, such as in the *Ike Brown* case, until we
12 reached the day when the socioeconomic status of
13 blacks in Mississippi was the same as the
14 socioeconomic status of whites living there.

15 Of course, there is nothing in the
16 statutory language of the Voting Rights Act that
17 indicates that DOJ lawyers can decide not to enforce
18 the race-neutral prohibitions in Section 2 of the Act
19 against racial discrimination or in 11(b) of the Act,
20 the anti-intimidation prohibitions, until
21 socioeconomic parity is achieved between blacks and
22 whites in the jurisdictions in which the cases arise.

23 But with the help of one attorney and one
24 paralegal, who was new to the Voting Section, and with

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1 the support of the Division front office, I was able
2 to investigate and bring suit.

3 By the time the case went into discovery
4 and then into trial in 2007, the Bush administration
5 had hired some attorneys, such as Christian Adams and
6 Joshua Rogers, who did not oppose working on lawsuits
7 of this kind. They and I were able to complete
8 discovery and to try the case and win and obtain
9 meaningful injunctive relief, including the removal of
10 Ike Brown from his position as superintendent of the
11 Democratic primary elections in Noxubee County.

12 However, I have no doubt that this
13 investigation and case would not have gone forward if
14 the decision had been ultimately made by the career
15 managers in the Voting Section when the case was first
16 approved for investigation and then filed.

17 A regrettable incident occurred during the
18 trial in the *Brown* case. A young African American
19 working in the Voting Section as a paralegal
20 volunteered to work on the *Ike Brown* case, and he
21 later volunteered to work on the *Panther* case.
22 Because of his participation in the *Ike Brown* case, he
23 and his mother, who was an employee in another section
24 of the Civil Rights Division, were harassed by an
25 attorney in that other section and by an

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1 administrative employee and a paralegal in the Voting
2 Section. I reported this to the Bush administration
3 Division front office, and the harassment was
4 addressed.

5 But even after the favorable ruling in the
6 *Ike Brown* case, opposition to it continued. At a
7 meeting with Division management in 2008 concerning
8 preparations for the general election that year, I
9 pointed to the ruling in *Brown* as precedent supporting
10 race-neutral enforcement of the Voting Rights Act.
11 Mark Kappelhoff, then Chief of the Division's Criminal
12 Section, complained that the *Brown* case had caused the
13 Division, the Civil Rights Division, problems in its
14 relation with civil rights groups.

15 Mr. Kappelhoff is correct in claiming that
16 a number of these groups are opposed to the
17 race-neutral enforcement of the Voting Rights Act,
18 that they only want the Act to be enforced for the
19 benefit of racial minorities and that they had
20 complained bitterly to the Division about the *Ike*
21 *Brown* case. But, of course, what Mr. Kappelhoff had
22 not factored in his criticism of the *Brown* case was
23 that the primary role of the Civil Rights Division is
24 to enforce the civil rights laws enacted by Congress,

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1 not to serve as a crowd pleaser for many of the civil
2 rights groups.

3 Many of those groups on the issue of
4 race-neutral enforcement of the Voting Rights Act,
5 frankly, have not pursued the goal of equal protection
6 of the law for all people. Instead, many of these
7 groups act, as they did in response to the *Brown* case,
8 not as civil rights groups but as special interest
9 lobbies for racial and ethnic minorities and demand
10 not equal treatment but enforcement of the Voting
11 Rights Act only for racial and language minorities.
12 Such a claim of unequal treatment is the ultimate
13 demand for preferential racial treatment.

14 When I was Chief of the Voting Section in
15 2008, and because I had experienced, as I have
16 described, employees in the Voting Section refusing to
17 work on the *Ike Brown* case, I began to ask applicants
18 for trial attorney positions in their job interviews
19 whether they would be willing to work on cases that
20 involved claims of racial discrimination against white
21 voters as well as cases that involved claims of racial
22 discrimination against minority voters. For obvious
23 reasons, I did not want to hire people who were
24 politically or ideologically opposed to the equal

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1 enforcement of the voting statutes the Voting Section
2 is charged with enforcing.

3 The asking of this question in job
4 interviews did not ever to my knowledge cause any
5 problems with applicants to whom I asked that question
6 and, in fact, every applicant to whom I asked the
7 question responded that he or she would have no
8 problem working on a case involving white victims,
9 such as the *Ike Brown* case.

10 However, word that I was asking applicants
11 that question got back to Loretta King. In the Spring
12 of 2009, Ms. King, who had by then been appointed the
13 Acting Assistant Attorney General for Civil Rights by
14 the Obama administration, called me to her office and
15 specifically instructed me that I was not to ask any
16 other applicants whether they would be willing to, in
17 effect, race-neutrally enforce the Voting Rights Act.

18 Ms. King took offense that I was asking
19 such a question of job applicants and directed me not
20 to ask it because I do not believe she supports equal
21 enforcement of the provisions of the Voting Rights Act
22 and she has been highly critical of the filing and the
23 civil prosecution of the *Ike Brown* case.

24 From Ms. King's view, why should I ask
25 that question when a response that an applicant would

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1 not be willing to work on a case against a minority
2 election official would not in any way, in her
3 opinion, I believe, weigh against hiring that
4 applicant to work in the Voting Section.

5 The election of President Obama brought to
6 positions of influence and power within the Civil
7 Rights Division many of the very people who had
8 demonstrated hostility to the concept of equal
9 enforcement of the Voting Rights Act.

10 For example, Mr. Kappelhoff, who had
11 complained in 2008 that the *Brown* case had caused
12 problems with the Civil Rights Division, was appointed
13 the Acting Chief of Staff for the entire Civil Rights
14 Division by the Obama administration. And Loretta
15 King, the person who forbade me to ask any applicants
16 for a Voting Section position whether he or she would
17 be willing to enforce the Voting Rights Act in a
18 race-neutral manner, was appointed Acting Assistant
19 Attorney General for Civil Rights.

20 Furthermore, one of the groups that had
21 opposed the Civil Rights Division's prosecution of the
22 *Ike Brown* case most adamantly was the NAACP Legal
23 Defense Fund, through its Director of Political
24 Participation, Kristen Clarke. Ms. Clarke has spent a

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1 considerable amount of time attacking the Division's
2 decision to file and prosecute the *Ike Brown* case.

3 Grace Chung Becker, the Acting AAG for
4 Civil Rights during the last year of the Bush
5 administration, and I were involved in a meeting in
6 the Fall of 2008 with a number of representatives of
7 civil rights organizations concerning the Division's
8 preparations for the 2008 general election.

9 At this meeting, Ms. Clarke spent a
10 considerable amount of time criticizing the Division
11 and the Voting Section for bringing the *Brown* case
12 when, in fact, the district court had already ruled in
13 the case.

14 Indeed, it was reported to me that Ms.
15 Clarke approached an African-American attorney who had
16 been working in the Voting Section for only a short
17 period of time in the Winter of 2009, before the
18 dismissals in the *Panther* case, and asked that
19 attorney when the *New Black Panther Party* case was
20 going to be dismissed. The Voting Section attorney to
21 whom I refer was not even involved in the *Panther*
22 case.

23 This reported incident led me to believe
24 in 2009 that the Legal Defense Fund Political
25 Participation Director, Ms. Clarke, was lobbying for

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1 the dismissal of the *New Black Panther Party* case
2 before it was dismissed.

3 It was within this atmosphere, with these
4 managers at the Division level and with pressure being
5 applied by an organization, the NAACP Legal Defense
6 Fund, that is close to the Obama administration's
7 Civil Rights Division management group, that the
8 decision to gut the *New Black Panther Party* case was
9 made.

10 Although there have been recent reports
11 that indicate that senior political appointees at high
12 levels in the Department were involved in the *Panther*
13 case, it was Ms. King, along with her deputy, Steve
14 Rosenbaum, whom the Justice Department has claimed
15 made the decision to dismiss three of the
16 party-defendants in that case and ordered the
17 limitation on the broader injunctive relief
18 recommended by both Voting Section and Appellate
19 Section attorneys against the one remaining defendant.

20 It is my opinion that the disposition of
21 the *Panther* case was ordered because the people
22 calling the shots in May 2009 were angry at the filing
23 of the *Brown* case and angry at the filing of the
24 *Panther* case. That anger was the result of their
25 deep-seated opposition to the equal enforcement of the

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1 Voting Rights Act against racial minorities and for
2 the protection of white voters who had been
3 discriminated against.

4 Ms. King, Mr. Rosenbaum, Mr. Kappelhoff,
5 Ms. Clarke, a large number of the people working in
6 the Voting Section and in the Civil Rights Division
7 and many of the liberal product groups at work in the
8 civil rights field, believe incorrectly but vehemently
9 that enforcement of the protections of the Voting
10 Rights Act should not be extended to white voters but
11 should be extended only to protecting racial, ethnic,
12 and language minorities.

13 The final disposition of the *Panther* case,
14 even in the face of a default by the defendants, was
15 caused by this incorrect view of civil rights
16 enforcement, and it was intended to send a direct
17 message, in my opinion, to people inside and outside
18 the Civil Rights Division. That message is that the
19 filing of voting cases like the *Ike Brown* case and the
20 *New Black Panther Party* case would not continue in the
21 Obama administration.

22 The disposition of the *Panther* case was
23 not required by the facts developed during the case or
24 the applicable case law, as has been claimed, but was
25 because of this incorrect view of civil rights

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1 enforcement that is at war with the statutory language
2 of the Voting Rights Act, which is written in a
3 race-neutral manner, and at war with racially fair
4 enforcement of federal law.

5 If anyone doubts that the Civil Rights
6 Division and the Voting Section have failed to enforce
7 the Voting Rights Act in a race-neutral manner, one
8 only has to look at the enforcement of Section 5's
9 pre-clearance requirements.

10 The statutory language of Section 5 speaks
11 in terms of protecting all voters from racial
12 discrimination. But the Voting Section has never
13 interposed an objection under Section 5 to a voting
14 change on the ground that it discriminated against
15 white voters in the 45-year history of the Act.

16 This failure includes no objections in the
17 many majority-minority jurisdictions in the covered
18 states. Indeed, the personnel in the Voting Section's
19 unit which handles Section 5 submissions are
20 instructed only to see if the voting change
21 discriminates against racial, ethnic, and language
22 minority voters.

23 This practice of not enforcing Section 5's
24 protections for white voters includes jurisdictions,
25 such as Noxubee County, Mississippi, where the *Ike*

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1 *Brown* case arose, where white voters are in the racial
2 minority. It is in those jurisdictions that the
3 Voting Section's failure to apply Section 5's
4 protections for white minority voters is particularly,
5 in my opinion, problematic.

6 On two occasions while I was Chief of the
7 Voting Section, I tried to persuade officials at the
8 Division level to change this policy so that white
9 voters would be protected by Section 5 in appropriate
10 circumstances, but to no avail. I believe that
11 present management at both the Division and the
12 Section are opposed to the race-neutral enforcement of
13 Section 5 and continue to enforce those provisions in
14 a racially selective manner.

15 As I have indicated, I am not going to
16 testify about the statements made during my meetings
17 with Ms. King and Mr. Rosenbaum because of the DOJ's
18 assertion of the deliberative process privilege.
19 However, the DOJ and Mr. Perez have publicly
20 articulated reasons for the disposition of the Panther
21 case. And I will, therefore, address here several of
22 those publicly stated reasons for dismissal of three
23 defendants and the limitations on injunctive relief.

24 The primary reason cited by the Division
25 for not obtaining injunctive relief against Black

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1 Panther Jerry Jackson, who stood at the Philadelphia
2 polling place in uniform with his fellow Panther King
3 Samir Shabazz but without a weapon, was that a
4 Philadelphia police officer came to the polling place,
5 made the determination that King Samir Shabazz had to
6 leave the polling place, but that Black Panther
7 Jackson could stay because he was a certified
8 Democratic poll watcher.

9 During my 13 and a half years in the
10 Voting Section, I cannot remember another situation
11 where a decision not to file a Voting Rights Act case,
12 much less to dismiss pending claims and parties, as
13 happened in the *New Black Panther Party* case, was
14 made, in whole or in part, on a determination of a
15 local police officer.

16 In my experience, officials in the Voting
17 Section and the Civil Rights Division always reserved
18 for themselves, and correctly so, the determination as
19 to what behavior constitutes a violation of federal
20 law and what does not. One of the reasons for this
21 federal preemption of the determination of what
22 constitutes a Voting Rights Act violation is that
23 local police officers are normally not trained in what
24 constitutes a Voting Rights Act violation.

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1 In addition, in the Philadelphia police
2 incident report provided to this Commission by the
3 DOJ, the Philadelphia police officer who came to the
4 polling place did not determine that Black Panther
5 Jackson's actions were not intimidating. Instead, he
6 simply reported that Jackson was certified by the
7 Democratic Party to be a poll watcher at the polling
8 place and was allowed to remain.

9 Further, as the history underlying the
10 enactment and the extension of the Voting Rights Act
11 shows, local police have on occasion had sympathy for
12 persons who were involved in behavior that adversely
13 affected the right to vote or violated the protections
14 of the Voting Rights Act.

15 In this case, however, the fact that one
16 Philadelphia police officer did not require Black
17 Panther Jackson to leave the area became such a
18 compelling piece of evidence that it was cited by the
19 Assistant Attorney General in his May 14, 2010 written
20 statement to this Commission. There Mr. Perez stated
21 that, "The Department placed significant weight on the
22 responses of the law enforcement first responder to
23 the Philadelphia polling place" in allowing Black
24 Panther Jackson to escape default judgment and escape

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1 the entry of injunctive relief against his future
2 actions.

3 Based upon my experience, this reasoning
4 is extraordinarily strange and an unpersuasive basis
5 to support the Division's disposition of the *Panther*
6 case.

7 Another publicly stated reason by the DOJ
8 was in a June [sic.] 13th, 2009 letter to Congressmen
9 Frank Wolf and Lamar Smith that pointed out that
10 Panther Jackson lived at the apartment building whose
11 lower level was being used as the polling place. This
12 reason was later abandoned by the Division, but the
13 fact that it was asserted shortly after the dismissal
14 in the case strongly suggests that it was a reason
15 asserted at some point close to the time of the
16 dismissals.

17 Regarding the location of Panther
18 Jackson's residence, our investigation determined that
19 Jackson's claim that he was a resident of the
20 apartment building was not true. However, even if it
21 was true that Panther Jackson resided there, it should
22 be quite clear to all that such a fact would not have
23 provided a legal basis for intimidating voters.

24 To understand the rationale of these
25 articulated reasons for gutting this case, the *Panther*

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1 case, one only has to state the facts in the racial
2 reverse. Assume that two members of the Ku Klux Klan,
3 one of which lived in an apartment building that was
4 being used as a polling place, showed up at the
5 entrance in KKK regalia and that one of the Klansmen
6 was carrying a billy stick. Further assume that the
7 two Klansmen were yelling racial slurs at black
8 voters, who were a minority of the people registered
9 to vote at that particular polling place and that the
10 Klansman was blocking ingress to the polling place.
11 Assume further that a local policeman came on the
12 scene and determined that the Klan with the billy club
13 must leave but that the other Klansman could stay
14 because he was a certified poll watcher for a local
15 political party.

16 In those circumstances, ladies and
17 gentlemen, does anyone seriously believe that the
18 Assistant Attorney General for Civil Rights would
19 contend that, on the basis of the facts and the law,
20 the Civil Rights Division did not have a case under
21 the Voting Rights Act against the hypothetical
22 Klansman that I described because he resided in the
23 apartment building where the polling place was located
24 or because he was allowed to stay at the polling place

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1 by a local police officer because he was a poll
2 watcher?

3 I certainly hope that Mr. Perez would not
4 find that hypothetical case lacking in merit, and I
5 will guarantee you, on the basis of my working with
6 them, that Ms. King, Mr. Rosenbaum, Mr. Kappelhoff,
7 and Ms. Clarke would not either.

8 However, such reasons are a part of the
9 publicly articulated grounds for the Division's
10 decision to instruct me to dismiss a significant
11 portion of the *Panther* case.

12 Based on my own personal knowledge of the
13 events surrounding the Panther case and the atmosphere
14 that existed in the Division in the Voting Section
15 against racially fair enforcement of certain federal
16 voting laws, I do not believe these publicly stated
17 representations to the Commission and other entities
18 accurately reflect what occurred in the *Panther* case.
19 They do not acknowledge the hostile atmosphere that
20 has existed within the Division against the
21 race-neutral enforcement of the Voting Rights Act.

22 In the Summer of 2009, Julie Fernandes was
23 appointed as Deputy Assistant Attorney General for
24 Civil Rights by the Obama administration. One of her
25 responsibilities is to oversee voting.

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1 Ms. Fernandes and I worked together in the
2 Voting Section during the Clinton administration. She
3 had spent years working for civil rights groups, such
4 as, since our Clinton administration days, mainly with
5 the Leadership Conference for Civil Rights, but I
6 hoped that she might have an enforcement approach
7 different than Ms. King's and Mr. Rosenbaum's. I was
8 to be disappointed.

9 Ms. Fernandes began scheduling luncheons
10 in the conference room of the Voting Section at which
11 the various statutes the Voting Section has the
12 responsibility for enforcing were discussed as well as
13 other enforcement activities.

14 In September 2009, Ms. Fernandes held a
15 meeting to discuss enforcement of the
16 anti-discrimination provisions of Section 2 of the
17 Voting Rights Act. At this meeting, one of the Voting
18 Section trial attorneys asked Ms. Fernandes what
19 criteria would be used to determine what type of
20 Section 2 cases the Division front office would be
21 interested in pursuing.

22 Ms. Fernandes responded by telling the
23 gathering there that the Obama administration was only
24 interested in bringing traditional types of Section 2
25 cases that would provide equality for racial and

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1 language minority voters. And then she went on to say
2 that this is what we are all about or words to that
3 effect.

4 When Ms. Fernandes made that statement,
5 everyone in the room, talking about the conference
6 room on the seventh floor, where the Voting Section is
7 located, understood exactly what she meant: no more
8 cases like *Ike Brown* and no more cases like the *New*
9 *Black Panther Party* case.

10 Ms. Fernandes reiterated that directive in
11 another meeting held in December 2009 on the subject
12 of federal observer election coverage, in which she
13 stated to the entire group in attendance that the
14 Voting Section's goal was to ensure equal access for
15 voters of color or language minority.

16 In November 2009, a similar lunch was held
17 by Ms. Fernandes, probably more accurately described a
18 brown bag lunch, at which people would bring their
19 lunches and meet in the conference room.

20 That meeting was held on the subject of
21 the National Voter Registration Act. Two provisions
22 of the NVRA are found in Section 8 of that Act. They
23 require states to ensure that voter registration list
24 maintenance be conducted so that registration lists do
25 not have the names of persons who were no longer

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1 eligible to vote in the jurisdiction. Further,
2 Section 8 also provides that certain notice
3 requirements are to be followed in order to legally
4 remove persons from a voter registration list.

5 In discussions specifically addressing the
6 list maintenance provision of Section 8 of the
7 National Voter Registration Act, Ms. Fernandes stated
8 list maintenance had to do with the administration of
9 elections.

10 She went on to say that the Obama
11 administration was not interested in that type of
12 issue but, instead, interested in issues that
13 pertained to voter access.

14 During the Bush administration, the Voting
15 Section began filing cases under the list maintenance
16 provisions of Section 8 to compel states and local
17 registration officials to remove ineligibles from the
18 list. These suits were very unpopular with a number
19 of the groups that work in the area of voting rights
20 or voter registration.

21 When Ms. Fernandes told the Voting Section
22 that the Obama administration was not interested in
23 the Section 8 list maintenance enforcement activity,
24 everyone in the room understood exactly what she
25 meant. We understood that she was not talking about

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1 Section 8 cases in which there is a claim that the
2 removal procedures of Section 8 were not complied
3 with. Instead, she was talking about the type of
4 cases that the Voting Section filed during the Bush
5 administration whose purpose was to compel the states
6 to comply with the Section 8 directive that they do
7 this maintenance by removing ineligibles from the
8 list.

9 In June 2009, the Election Assistance
10 Commission issued a biannual report concerning what
11 states appeared not to be in compliance with Section
12 8's list maintenance requirements.

13 The report identified eight states that
14 appeared to be the worst in terms of their
15 noncompliance with the list maintenance requirement of
16 Section 8.

17 These were states that reported that no
18 voters had been removed from any of their voters'
19 lists in the last two years. Obviously this is a good
20 indication that something is not right with the list
21 maintenance practices in a state.

22 As Chief of the Voting Section, I assigned
23 attorneys to work on this matter. And in September
24 2009, I forwarded a memo to the Division front office

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1 asking for approval to go forward with the Section 8
2 list maintenance investigations in these states.

3 During the time that I was Chief, no
4 approval was given to this project. And it is my
5 understanding that approval has never been given for
6 that Section 8 list maintenance project to date. That
7 means that we have entered the 2010 election cycle
8 with eight states appearing to be in major
9 noncompliance with list maintenance requirements of
10 Section 8 of the NVRA. And, yet, the Voting Section,
11 which has the responsibility to enforce that law, has
12 yet to take any action.

13 From these circumstances, I believe that
14 Ms. Fernandes's statement to the Voting Section in
15 November 2009 not to, in effect, initiate Section 8
16 list maintenance enforcement activities has been
17 complied with.

18 In Mr. Perez's letter to this Commission
19 on August 11th, 2010, he stated that the Division
20 currently has active matters under the NVRA,
21 "including investigations under Section 8." In making
22 the statement, I do not believe Mr. Perez was
23 referring to Section 8 list maintenance cases, the
24 kind of cases Ms. Fernandes was referring to when she
25 talked about no interest in enforcing Section 8,

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1 because I do not believe that the Voting Section has
2 recently been involved in any list maintenance
3 enforcement during the Obama administration.

4 Furthermore, it should be noted not to
5 enforce the list maintenance provisions of Section 8
6 is likely to have a partisan consequence as well. A
7 number of the jurisdictions that have bloated voter
8 registration lists are where there are sizeable
9 minority populations that are Democratic strongholds.

10 For example, at the time of the trial in
11 the *Ike Brown* case, the Noxubee County Election
12 Commission had not purged its list, as required by
13 Mississippi law and Section 8 of the NVRA, so that the
14 number of persons on the voter registration list was
15 approximately 130 percent of the number of people in
16 that county who were 18 years of age or older.

17 As Congress recognized in enacting the
18 list maintenance provisions of Section 8, a bloated
19 voter registration list increases the risk of voter
20 fraud.

21 Finally, let me just respectfully submit
22 that equal enforcement of the Voting Rights Act is
23 absolutely essential for a number of reasons. First,
24 it is required by the statutory language of the Act.

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1 Congress did not use statutory language
2 that speaks in terms of discrimination against racial
3 or language minorities but in terms of discrimination
4 on the basis of race or color. In extending and
5 amending Section 5 of the Act in 2006, Congress used
6 the term "any voter," not "racial or ethnic voters."

7 Further, the statutory construction given
8 the Voting Rights Act by the courts supports the fact
9 that the Act is written in race-neutral terms and is
10 intended for the protection of all.

11 When we go to work with the Department, we
12 take an oath faithfully to enforce the laws of the
13 United States. Enforcing the Voting Rights Act in a
14 racially selective manner or choosing not to enforce
15 certain provisions of the federal voting law, such as
16 the list maintenance provisions of Section 8 of the
17 Act, is not in compliance with the oath we have taken.

18 Second, when the Voting Rights Act was
19 originally enacted in 1965, it probably did not make a
20 great deal of difference as a practical matter.
21 Whether its prohibitions against racial discrimination
22 and intimidation were enforced against minority
23 wrongdoers as well as white wrongdoers, during that
24 time period, sadly, there were few minority election
25 officials in the overwhelming majority of

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1 jurisdictions. And in a number of jurisdictions,
2 there were no election, minority election, officials.

3 However, during the last 45 years, the
4 United States has changed for the better. Large
5 numbers of minority persons now serve as election and
6 poll officials in hundreds of jurisdictions throughout
7 America.

8 In such a multiracial and multicultural
9 country, not one of Bull Connor or Ross Barnett but
10 the country in which an African American serves as
11 President of the United States and as Attorney General
12 of the United States, it is absolutely essential that
13 the Voting Rights Act be enforced against all racial
14 and ethnic groups.

15 During my years in the Voting Section and
16 particularly during the time I served in a management
17 capacity, I became acutely aware, based upon
18 complaints and conducting investigations, that a
19 sizeable number of voting illegalities are committed
20 by members of racial and ethnic minorities.

21 Noxubee County, Mississippi is a prime
22 example. Noxubee was not, as some critics have
23 claimed, a mere aberration. Let me give you several
24 other examples.

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1 During the time I was Chief in the Voting
2 Section, we conducted a prolonged investigation in
3 Wilkinson County, Mississippi, another majority black
4 county in the southwestern portion of the state.

5 There a long battle between an all-black
6 faction and a racially integrated faction had been
7 going on for a substantial period of time in that
8 county. Relations between the two factions had
9 reached the point where the all-black faction would
10 not allow members of the racially integrated faction
11 to play a role in the conduct of local elections,
12 including the counting of absentee ballots or the
13 choosing of persons to work at the polls.

14 After a local election in Wilkinson County
15 in 2007, the home of a white candidate for local
16 office was burned. No one was ever prosecuted for
17 this burning, and the burning of this candidate's home
18 never received any national attention.

19 The Voting Section, in the end, did not
20 file a Voting Rights Act suit in Wilkinson County for
21 a number of good reasons, including the pendency of
22 multiple election contests in state courts during the
23 time our investigation was going on. And the fear
24 that the filing of the suit by the Department of

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1 Justice under those circumstances would suggest we
2 were taking sides in election disputes.

3 Parenthetically, in Noxubee County, we
4 waited until all of the election contests were over
5 before we filed the suit involving Mr. Brown.

6 We did send federal observers to elections
7 in Wilkinson County, including the 2008 elections. I
8 came away from the Wilkinson County investigation with
9 the clear impression that some African-American
10 officials were involved in voting-related acts of
11 racial discrimination against whites there.

12 In addition, in 2005, I conducted an
13 investigation in Hale and Perry Counties, Alabama, two
14 other majority black counties. Again, there were
15 political factions in those counties with one faction
16 all black and another, a racially integrated faction.

17 There were multiple claims by the racially
18 integrated faction that absentee ballots and other
19 types of voting fraud was being perpetrated by the
20 all-black faction in these counties.

21 While investigating Hale County, I learned
22 that there had been a highly contentious election.
23 And on the night of that election, election materials,
24 including the absentee ballots, were placed for
25 safekeeping in a local bank vault so that those

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1 materials could be reviewed the next morning by
2 election officials. Overnight that bank was also set
3 on fire. No one has ever been prosecuted for that
4 burning.

5 Again, the Voting Section did not end up
6 filing a Voting Rights Act case in either of these
7 Alabama counties for good reasons, including an
8 ongoing voter fraud investigation by the Alabama State
9 Attorney General's office in those counties.

10 I have recently learned that several
11 African-American political officials have been
12 convicted of absentee ballot fraud in Hale County.
13 Again, I came away from the Hale and Perry County
14 investigations with the clear impression that some
15 African Americans there in those counties were
16 involved in acts of racial discrimination against
17 whites.

18 In pointing out these examples, I am not
19 suggesting, I am not suggesting that minority election
20 and poll officials or minority political activists are
21 more likely to commit voting law violations than their
22 white counterparts. What I am pointing out is that I
23 believe that some minorities are just as likely to
24 resort to lawlessness in the voting area as are some
25 wrongdoing whites.

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1 For the Civil Rights Division and the
2 Voting Section to pursue enforcement practices that
3 ignore Voting Rights Act violations by members of
4 minority groups will encourage lawlessness in the
5 voting area because those people who are inclined to
6 commit acts of voting illegality, black or white, will
7 have no fear that the federal government will enforce
8 the federal law against them.

9 And when minority election officials who
10 are inclined to participate in lawless acts learn that
11 the federal government will not enforce the law
12 against them, it will increase lawlessness. In our
13 increasingly multiethnic society, that is a clear
14 recipe to undermine the public's confidence in the
15 legitimacy of our electoral process.

16 I have heard some argue that prosecutors,
17 both criminal and civil, have prosecutorial discretion
18 that gives attorneys in the Division and the Voting
19 Section the authority to bring Voting Rights Act
20 lawsuits against minority wrongdoers.

21 It is certainly true that prosecutors have
22 discretion to decide what cases to bring based upon
23 resources and other legal considerations. But we do
24 not have the discretion to decide to enforce the law
25 based upon the race of the perpetrator or the race of

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1 the victim of the wrongdoing. Those discretionary
2 decisions cannot constitutionally be based upon race.

3 In conclusion, I thank you for the time
4 you have given me to testify on these important
5 enforcement civil rights issues. I commend the Civil
6 Rights Commission for making inquiry into these areas.

7 Individuals of good will, regardless of
8 their race, ethnicity, or language-minority status,
9 should be concerned about the Division not enforcing
10 laws in a race-neutral manner.

11 As important as the mandate in the Voting
12 Rights Act is to protect minority voters, white voters
13 also have an interest in being able to go to the polls
14 without having race-haters such as Blank Panther King
15 Samir Shabazz, whose public rhetoric includes such
16 statements as, "Kill cracker babies," "Kill cracker
17 babies," standing at the entrance of a polling place
18 with a billy club in his hand hurling racial slurs at
19 voters.

20 Given this outrageous conduct, it was a
21 travesty of justice for the Department of Justice not
22 to allow the attorneys in the Voting Section to obtain
23 nationwide injunctive relief against all four of these
24 defendants.

25 Thank you, sir.

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1 CHAIRMAN REYNOLDS: Thank you, Mr. Coates.
2 Mr. Blackwood, please proceed.

3 MR. BLACKWOOD: Thank you, Mr. Coates.

4 If I could, before getting into the merits
5 of some of what you have testified to today, I would
6 like to ask you a little bit about your background.
7 You were hired at the Department of Justice in 1996.
8 Is that correct?

9 MR. COATES: That's correct, hired in 1996
10 as a trial attorney, worked in that capacity until --
11 it was '99 or 2000. It was during the Clinton
12 administration. I was promoted to special litigation
13 counsel, served in that position until 2005, at which
14 time I was appointed principal Deputy Chief of the
15 Voting Section.

16 In December of 2007, I was appointed
17 Acting Chief and then appointed permanent Chief in May
18 of 2008, served as Chief of the Voting Section until
19 the end of December of 2009.

20 MR. BLACKWOOD: So you had promotions both
21 during the Clinton administration and during the Bush
22 administration?

23 MR. COATES: Yes, sir.

24 MR. BLACKWOOD: Prior to your work at DOJ,
25 where did you work?

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1 MR. COATES: I first wanted to do voting
2 cases. I took a job with the Voting Rights Project of
3 the American Civil Liberties Union in Atlanta,
4 Georgia. It was then known as the Southern regional
5 office of the ACLU. I commenced my employment there
6 in May of 1976 and served in that capacity from May of
7 '76 as a staff attorney through 1985.

8 So I have been there about eight and a
9 half years, in which time I litigated a number of
10 cases on behalf of African-American clients,
11 particularly challenging at-large election procedures
12 used at the city, county, and school board level.

13 MR. BLACKWOOD: At one point you argued a
14 case before the Supreme Court. Is that correct?

15 MR. COATES: That's correct. In 1993, I
16 argued on behalf of six African-American citizens and
17 the local NAACP chapter in Bleckley County, Georgia.
18 The case was *Holder v. Hall*. And so that is what I
19 argued before the Supreme Court.

20 MR. BLACKWOOD: And before you came to the
21 Department, as well, you won some awards. Is that
22 correct?

23 MR. COATES: I did. In 1991, I was
24 awarded the Thurgood Marshall Decade Award by the

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1 Georgia Conference of the NAACP for work in civil
2 rights.

3 And I was awarded a ~~prestigious~~ procedure
4 award from the Georgia Environmental Association that
5 was awarded on the basis of my representation of seven
6 clients who all resided in Hancock County, Georgia.

7 Hancock County is the county in Georgia
8 that has the largest African-American population. And
9 a garbage dump company was in the process of trying to
10 put the third largest landfill in the United States in
11 that county. And the award was for successful
12 representation in that case.

13 MR. BLACKWOOD: You also have won a
14 significant award while at the Department. Is that
15 also accurate?

16 MR. COATES: Yes. In 2007, I received the
17 award given by the Civil Rights Division for effective
18 advocacy. It's the second highest award. The Hubble
19 Award is the second highest award given by the Civil
20 Rights Division.

21 MR. BLACKWOOD: I want to make sure I am
22 accurate in this. Other than the *Ike Brown* case and
23 the *New Black Panther Party* case, you have spent your
24 whole time at the Department representing minorities.
25 Is that correct?

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1 MR. COATES: Those are the only two cases
2 in my 13 and a half years in the Voting Section that
3 involved white victims, if you will. All the other
4 Voting Rights Act cases that I participated in the
5 Department while I was with the Department involved
6 claims that minority voters were being discriminated
7 against.

8 There were other cases brought under the
9 NVRA, UOCAVA, other statutes, not race-based statutes,
10 like the Voting Rights Act, that there would have been
11 both black and white victims of illegality. But under
12 the Voting Rights Act, the *New Black Panther Party*
13 case and the *Ike Brown* case were the only two.

14 MR. BLACKWOOD: When Mr. Adams was here
15 and testified, he indicated that, after the election,
16 when President Obama was elected, you were rather
17 closely supervised. Could you describe what happened
18 after the election?

19 MR. COATES: The relationships, the
20 relationship, between Ms. King and Mr. Rosenbaum and I
21 were not good. That relationship was not good.

22 And as the -- as I continued to serve in
23 the capacity as the Chief of the Voting Section, my --
24 the responsibilities and powers that a section chief
25 in the Civil Rights Division normally has, such as

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1 assigning particular lawyers to cases, assigning the
2 particular deputies to supervise cases, things of that
3 sort, that those powers were taken away as the months
4 went by in 2009, after the Obama administration came
5 to power in January of 2009.

6 MR. BLACKWOOD: Did anyone indicate to you
7 that this leaching away of your authority was a result
8 of the *Black Panther* case or the *Ike Brown* case?

9 MR. COATES: No, they did not make direct
10 statements to that effect.

11 MR. BLACKWOOD: You talked about Kristen
12 Clarke and her attempt to contact the Department.
13 There's been prior testimony that Ms. Clarke
14 approached a DOJ attorney, Laura Coates, and indicated
15 interest in asking when the *Black Panther* case would
16 be dismissed. Do you know when that occurred? Was it
17 after the suit got filed obviously?

18 MR. COATES: I think it was after the suit
19 got filed and before -- I think that contact occurred
20 after the suit was filed and before it was dismissed.

21 MR. BLACKWOOD: It was filed, the suit was
22 filed, on January 7th?

23 MR. COATES: That's correct.

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1 MR. BLACKWOOD: And it was dismissed on
2 May 15th. So it was sometime between then? You're
3 not sure?

4 MR. COATES: My understanding is that
5 that's when the contact occurred.

6 MR. BLACKWOOD: My understanding is that
7 Mr. Rosenbaum first raised objections to the *New Black*
8 *Panther* case on April 29th, the day before the default
9 was supposed to be entered, which was May 1st. Does
10 that sound accurate?

11 MR. COATES: I don't remember the exact
12 dates. It was some time in the latter part of April
13 that I recall first receiving any indication from Mr.
14 Rosenbaum that there might be any trouble with the
15 case from the Division front office perspective.

16 MR. BLACKWOOD: Going back to the Kristen
17 Clarke issue, did the comment Ms. Clarke made to Laura
18 Coates occur before you heard of any objections from
19 Mr. Rosenbaum?

20 MR. COATES: I think that it was reported
21 to me that that conversation occurred prior to the
22 time that I was contacted by Mr. Rosenbaum.

23 MR. BLACKWOOD: Did you take any further
24 steps? Did you notify anybody about Ms. Clarke's
25 approach to Ms. Coates?

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1 MR. COATES: No. Ms. Coates, very fine
2 lawyer and I would be proud if she was related to me,
3 but she's not. She's not a family member. I wanted
4 to make that point.

5 She had just started in the Fall of 2008,
6 is my recollection. I had been a person who
7 recommended that Ms. Coates be employed by the Voting
8 Section because I thought she would make a fine
9 attorney there. And this matter came up within, I
10 think, six months after she started. I did not want
11 to get her embroiled in a controversy of that nature
12 right within the first couple of months.

13 She had not been an attorney in the *New*
14 *Black Panther Party* case. And so I did not go to the
15 front office and tell them about it.

16 MR. BLACKWOOD: I understand you wanted to
17 respect the deliberative process privilege, but I
18 would ask if you could see the three memos, internal
19 memos, marked A, B, and C in the upper right-hand
20 corner, the first being the j-memo marked December
21 22nd, 2008.

22 MR. COATES: Right.

23 MR. BLACKWOOD: Can you identify the
24 document?

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1 MR. COATES: As I understand it, these
2 documents have been previously provided to the
3 Commission by the Department of Justice.

4 MR. BLACKWOOD: No, they have not been
5 provided by the Department. They were provided by
6 other means.

7 MR. COATES: Well, in that case, I do not
8 want to identify or not identify documents that are
9 covered by the deliberative process privilege. And so
10 I decline to answer your question, sir.

11 MR. BLACKWOOD: Okay. Let me just walk
12 you through some events, then. My understanding is,
13 as of the time that the decision was made to dismiss
14 the case as to three of the defendants and reduce the
15 remedy as to the fourth, yourself, Robert Popper,
16 Christian Adams, and Spencer Fisher all supported
17 proceeding with the case as it was originally filed.
18 Is that accurate?

19 MR. COATES: Yes.

20 MR. BLACKWOOD: And you were also joined
21 by the Appellate Section members Diana Flynn and Ms.
22 McElderry. Is that also correct?

23 MR. COATES: That's correct.

24 MR. BLACKWOOD: When the Appellate Section
25 undertook a review of a case that had already been in

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1 a default status, have you ever heard of such a review
2 in your time at DOJ?

3 MR. COATES: No, I have not, but that does
4 not mean that it has not occurred before. But I had
5 never heard of the Appellate Section reviewing any
6 case that I had been involved in.

7 MR. BLACKWOOD: The documents that, or the
8 analysis that came back from the Appellate Section, is
9 dated May 13th. Now, the default judgment or default
10 time for the filing of default judgment is May 15th.
11 Did you see a copy of the Appellate Section analysis?

12 MR. COATES: Yes.

13 MR. BLACKWOOD: Were you told any reason
14 why the trial team and the Appellate Section team, a
15 total of six career attorneys, were overruled?

16 MR. COATES: Well, if you're talking about
17 conversations that occurred between Ms. King, Mr.
18 Rosenbaum, and I --

19 MR. BLACKWOOD: Yes.

20 MR. COATES: -- I respectfully refuse to
21 answer that question because the Department has
22 asserted deliberative process privilege.

23 MR. BLACKWOOD: Were you told whether any
24 individuals other than Ms. King and Mr. Rosenbaum,

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1 specifically political appointees, weighed in,
2 consulted, made decisions about the case?

3 MR. COATES: I can answer that this way.
4 I am familiar with the *Judicial Watch* lawsuit and the
5 documents that have been provided within the last
6 week.

7 And I see that there were a number of
8 people outside the Division who those documents that
9 have been publicly released by the Department indicate
10 were contacted, such as Mr. Hirsh and other people at
11 the Department level. And that is the first time that
12 I have received any information that people outside
13 the Division played a role in the decision concerning
14 the *New Black Panther Party* case.

15 MR. BLACKWOOD: You mentioned the lawsuit
16 by *Judicial Watch*. An index of documents was
17 released, as you say, earlier this week. Let me ask
18 you about one entry. And I understand that you were
19 not part of the documents produced, but I am asking
20 about the information.

21 Item number 50 in that log shows an e-mail
22 from Steve Rosenbaum to Sam Hirsh, and it's summarized
23 as follows, "DAAG," D-A-A-G -- that's Mr. Rosenbaum --
24 "provides OASG in charge of CRT" -- and that would be
25 Mr. Hirsh -- "with requested follow-up information and

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1 confirmation that additional actions would be
2 conducted by Criminal Section Chief per his request."

3 Did you ever hear of the Criminal Section
4 also being involved in the decision-making in the
5 *Black Panther* case?

6 MR. COATES: No.

7 MR. BLACKWOOD: Before he testified before
8 the Commission, which was on May 4th of this year, Mr.
9 Perez had a meeting with you and Mr. Adams and Mr.
10 Popper. Is that correct?

11 MR. COATES: Those would be discussions --
12 well, I can affirm that there was a meeting, yes.

13 MR. BLACKWOOD: Yes. Your hesitancy, are
14 you not going to tell us what occurred during that
15 meeting?

16 MR. COATES: No, because of the
17 deliberative process privilege that has been asserted
18 by the Department.

19 MR. BLACKWOOD: In a magazine article
20 about the *New Black Panther* case, it was alleged that
21 there was two days of yelling as arising out of the
22 time that the case got continued. Can you tell us
23 anything about that?

24 MR. COATES: Well, in terms of the -- I
25 won't tell you what the discussions were. I will tell

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1 you that I became so frustrated with the process that
2 I did use profanity. It wasn't the first time that
3 I've ever used profanity, but it was not my customary
4 way of speaking to my supervisors at the Division
5 level. And I used the "bs" word that Mr. Adams
6 identified in his testimony. And so, to that extent,
7 that yelling went on.

8 MR. BLACKWOOD: Aside from use of
9 profanity or not, did that arise out of the fact that
10 it appeared that Mr. Rosenbaum had not been reading
11 the background materials supplied by the trial team
12 for his review?

13 MR. COATES: No. It arose because the
14 accusation had been -- was made against me and Mr.
15 Popper that wasn't true.

16 MR. BLACKWOOD: Can you tell us what that
17 accusation was?

18 MR. COATES: No, I can't.

19 MR. BLACKWOOD: At any time during the
20 discussions about what to do with the case or how it
21 should proceed, did anyone accuse you or any member of
22 the trial team of violating rule 11 of the Federal
23 Rules of Civil Procedure?

24 MR. COATES: There were accusations made.
25 I think Mr. Perez has mentioned and I think in

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1 testimony before Congress has mentioned a rule 11
2 concern.

3 And we're not talking about 11(b) here,
4 the section of the Voting Rights Act that prohibits
5 intimidation, threats, coercion. We're talking about
6 the -- as you well know, Mr. Blackwood, the rule 11 of
7 the Federal Rules of Civil Procedure, that would
8 subject plaintiffs who bring a lawsuit to awards of
9 money against them because there was no basis in law
10 or in fact for bringing the lawsuit.

11 And I have always been flabbergasted that
12 anyone would make such a claim regarding the *New Black*
13 *Panther* case. People can have differences about a
14 number of things, but we had eyewitness testimony.

15 We had videotape that there were two
16 people standing in uniform in front of a polling place
17 in violation of the distance required by Pennsylvania
18 law, as I recall, for people to be away from the
19 polling place. One of them had a weapon.

20 They were hurling racial slurs, including
21 to white voters, "How do you think you're going to
22 feel with a black man ruling over you?" at the voters.
23 They were standing in close proximity to each other to
24 block the ingress into the polling place.

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1 The 11(b) of the Voting Rights Act
2 prohibits attempts to intimidate or coerce or
3 threaten. It doesn't even require that the actual
4 intimidation or coercion or threat occurred. It
5 requires that no number of people be intimidated but
6 just that there was an attempt in intimidation.

7 And I've never been able to understand how
8 anyone could accuse us of not having a basis in law
9 and fact for bringing a straightforward 11(b) claim in
10 circumstances where the evidence was so compelling.

11 MR. BLACKWOOD: In the three memos that
12 you have before you, A, B, and C, specifically the
13 original j-memo, -- then there's the remedial memo,
14 which is addressing demands by Ms. King and Mr.
15 Rosenbaum -- for additional information; and, finally,
16 the Appellate Section review, there is absolutely no
17 distinction between liability between Mr. Jackson and
18 King Samir Shabazz. When did that first arise, that
19 issue? Were you ever asked to analyze it?

20 MR. COATES: I don't remember any public
21 discussions prior to the dismissal of the three
22 defendants and the limitations on injunctive relief.
23 I don't remember any public discussions of
24 distinguishing between Mr. Jackson and Mr. Shabazz.

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1 And I am not going to answer the question
2 about whether or not we had any internal deliberative
3 process discussions about that.

4 MR. BLACKWOOD: Okay. But as far as the
5 remedial memo, the purpose of the remedial memo was to
6 address existing concerns of King and Rosenbaum,
7 correct?

8 MR. COATES: Well, you can draw that
9 inference. And I can see how you would logically draw
10 that inference, but I am not going to be able to
11 confirm that.

12 MR. BLACKWOOD: In looking at the record,
13 there is a reference and also at the log provided by
14 the *Judicial Watch* litigation. It appeared that there
15 was an extensive substantive memo, either April 29th
16 or May 1st, around that time addressing concerns by
17 Mr. Rosenbaum. Are you aware of that? I mean, can
18 you confirm that?

19 MR. COATES: Written by whom?

20 MR. BLACKWOOD: Evidently by the trial
21 team. It shows an e-mail by you to Mr. Rosenbaum.

22 MR. COATES: Okay. Well, if there is a
23 document to that effect, you would be logical in
24 reaching the conclusions that you speak of.

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1 MR. BLACKWOOD: Well, when Mr. Adams was
2 here, he testified about the trial team at one point
3 having to pull an all-nighter to address concerns by
4 Mr. Rosenbaum.

5 MR. COATES: Yes.

6 MR. BLACKWOOD: Does that sound accurate?

7 MR. COATES: I remember one night when --
8 I didn't stay up all night, but I remember that Mr.
9 Popper and I think Mr. Adams did, in terms of
10 completing their memorandum.

11 When I came in the next morning, they
12 looked sleepy. And they told me that they had been
13 there a goodly portion of the night. So that's the
14 information that I have in that regard.

15 MR. BLACKWOOD: Just a final question.

16 COMMISSIONER YAKI: I'm sorry. It's a
17 point of order. And it's for the benefit of the
18 witness. Mr. Chair and Mr. Legal Counsel, I was a
19 little uncomfortable about the last exchange about the
20 e-mail on two reasons.

21 One, it's very clear that Mr. Coates wants
22 to steer very clear on the side of the deliberative
23 process privilege. And if you're making
24 representations to him about what an e-mail may or may
25 not say, I think he would be more comfortable having

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1 the document in hand to know whether or not it
2 actually was a Vaughn index log of the e-mail or the
3 actual e-mail itself because I was unclear as exactly
4 what it was.

5 And I think that in terms of for the
6 benefit of the witness to ensure his compliance with
7 his desire to be on the side of the deliberative
8 process privilege, it would probably be in our
9 interest for him to make sure that he sees a document
10 before he testifies about it so he doesn't make any
11 assumptions about the --

12 MR. BLACKWOOD: So the record is clear,
13 the document was not in front of you. I was reading
14 off of an index that was provided as part of the
15 *Judicial Watch* litigation against the Department.

16 And, for the record, the Commission has
17 also asked for such an index as well as the underlying
18 documents. And we have yet to receive them.

19 But a final question, if I could in my
20 time --

21 CHAIRMAN REYNOLDS: Before you go on, Mr.
22 Coates, if there is any question that you feel
23 uncomfortable with, please raise your hand and let us
24 know if we are bringing you into an area where you
25 feel uncomfortable. We appreciate the fact that you

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1 have put yourself at risk by coming here to testify.
2 I have no desire to bring you to an area that is going
3 to increase the risk to you.

4 MR. COATES: Thank you, sir.

5 MR. BLACKWOOD: You gave a going-away
6 speech on or about January 12th of this year. I'm
7 sorry. It was earlier in January.

8 MR. COATES: I think it was January the
9 5th.

10 MR. BLACKWOOD: And you made a long
11 statement, it's reported, before members of the Civil
12 Rights Division and the Voting Section. Is that
13 right?

14 MR. COATES: Just Ms. Fernandes was there,
15 and Mr. Perez was there for part of the meeting. He
16 had to leave prior to my remarks. There were a couple
17 people from outside the Section there. Most of the
18 people there were from the Voting Section. Some
19 family members were there and people from other -- a
20 couple of people from other sections in the Division.

21 MR. BLACKWOOD: Do you have a written copy
22 of what was said that day?

23 MR. COATES: No.

24 MR. BLACKWOOD: Have you ever seen a
25 version of what you allegedly said that day on

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1 National Review Online? There is a version of
2 purportedly what you said that day. Have you ever
3 seen that?

4 MR. COATES: I remember that Mr. Hans von
5 Spakovsky published an article that said that it was
6 not a verbatim statement, but it was based upon
7 interviews that he had had with people who were
8 present.

9 MR. BLACKWOOD: Did you ever have a chance
10 to read it?

11 MR. COATES: I did.

12 MR. BLACKWOOD: And, although not a
13 verbatim transcript, did it accurately reflect what
14 you said that day?

15 MR. COATES: It was an accurate reflection
16 of the points that I made in my going-away speech.

17 MR. BLACKWOOD: Finally, you transferred
18 to the U.S. Attorney's Office in South Carolina. Is
19 that correct?

20 MR. COATES: Yes. I am presently employed
21 as Assistant U.S. Attorney for the District of South
22 Carolina. I'm on detail there from the Civil Rights
23 Division. And the detail is for 18 months.

24 MR. BLACKWOOD: Was the decision to
25 transfer voluntary?

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1 MR. COATES: Well, it's -- let me explain
2 it this way. And I don't mean to -- it's not a
3 question that I think can be accurately answered by
4 "Yes" or "No."

5 During the year of 2009, I had
6 considerable conflict with Ms. King, Mr. Rosenbaum.
7 And then I saw that Ms. Fernandes's, as I've
8 described, management style was going to be in some
9 ways similar to theirs. My relationship with her was
10 a little better than with Ms. King and Mr. Rosenbaum.
11 Julie and I have been knowing each other for a long
12 time. And so I got along better with her.

13 But my powers to run the Section, to
14 assign cases, to assign deputies, was being
15 substantially reduced to where I believe that, by the
16 late Fall of 2009, that I was serving as Chief only in
17 name and that the decisions were being made by other
18 management people in the Section and at the Division
19 level.

20 And, of course, as a manager who has --
21 who is blamed when things go wrong, you don't want to
22 be in a situation where you're supposed to be running
23 a section when, in fact, you're not. And so I took
24 that into consideration.

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1 I took into consideration I knew that a
2 number of people in the Section did -- in the
3 Division, I mean, the managers in the Division, some
4 of them, did not want me as the Chief, including Ms.
5 King, quite frankly, Mr. Rosenbaum, quite frankly.

6 And there were a number of the people in
7 the civil rights groups who did not want me as Chief
8 of the Voting Section. And some of those groups, as I
9 have described, have significant influence, I believe,
10 in the Obama administration.

11 So I just thought that it was a situation
12 where I was not going to be able to manage the
13 Section. And if you're not going to be able to do
14 that, then why pursue a course of action that you had
15 really no chance of winning?

16 I have family in Charleston, South
17 Carolina. My daughter and son-in-law and two
18 grandchildren live there. And so I talked with Mr.
19 Perez about working out a situation where I would
20 voluntarily leave the position as Chief of the Voting
21 Section and transfer down to South Carolina for a
22 period of time on detail. And that is what we were
23 able to accomplish.

24 If circumstances had been differently, I
25 guess one of the ways I could describe that, if

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1 Senator McCain had won the election and he had left me
2 in and his people had left me in as Chief of the
3 Voting Section and there had been good relations
4 between us, then I would have stayed on as Chief of
5 the Voting Section for a while longer. It is the most
6 important job I have ever had. And so, therefore, you
7 don't give something up like that easily.

8 But under the circumstances, I asked for
9 the transfer. But I asked it in the circumstances
10 that I have described.

11 MR. BLACKWOOD: One final question. Who
12 was the party, who was responsible for taking away
13 your authority, --

14 MR. COATES: Well --

15 MR. BLACKWOOD: -- diminishing your
16 authority?

17 MR. COATES: Okay. Ms. King was involved
18 in that. Mr. Rosenbaum was involved in that. Ms.
19 Fernandes was involved in that. The type of
20 limitations they put on my ability to make decisions
21 in the management of the Voting Section, I believe,
22 were not the kind of limitations that were placed on
23 other Chiefs in the Civil Rights Division.

24 I'm not saying I'm not -- I'm not the only
25 person who had those kind of limitations because I'm

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1 not the only Chief who has had conflicts with the
2 Division management. But it was unusual in comparison
3 with how other Chiefs that they liked better were
4 treated.

5 CHAIRMAN REYNOLDS: Okay. At this point,
6 I will yield my time to Commissioner Gaziano.

7 COMMISSIONER GAZIANO: Thank you very
8 much, Mr. Chairman. And thank you very much, Mr.
9 Coates. I think this is a morally right and morally
10 courageous thing you're doing coming forward today.

11 And I thank the Chairman for yielding to
12 me because I initially proposed this investigation.
13 With their indulgence, I may have three or four rounds
14 of five-minute questioning. But I am going to begin
15 with, I hope, some simple questions and answers that I
16 never got from Assistant Attorney General Perez.

17 I am very saddened by the detail that you
18 and Mr. Adams testified to regarding the hostility and
19 the harassment that you and your team had when you
20 tried to enforce the voting rights laws in a
21 race-neutral way.

22 But this isn't the first time I heard
23 about that. I asked Mr. Perez about articles that
24 were published in February 2009 that recounted this
25 hostility, this culture of hostility, to the

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1 race-neutral enforcement of the Voting Rights Act.
2 And he was the transition director for the Obama
3 administration. Surely he was aware of these
4 articles.

5 I asked him whether he did any
6 investigation regarding that. And I got a non-answer.
7 So I'm asking you. I have like three or four in the
8 series.

9 Did Rosenbaum or King or Fernandes or
10 Perez, when he was confirmed, begin an investigation,
11 to your knowledge, toward hostility that existed in
12 the Section or hostility that existed in the Civil
13 Rights Division toward the race-neutral enforcement of
14 the voting laws?

15 MR. COATES: Not to my knowledge. And I
16 would think that, since I would have been one of the
17 primary persons, having been the lead attorney in the
18 *Ike Brown* case and having been the Chief and
19 intimately involved in the *New Black Panther* case,
20 that if one was going to do an investigation to
21 determine whether or not people who had been involved
22 in nontraditional Voting Rights Act cases on behalf of
23 white victims, if such an investigation was going to
24 be conducted, is that I would have been one of the
25 first persons contacted and --

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1 COMMISSIONER GAZIANO: I absolutely --

2 MR. COATES: And I don't know of any
3 investigation that was specifically done for that
4 reason.

5 COMMISSIONER GAZIANO: Okay. Well, let me
6 get to a few other incidents. There were news stories
7 in the late spring and summer after the dismissal of
8 the New Black Panther story where one of the news
9 organizations had sources that the reason for the
10 dismissal was hostility to the race-neutral
11 enforcement of the voting rights laws.

12 And I pointed out to Mr. Perez that his
13 confirmation was upheld, delayed because of those
14 stories and the requests of members of Congress that
15 were not being fulfilled for information on that. So,
16 surely, he read that.

17 So I asked him whether, when he came in
18 office, there was any investigation regarding those
19 allegations in those news stories. And I take it your
20 answer would be the same. You were aware during the
21 Summer of 2009 of no investigation whether that was
22 true.

23 MR. COATES: I don't know of any such
24 investigation.

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1 COMMISSIONER GAZIANO: Okay. Then I'm
2 going to get back maybe in another round of
3 questioning to the September 2009 lunch meeting with
4 Fernandes. That shocks me for a different reason.

5 But you have previously testified in
6 response to Mr. Blackwood's questions that the
7 paraphrase of your farewell remarks in January of 2010
8 published in the National Review was accurate. In
9 that statement, that paraphrase, you decry the
10 hostility to race-neutral enforcement of the voting
11 rights laws.

12 And I asked Mr. Perrelli. I said, did you
13 -- Mr. Perez. I asked Mr. Perez, did you contact your
14 former Voting Section Chief, Mr. Coates, and say,
15 "Chris, why do you believe that?" And I got the
16 typical non-answer, evasive non-answer.

17 Did he contact you?

18 MR. COATES: No. After he -- because of a
19 prior engagement, he had to leave. So he did not
20 hear.

21 COMMISSIONER GAZIANO: I understand he
22 didn't hear it but, afterward, did he or Julie
23 Fernandes or King or Rosenbaum or anyone above you
24 say, "Chris, why do you believe that?"

25 MR. COATES: No.

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1 COMMISSIONER GAZIANO: No?

2 MR. COATES: I was not contacted by
3 anybody with the Department concerning why I had
4 stated on January the 5th that I believed that there
5 was an atmosphere of hostility toward race-neutral
6 enforcement in two of those cases.

7 COMMISSIONER GAZIANO: And one reason --

8 CHAIRMAN REYNOLDS: Commissioner Gaziano
9 --

10 COMMISSIONER GAZIANO: One concluding
11 question?

12 CHAIRMAN REYNOLDS: Commissioner Gaziano,
13 you'll have to take care of that on follow-up.

14 Vice Chair Thernstrom?

15 VICE CHAIR THERNSTROM: And I am yielding
16 my time to Commissioner Yaki.

17 COMMISSIONER YAKI: Thank you very much.
18 Thank you very much, Mr. Coates, for coming here to
19 testify. And thank you, Vice Chair, for yielding your
20 time.

21 MR. COATES: Thank you for having me.

22 COMMISSIONER YAKI: There are some
23 questions I have about the j-memo, but I have a
24 feeling that, because you were unaware that this was
25 not produced at the request of the Department of

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1 Justice, that you really can't comment on any of the
2 specifics about the j-memo, but I have some questions
3 about what -- could you define what a j-memo is?

4 MR. COATES: Well, "j" stands for
5 justification memorandum.

6 COMMISSIONER YAKI: Right.

7 MR. COATES: And it is the last memorandum
8 that puts together the evidence to date and the
9 applicable laws that the attorneys write to justify
10 and try to get -- try to convince the people at the
11 division level that a notice letter should be sent
12 out. And in the notice letter, a letter goes out
13 saying, "We investigated. We believe that you are in
14 violation of the law."

15 COMMISSIONER YAKI: Thank you. You said
16 it's the last memorandum. Are there other memoranda
17 that initiate the investigation?

18 In other words, let's take a hypothetical
19 example of two individuals in front of a polling place
20 somewhere who allegedly may be involved in voter
21 intimidation. I don't know if you can talk about this
22 specifically or if, because of the j-memo's existence,
23 we are going to talk about a hypothetical, whichever
24 is most convenient to you for your own protection.

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1 Let's start with a hypothetical. If you
2 want to make it real, we can do that.

3 Information comes to you. Does it comes
4 to you as the Section Chief? Does it come to
5 attorneys underneath you who bring it to your
6 attention? How does the investigation begin?

7 MR. COATES: It can commence a number of
8 different ways. If it came to the Section Chief
9 directly, then what a Section Chief would do if he or
10 she felt that the complaint had a reasonable
11 possibility of being meritorious, attorneys would be
12 assigned to investigate.

13 And those attorneys would then work on the
14 investigation. A deputy would be assigned to
15 supervise the investigation. And after the
16 investigation was completed, then a j-memo,
17 memorandum, would be written by the attorneys, passed
18 up through the supervising deputy, and then to the
19 Chief, and then to the Civil Rights Division front
20 office.

21 COMMISSIONER YAKI: So the number of
22 people who would have access to the justification memo
23 would be the investigating attorneys, their immediate
24 supervisors, principal deputy, you, and then your
25 immediate --

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1 MR. COATES: It would not necessarily go
2 through principal deputy --

3 COMMISSIONER YAKI: Yes.

4 MR. COATES: -- but would go to the chief.

5 COMMISSIONER YAKI: It would go to you?
6 So you would have received a j-memo on the New Black
7 Panther Party if --

8 MR. COATES: Under the normal consensus,
9 yes.

10 COMMISSIONER YAKI: But you can't testify
11 whether or not you actually received it or not?

12 MR. COATES: No. I think I can testify
13 that I received a justification memorandum in the *New*
14 *Black Panther Party* case. Because of the deliberative
15 process, I would rather not identify a particular
16 document as being the justification in the *Panther*
17 case.

18 COMMISSIONER YAKI: Can you testify as to
19 how the *New Black Panther* case came to your attention
20 or to the Section's attention?

21 MR. COATES: Yes. The first -- I've
22 checked my e-mails on that. The first person to call
23 me was a young man who used to work in the Voting
24 Section and at that time was working in the Criminal
25 Section of the Civil Rights Division by the name of

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1 James or Jim Walsh. And he was monitoring on Election
2 Day 2008. He was monitoring complaints in the
3 Criminal Section just like we were monitoring --

4 COMMISSIONER YAKI: Right.

5 MR. COATES: -- complaints in the Voting
6 Section. And I think that Jim sent me an e-mail
7 alerting me to the fact that he had heard about the
8 complaint.

9 And then subsequently I received an e-mail
10 from the -- I think it was the Chairman of the
11 Pennsylvania Republican Party making the same
12 complaint.

13 COMMISSIONER YAKI: And did you --

14 MR. COATES: That's my best recollection
15 of how I first learned about it.

16 COMMISSIONER YAKI: At that point did you
17 assign Christian Adams to be one of the investigators
18 on this?

19 MR. COATES: No. That assignment would
20 not have been at that time. I spoke with what I --
21 the action that I took that day was to speak with --
22 we had poll observers in Philadelphia.

23 And I spoke with the people that we had up
24 there. And I asked them to go by the polling place

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1 and gave them the location to see if they could find
2 out what was going on.

3 COMMISSIONER YAKI: Okay. And then the
4 next step is --

5 CHAIRMAN REYNOLDS: Last question.

6 COMMISSIONER YAKI: Okay. The next step
7 is prior to the justification memorandum developing
8 the case. Who did you assign to start actually
9 developing the case to present a j-memorandum to the
10 New Black Panther Party?

11 MR. COATES: The deputy that I assigned
12 was Bob Popper. I think that Bob was on the
13 Philadelphia coverage. I think that he was up there
14 that day.

15 COMMISSIONER YAKI: Okay.

16 MR. COATES: And then the two line
17 attorneys that were eventually assigned, one was
18 Christian Adams. And one was Spencer Fisher.

19 COMMISSIONER YAKI: Thank you very much,
20 Mr. Chair. I am going to continue this when my
21 regular round comes around.

22 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

23 COMMISSIONER KIRSANOW: Thank you, Mr.
24 Chairman.

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1 And thank you also, Mr. Coates, for coming
2 forward today. When your former colleague Christian
3 Adams testified, as I said, that was probably the most
4 profound or extraordinary testimony I had heard in my
5 eight years on the Commission. I see Mr. Adams is in
6 the audience. You've been trumped.

7 You have appeared today with some degree
8 of peril to your own career. It's always difficult to
9 defy the wishes of your employer. In that regard, I
10 would like to read into the record a letter that was
11 delivered yesterday from Congressman Wolf to Attorney
12 General Holder, who says, "I write to strongly support
13 Mr. Christopher Coates' decision to comply with a
14 federal subpoena to appear before the U.S. Commission
15 on Civil Rights.

16 "I also wanted to make you aware that
17 prior to appearing before the Commission, Mr. Coates
18 contacted me to share similar information related to
19 the equal enforcement of federal voting laws. Coates
20 has every right to bring information to a member of
21 Congress as well as a responsibility to comply with
22 the Commission's subpoena, despite the Department's
23 obstruction.

24 "I trust that Mr. Coates will face no
25 repercussions for his decision and expect you to

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1 influence political and career supervisors to respect
2 his decision.

3 "As you are aware, a 1912 anti-gag
4 legislation and whistleblower protection laws for
5 federal employees guaranteed that 'the right of any
6 persons employed in Civil Service to petition Congress
7 or any member thereof or to furnish information to
8 either house of Congress or to any committee or member
9 thereof shall not be denied or interfered with.'

10 "Additionally, you should be aware that
11 federal officials who deny or interfere with an
12 employee's right to furnish information to Congress
13 are not entitled to have their salaries paid by the
14 taxpayers.

15 "As ranking member of the House Commerce,
16 Justice, Science Appropriations Subcommittee, I assure
17 you that I take this statute very seriously and will
18 do everything in power to enforce it should any
19 negative consequences be taken against Mr. Coates as a
20 result of his decision to contact Congress and appear
21 before the Commission.

22 "And a copy of this letter and Mr. Coates'
23 testimony before the Commission will be submitted to
24 the Congressional Record for public review."

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1 I have probably taken up half of my time
2 just saying that. I am going to, due to the
3 limitations of time, ask a series of questions that I
4 think are capable of maybe "Yes" or "No" answers, but
5 feel free to elaborate if you believe they are not.

6 Mr. Adams testified in the line. I just
7 wanted to confirm and perfect the record, make it very
8 clear what the testimony has been.

9 Do you agree with Mr. Adams that the DOJ's
10 Voting Section has a racially motivated policy of not
11 enforcing Section 8 of the National Voter Registration
12 Act?

13 MR. COATES: I do not make the claim that
14 it is racially motivated, but I do think --

15 COMMISSIONER KIRSANOW: It's the policy.

16 MR. COATES: -- we have received
17 instructions from the Deputy Assistant Attorney
18 General. And I heard them. I was in the room when
19 they were stated. And Mr. Adams was in the room. And
20 a number of other people in the Voting Section were in
21 the room, in which she said there was no interest in
22 enforcing the list maintenance requirements of Section
23 8 of the NVRA. I heard Ms. Fernandes say that.

24 COMMISSIONER KIRSANOW: Thank you.

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1 Do you agree with Mr. Adams that the
2 Voting Section of DOJ has a policy or practice of not
3 enforcing voting laws against minority violators?

4 MR. COATES: I think that it had a
5 practice, a pattern and practice, of doing that until
6 the *Brown* case was filed in 2005. And I had hoped
7 that that pattern had been amended and changed with
8 the bringing of the *Brown* case and the success of that
9 *Brown* case.

10 But two things have caused me great
11 concern about whether or not that pattern of
12 nonenforcement, of selective enforcement of the Voting
13 Rights Act, has been reestablished. And that is the
14 dismissals and the limitation on injunctive relief in
15 the *Panther* case and the instructions that Ms.
16 Fernandes gave us in the meetings in September and
17 December of 2009.

18 When the Deputy Assistant Attorney General
19 comes down to the Voting Section and says the kind of
20 things that she said in terms of what you are
21 interested in and what you are not interested in, it
22 has tremendous impact because she is speaking for the
23 AAG, the Assistant Attorney General, for Civil Rights
24 and ultimately for the Attorney General.

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1 COMMISSIONER KIRSANOW: I've got one more
2 question in this round. Do you agree with Mr. Adams
3 that there is a culture in the Voting Section, or in
4 the Civil Rights Division broadly, hostile to the
5 enforcement of voting laws on behalf of white victims?

6 MR. COATES: Yes. I believe that it -- I
7 don't think that it exists to the same degree with
8 every employee in the Voting Section. And there are
9 some employees in the Voting Section who do not agree,
10 but that generally there has been that pattern of
11 hostility that is reflective also of the point of view
12 of some of the major civil rights groups in this
13 country.

14 COMMISSIONER KIRSANOW: Thank you, Mr.
15 Coates. Thank you, Mr. Chairman.

16 CHAIRMAN REYNOLDS: Commissioner Taylor?

17 COMMISSIONER TAYLOR: Thank you. And
18 thank you for appearing today.

19 MR. COATES: Thank you, sir.

20 COMMISSIONER TAYLOR: I was struck by --
21 my notes have strained relationship between you, King,
22 and Rosenbaum. That struck me, given your history
23 starting in 1976 with a regional office of the ACLU
24 and being hired in the Clinton administration and then
25 promoted under two administrations, both Clinton and

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1 the Bush administration. So I thought I would ask you
2 directly.

3 In your view, what was the cause of the
4 strained relationship specifically?

5 MR. COATES: I think that -- I mean, it
6 may be that they just don't like me. And, you know,
7 that happens to you sometimes.

8 I think that they were of the group of
9 people in management positions in the Civil Rights
10 Division -- Ms. King and Mr. Rosenbaum have been there
11 for a long time. And they are of the group of people
12 who, if it had been their choice, they would not have
13 filed the *Ike Brown* case and they would not have filed
14 the *New Black Panther* case.

15 Perhaps they would not have sent federal
16 observers to places like Wilkinson County,
17 Mississippi. And so I think that those views are
18 strongly held by some of the career management, as
19 they are held by people in the civil rights
20 organizations. And when people disagree sometimes on
21 ideological legal-type issues is that hostility comes
22 to the surface. And I think that that was probably
23 part of the rough times that the three of us had.

24 COMMISSIONER TAYLOR: When you were
25 promoted to the position of Chief in 2008, you

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1 indicated that you started to ask applicants for trial
2 attorney positions what again to me seemed like an odd
3 question to ask.

4 To summarize it, would you be willing --
5 this was the question. I want to make sure I am
6 getting it properly on the table. "Would you be
7 willing," you would say to the applicant, "to equally
8 apply the law to all people?" Is that essentially the
9 new question you began to ask?

10 MR. COATES: Yes.

11 COMMISSIONER TAYLOR: Would you share with
12 us why you felt compelled to ask that question in the
13 context of hiring trial attorneys for the Civil Rights
14 Division?

15 MR. COATES: Because I had a number of
16 people -- I had a social scientist, who I had worked
17 with for a number of years -- so I know that his
18 refusal to work on the investigation in the Noxubee
19 case wasn't personal. He's a personal friend of mine.
20 But he would not -- he flat out refused to work on the
21 investigation.

22 And I had trial attorneys that I had
23 worked with in cases that were successful and we had
24 good relationships with. And they told me, one -- the
25 person that testified told me point blank that he

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1 didn't come to the Voting Section to sue black people,
2 to sue African-American people.

3 And because of those comments over the
4 years that the *Brown* case went on, is that I wanted to
5 make sure when I became the Chief that I did not hire
6 people who felt that they could not work on cases
7 involving wrongdoing by minorities because their
8 political or ideological feelings prohibited them from
9 not doing it. I wanted to hire people, such as
10 Christian Adams, for example, who would work on a vote
11 dilution case on behalf of African Americans and work
12 on a case against the Black Panthers.

13 And so I didn't like the limitations that
14 I was finding that people put on what they were
15 willing to work on. If one has a private practice or
16 one works with a private group, then one might be able
17 to make decisions of, "Well, I am not going to do
18 those types of cases. And we are not going to do this
19 type of case."

20 But when you are paid by the taxpayer and
21 you're working for the Department of Justice, I think
22 it is totally indefensible for employees to take the
23 position that they're not going to enforce
24 race-neutral laws in a race-neutral manner.

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1 So I thought it was completely appropriate
2 to ask that question.

3 COMMISSIONER TAYLOR: Did Mrs. King ask
4 you to stop asking that question?

5 MR. COATES: She did not ask me. She told
6 me. She said, "You will not ask that question again."

7 COMMISSIONER TAYLOR: Was that part of
8 what caused a strained relationship, in your mind, as
9 well?

10 MR. COATES: The strain between Ms. King
11 and I probably was already there, but that
12 conversation did not help our relationship.

13 Of course, I complied with it. And I
14 didn't argue with her because I felt that, as the
15 Acting Assistant Attorney General, she had the
16 authority to give me that directive.

17 But I thought that the fact that she gave
18 me that directive speaks to her own view of
19 race-neutral enforcement of the Voting Rights Act.

20 CHAIRMAN REYNOLDS: Thank you,
21 Commissioner Taylor.

22 Commissioner Yaki?

23 COMMISSIONER YAKI: Yes. Thank you very
24 much.

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1 Mr. Coates, in 2005, you were made the
2 principal deputy of the Voting Rights Section. Is
3 that correct?

4 MR. COATES: That's correct.

5 COMMISSIONER YAKI: So you would have, is
6 it fair to say, knowledge of a lot of the issues that
7 were being brought up or considered for investigation
8 by the Voting Rights Section, correct?

9 MR. COATES: Yes, with this caveat, is
10 that I was still in that position because of my own
11 choosing and also the way in which the Chief of the
12 Voting Section at that time chose to assign is that
13 there would have been a number of things that would
14 have been occurring after I became principal deputy
15 that I would not have personal knowledge of but other
16 things I would.

17 COMMISSIONER YAKI: And the Chief at the
18 time was John Tanner, correct?

19 MR. COATES: That's correct.

20 COMMISSIONER YAKI: I want to ask for your
21 recollection based upon your work over the years in
22 the Voting Rights Section because you talk about some
23 examples and you've made the indication that the Black
24 Panthers was an outrageous situation.

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1 I take it that part of the outrageousness
2 for you was the fact that one of the persons was
3 carrying a baton. A weapon, I think you called it in
4 your testimony, correct?

5 MR. COATES: That was one of the factors
6 but certainly not the only factor.

7 COMMISSIONER YAKI: True. I understand.
8 I wanted to talk to you about in 2006 the situation in
9 Pima, Arizona when allegations were made that three
10 fairly well-known in the community anti-immigrant
11 advocates affiliated with the Minutemen organization
12 were filming Latino voters at polling places. One of
13 them had a gun, had an open-carry gun. There are
14 allegations that some of them had their own
15 hand-printed badges on their side.

16 I want to know whether or not the
17 Department ever opened up any investigation into the
18 Pima issue or not when you were there.

19 MR. COATES: The -- I've learned about the
20 Pima, I'm familiar with the Pima, Arizona matter. I
21 learned about it after it occurred and after it came
22 to the Department. So I can talk to you more about it
23 in 2008 than I can in 2006 and 2007.

24 COMMISSIONER YAKI: Okay.

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1 MR. COATES: Okay? But yes, it did -- the
2 complaint did come to the Voting Section.

3 COMMISSIONER YAKI: Yes.

4 MR. COATES: And my understanding is that
5 in 2006 it was investigated. In 2008, my recollection
6 -- and I haven't looked at those files in several
7 years, but my recollection is that we did send an
8 attorney to Pima to investigate the matter. And we
9 did send federal observers to Pima during the 2008
10 election. And I can't remember if it was primary
11 election or general election or both.

12 And one of the factors that we relied upon
13 in sending federal observers to Pima was the incident
14 that you refer to involving some Minutemen.

15 COMMISSIONER YAKI: Let me just ask you
16 this, if you can. If you can't, I understand, but
17 understand, from my point of view just being here on
18 the Commission, when you see facts of a certain genre,
19 you tend to think, as you have said, there should be
20 equal treatment before the law.

21 My question is, why in 2006 -- given these
22 facts and given the fact that in 2008, it was
23 important enough to send a federal observer there
24 because of these allegations. Why wasn't an 11(b)

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1 investigation opened up into this matter? Do you have
2 any personal knowledge as to that?

3 MR. COATES: I think that an investigation
4 of the matter was opened. And the information that I
5 recall being reported to me was that it did involve
6 three people who were probably associated with the
7 Minutemen, that Arizona had a -- I can't remember
8 whether it was 50 feet or 150 feet but that the state
9 has an area in which you cannot be in --

10 COMMISSIONER YAKI: True.

11 MR. COATES: -- and that the Minutemen
12 activities took place outside that area, I remember --

13 COMMISSIONER YAKI: But let me ask you
14 this. I'm sorry to interrupt, but does --

15 CHAIRMAN REYNOLDS: Please let him finish.

16 MR. COATES: I remember seeing --

17 COMMISSIONER YAKI: Sure.

18 MR. COATES: I was going to tell you I
19 remember seeing a picture.

20 COMMISSIONER YAKI: Right.

21 MR. COATES: We had a picture in the file
22 of the man. One of the men was wearing a holstered
23 pistol.

24 COMMISSIONER YAKI: Right.

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1 MR. COATES: And that did give concern.
2 The investigation, as I recall, determined that he did
3 not draw the pistol. And, fortunately or
4 unfortunately, under Arizona law, I think that our
5 investigation determined that one can wear a holstered
6 pistol in Arizona.

7 COMMISSIONER YAKI: Well, I'm curious
8 about that statement because the fact is, I think you
9 would agree, that voter intimidation takes many forms.
10 And the mere fact that you have a holstered gun within
11 50 feet versus 100 feet versus the entrance to the
12 parking lot of where a team of voters may be coming in
13 and you're watching them and filming them, I would
14 think that would be cause for alarm.

15 I guess I am curious as to what the
16 standard is here. Is it because the Panthers were
17 within 100 feet that it was also a problem, the fact
18 that these guys with guns were outside 100 feet? It's
19 a little unclear to me, if you are intimidating
20 voters, why it matters whether you're 25 feet, 50
21 feet, 100 feet, standing next to a parking lot, an
22 overpass to a highway holding a sign saying, "Don't
23 vote or we're going to get you. And we're filming."

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1 I mean, there really shouldn't be a
2 distance in some ways. It's a matter of judgment and
3 fact and perception, isn't it?

4 MR. COATES: Yes. And I think that all of
5 those factors -- I think that the Pima situation was
6 something that needed to be looked into. And during
7 the time that I was Chief, it was looked into in
8 making determinations about whether or not federal
9 statute has been violated, we have to give some
10 consideration to the countervailing claim by a person
11 that where the person was and the activity in which
12 the person was involved in is protected by state law.

13 COMMISSIONER YAKI: Great. Okay. Thank
14 you.

15 MR. COATES: But that is not a
16 determination that completely binds the federal
17 government but is something that we need to look at.

18 COMMISSIONER YAKI: Great. I will follow
19 up on that later.

20 MR. COATES: Okay. The attorney that was
21 looking at it did some state law research to find out
22 that the person was legally entitled to wear a pistol.

23 Now, I think that, if the pistol had been
24 drawn, then that would be a different set of facts.

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1 And those facts would militate much more in favor of
2 an 11(b) violation.

3 COMMISSIONER YAKI: I understand. Thank
4 you.

5 MR. COATES: That is a -- I mean, anything
6 that happens in a polling place that might keep voters
7 from voting is a serious, serious matter.

8 COMMISSIONER YAKI: Thank you.

9 CHAIRMAN REYNOLDS: Commissioner Melendez?

10 COMMISSIONER MELENDEZ: First of all, I
11 want to thank you, Mr. Coates, for being here today.

12 MR. COATES: Thank you, Mr. Melendez.

13 COMMISSIONER MELENDEZ: I know this came
14 on really sudden. I just received your testimony a
15 few minutes before this convened. But why have you
16 decided to come before the Commission now, as opposed
17 to earlier? Has something changed? Was it the
18 previous testimony that you wanted to get on record?
19 I was just wondering.

20 MR. COATES: In looking at the August 11th
21 letter by Mr. Perez, I was still hoping that there
22 might be a change by the Department and I would get
23 permission to testify because I would rather be here
24 with their permission than without their permission,
25 as I am.

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1 But, as I previously testified, there were
2 some statements made by Mr. Perez in his testimony in
3 May and some statements made in his August 11th letter
4 to the Chairman that I did not agree with. I don't
5 think that they are factually correct, though I don't
6 claim that they are made -- they are perjured.

7 And so the combination of saying over a
8 period of time the representations by the Department,
9 knowing that I did not agree with some of them,
10 knowing that I had personal information concerning
11 some of them, led me to believe that the correct thing
12 to do would be to testify.

13 COMMISSIONER MELENDEZ: Okay. My other
14 question was, you know, in the reluctance to enforce
15 race-neutral laws against minorities, is it your
16 opinion that we're talking about Afro-Americans or are
17 you saying that Hispanics, Native Americans, Asians,
18 that you would feel that there would be a reluctance
19 to move forward, even on those, those cases?

20 MR. COATES: I think that the philosophy
21 that some people have that the Voting Rights Act was
22 intended to benefit people of color and that,
23 therefore, the federal government should not be
24 involved in enforcing the provisions against those
25 minority groups would apply to other racial

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1 minorities. But the particular cases that I have
2 talked about are cases in which the wrongdoers were
3 African American.

4 COMMISSIONER MELENDEZ: Okay.

5 MR. COATES: But I think there is a danger
6 that that same type of reasoning will be applicable if
7 wrongdoing by an American Indian, by a Hispanic
8 person, by an Asian person were brought to the
9 Division, to the Section.

10 COMMISSIONER MELENDEZ: Okay. Thank you.
11 No other questions.

12 CHAIRMAN REYNOLDS: Okay. Commissioner
13 Heriot?

14 COMMISSIONER HERIOT: Yes. I guess I want
15 to join my colleagues first in thanking you for your
16 testimony.

17 I had just a couple of quick questions, I
18 think. You told Commissioner Kirsanow that you did
19 not believe that the policy against enforcing Section
20 8 list maintenance was racially motivated, but you
21 didn't say what you thought did motivate it. Could
22 you comment on that?

23 MR. COATES: The -- I think what motivates
24 that is the reluctance on the part of the mindset in
25 the Civil Rights Division and in the Voting Section of

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1 taking people off of the list. They would rather
2 leave 100 people on who are ineligible, rather than
3 run the risk to take one person off who was eligible.

4 And I think that that grows out of the
5 past history when people who were eligible were
6 unlawfully taken off.

7 COMMISSIONER HERIOT: So I guess another
8 way of putting that is they disagreed with the
9 congressional policy.

10 MR. COATES: That's right.

11 COMMISSIONER HERIOT: Okay.

12 MR. COATES: Yes. The consequence -- I
13 don't claim it's the motivation, but the consequence
14 of it, I think, is to favor in certain jurisdictions
15 the Democratic Party and to favor racial minorities
16 because, in a number of areas, the bloated lists, are
17 at areas where there are large numbers of minorities.

18 But I don't claim that that is the
19 motivation for it. So that's why I said I don't think
20 it's a racially-motivated failure to report Section 8.

21 COMMISSIONER HERIOT: The incident that
22 actually interested me most was the incident involving
23 the job interviews, job applicants --

24 MR. COATES: Yes.

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1 COMMISSIONER HERIOT: -- that you have
2 discussed already a little bit with Commissioner
3 Taylor. If anything illustrates a culture of
4 hostility to race-neutral administration of the law,
5 if anything that we have talked about, I think that
6 that would be the incident that best illustrates it to
7 me because, to me, the whole focus of the Civil Rights
8 Division is to ensure the racially neutral
9 administration of the law.

10 And, therefore, in some respects, I would
11 say the question ought to be mandatory. But what I
12 wanted to ask, I know that you are not supposed to ask
13 a number of questions to applicants for career
14 positions that would get into their own political
15 background and such, but are there any written
16 procedures that you use in the Voting Section, or in
17 the Civil Rights Division generally, in interviewing
18 job applicants? Are there such procedures that we
19 could take a look at?

20 MR. COATES: I think that there were some
21 in effect at the time that I was doing the
22 interviewing in 2008. There were some procedures.
23 And there have -- since Mr. Perez has become the AAG,
24 there have been amendments to the hiring procedures.
25 And some of those amendments may address questions

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1 that can and cannot be asked of applicants, but I am
2 just not sure.

3 COMMISSIONER HERIOT: Do you remember
4 anything specific on that --

5 MR. COATES: On questions that --

6 COMMISSIONER HERIOT: -- on amendments?

7 MR. COATES: There were -- it's a matter
8 of public record at this point, I think. There were
9 some amendments made to the hiring procedures that set
10 up committees that interview and delegate power as to
11 who does the first interview and how many interviews
12 are conducted and then at what point the matter is
13 turned over to the political appointees at the
14 division level and how much power the career attorneys
15 have.

16 And I believe that that -- those are some
17 regulations that have been amended since I moved to
18 Charleston.

19 COMMISSIONER HERIOT: And Ms. King told
20 you not to do that? Am I correct on that?

21 MR. COATES: Ms. King.

22 COMMISSIONER HERIOT: Ms. King.

23 MR. COATES: Ms. King told --

24 COMMISSIONER HERIOT: And did she tell you
25 why?

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1 MR. COATES: No. She told me -- she
2 wanted to know if I had asked the direct question
3 whether or not they would be willing to work on the
4 case like *Ike Brown*. I phrased it in several
5 different ways. "This is what the *Ike Brown* case is
6 about. Would you be willing to work on this kind of
7 case as well as a Section 2 vote dilution case on
8 behalf of Hispanic Americans or African Americans?"

9 I may have asked, "Are you familiar with
10 the race-neutral prohibitions in Section 2? And would
11 you be willing to enforce them against all races or"
12 -- that, that kind of question.

13 And I told her yes, that I had asked. And
14 I told her why, that I had had problems with people
15 telling me that they weren't going to work on a case
16 that had been authorized by the Division front office.
17 *Ike Brown* was authorized by the Bush Department Civil
18 Rights Division. The *Black Panther Party* was
19 authorized by the Bush Department Civil Rights
20 Division. And that's why I wanted to ask that
21 question. So she knew in what context I was asking.

22 CHAIRMAN REYNOLDS: Okay.

23 COMMISSIONER HERIOT: And, by the way, do
24 you agree with me that the whole purpose of the Civil
25 Rights Division --

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1 CHAIRMAN REYNOLDS: Commissioner Heriot?

2 COMMISSIONER HERIOT: -- is to ensure the
3 race-neutral administration of the law?

4 CHAIRMAN REYNOLDS: Commissioner Heriot,
5 we're going to have to take care of that question
6 during the next round.

7 COMMISSIONER HERIOT: Okay.

8 CHAIRMAN REYNOLDS: Commissioner Gaziano,
9 you're up.

10 COMMISSIONER GAZIANO: Would you like me
11 to yield back to you or can I proceed?

12 CHAIRMAN REYNOLDS: No. Go ahead.

13 COMMISSIONER GAZIANO: Thank you.

14 Let me get back to where I left off. And
15 that is that neither Perez nor anyone higher than you
16 asked you why you believed, as you stated in your
17 farewell speech, there was hostility to the
18 race-neutral application of the voting rights law.
19 And let me suggest one reason. They didn't ask you.
20 You testified very clearly today that King and
21 Rosenbaum and Fernandes are themselves hostile to the
22 race-neutral application of the voting rights law.

23 Maybe they didn't care why you thought
24 that. Is that possible?

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1 MR. COATES: I not only think it's
2 possible. I think it's probable.

3 COMMISSIONER GAZIANO: Okay. Now, I then
4 asked Mr. Perez. By the way, in response to me, he
5 said he, of course, believes in the race-neutral
6 application of the voting rights law, but I told him
7 that I thought actions speak louder than words.

8 And I asked him. I said, "You know, there
9 were these newspaper articles. There was the -- about
10 the Noxubee hostility and harassment. There were
11 newspaper articles that the *Black Panther* suit was
12 dismissed that held up your confirmation, Mr. Perez.
13 There was the speech by Chris Coates that he believes
14 that. If you didn't believe that, Mr. Perez, why
15 didn't you issue a memo or statement to your staff
16 saying, 'There are these reports. It is not the
17 policy of this Department,' and just to clear up this
18 confusion, 'It is not the policy. It shall not be the
19 policy. And anyone who said otherwise is going to be
20 in trouble from me'?"

21 I asked him if he ever issued such a
22 statement. And he gave me a long-winded kind of
23 non-answer denial because that wasn't necessary.

24 But did anyone, Perez or anyone, since the
25 beginning of the Obama administration, say, "These

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1 allegations are not true. And it is not the policy of
2 this Division to enforce the civil rights laws in a
3 racially selective way. It is the policy to enforce
4 them in a race" -- did anyone issue that kind of a
5 memo or statement or policy?

6 MR. COATES: No, I don't think they have.
7 I think generalizations have been made that Mr. Perez
8 has said that we follow the law and follow the facts.

9 Every Acting AAG and every AAG that I have
10 ever had makes that statement. It is self-serving,
11 and that kind of statement is made.

12 But what needs to be done, in response to
13 your question, when you have a Deputy Assistant
14 Attorney General come down and say that this
15 administration is not interested in filing Section 8
16 list maintenance cases or that we only file cases on
17 behalf of racial minorities under Section 2, what
18 needs to be done is somebody in a position of
19 authority at Mr. Perez's level needs not to deal in
20 cliches.

21 He needs to come to the Voting Section or
22 go to a meeting where all attorneys are going to be
23 there and specifically tell them, "I have been
24 informed that this is what was said and this is not

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1 the policy of this administration." And that has not
2 been done.

3 What has been done, of course, the last
4 year and a half that I have heard, is cliches are
5 used. We're open for business. They're going to
6 restore the Civil Rights Division.

7 What the press does not tell you is that,
8 during the Bush administration, more suits were filed
9 under the Voting Rights Act, more suits were filed
10 under the Voting Rights Act, than were filed in the
11 Clinton administration.

12 The idea that the Voting Rights Act was
13 not actively enforced during the Bush administration
14 is not true, but what we have heard, rather than the
15 specifics that you have talked about that need to be
16 said, are the cliches that we're open for business
17 again.

18 COMMISSIONER GAZIANO: Since the time is
19 short, let me just step up a little bit --

20 MR. COATES: Okay.

21 COMMISSIONER GAZIANO: Thank you for that.
22 It is very valuable.

23 -- to right before the months preceding
24 Perez's testimony. I understand the week during which
25 Perez testified, there was a meeting in which some of

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1 the trial team briefed him. And it has been reported
2 that you participated by conference phone. Is that
3 right?

4 MR. COATES: Yes.

5 COMMISSIONER GAZIANO: Okay. Now, some of
6 this may be involved in the --

7 MR. COATES: Deliberative.

8 COMMISSIONER GAZIANO: -- deliberative
9 process. In another line of questions, I want to hone
10 in on that. Since the case is already dismissed, I
11 don't think it would be deliberative to the case.

12 Did you make Perez or anyone else make
13 Perez aware of the hostility to the race-neutral
14 application of the voting rights laws in the Noxubee
15 case?

16 MR. COATES: With regards to my
17 conversations with Mr. Perez, I don't think that we
18 have ever discussed Noxubee. And the meeting that you
19 are talking about was focused on the New Black Panther
20 Party.

21 COMMISSIONER GAZIANO: Did anyone make him
22 aware that there is hostility to the race-neutral
23 application of the law?

24 CHAIRMAN REYNOLDS: I'm sorry,
25 Commissioner Gaziano. Next round.

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1 I have a few questions for you.

2 MR. COATES: Yes, sir.

3 CHAIRMAN REYNOLDS: You mentioned that
4 there were several black employees at the Department
5 of Justice who elected to work on both the Noxubee and
6 the *New Black Panther Party* case. Is that correct?

7 MR. COATES: It was one employee, and he
8 worked on both of them.

9 CHAIRMAN REYNOLDS: Okay. Do you believe
10 that his career would be adversely affected by his
11 decision to work with you on these cases?

12 MR. COATES: I don't know, but I know that
13 he was made to feel uncomfortable in the Voting
14 Section by employees of the Division who unjustly
15 criticized him.

16 CHAIRMAN REYNOLDS: Okay. And the same
17 question for his mother. Do you believe that her
18 career would be adversely affected because of her
19 son's decision to assist you in these cases?

20 MR. COATES: His mother has been working
21 for the Division for a long time. She was working in
22 the Voting Section when I came to work there in 1996.
23 And I think that she is a very, very treasured
24 employee. And I think that she weathered that. So I

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1 do not think that her career will be adversely
2 affected.

3 CHAIRMAN REYNOLDS: Thank you.

4 At this time I would yield some of my time
5 to Mr. Blackwood.

6 MR. BLACKWOOD: Two questions. I just
7 want to confirm some statements that occurred in Mr.
8 Adams' testimony and see if you can verify them.
9 Robert Kengle, K-e-n-g-l-e, deputy in the Voting
10 Section, stated to you during a trip to investigate
11 the *Ike Brown* case, "Can you believe we are being sent
12 down to Mississippi to help a bunch of white people?"
13 Did a statement like that occur?

14 MR. COATES: Yes, as I indicated in my
15 testimony. I just didn't call Mr. Kengle by name.

16 MR. BLACKWOOD: Another deputy in the
17 section said in the presence of Mr. Coates, "I know
18 that Ike Brown is crooked and everybody knows that,
19 but the resources of the Division should not be used
20 in this way"?

21 MR. COATES: Yes. That statement was made
22 to me by a deputy chief.

23 MR. BLACKWOOD: Can you identify who that
24 was?

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1 MR. COATES: She's no longer with the
2 Department. Her name is Gilda Daniels. And she was a
3 deputy. And she was indicating to me in a casual
4 conversation in the Voting Section that Brown's
5 reputation for lawlessness is well-known in the
6 African-American community as well, but that she felt
7 that we should be using our resources in the Voting
8 Section in other areas.

9 MR. BLACKWOOD: That's all. Thank you.

10 CHAIRMAN REYNOLDS: Okay. If that is the
11 case, Vice Chair Thernstrom?

12 VICE CHAIR THERNSTROM: I am holding my
13 questions. I am yielding my time again to
14 Commissioner Yaki.

15 COMMISSIONER YAKI: Thank you very much,
16 Madam Vice Chair.

17 Mr. Coates, I am still fascinated by the
18 inner workings of the Voting Rights Section. So
19 please bear with me.

20 You were also there in 2005. There were
21 allegations that investigators for the State of
22 Mississippi who were armed went into the homes of
23 elderly minority voters in municipal elections asking
24 them who they voted for. And generally for them, they
25 felt very intimidated.

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1 I believe that a complaint was relayed to
2 the Civil Rights Division. Can you tell me what the
3 disposition of that complaint was?

4 MR. COATES: Yes. And since Mr. Perez
5 talked about that in his testimony, I am going to talk
6 about it, too.

7 COMMISSIONER YAKI: Okay.

8 MR. COATES: I was in charge of that
9 investigation as a principal deputy. And we
10 interviewed African-American voters in Panola. The
11 name of the jurisdiction is Panola County,
12 Mississippi.

13 We interviewed telephonically witnesses
14 who had -- some investigators from the Attorney
15 General's office had come in. They were doing a voter
16 fraud investigation, but they asked these people they
17 interviewed for whom they voted. There is a
18 Mississippi law that prohibits that except in very
19 special circumstances.

20 Judge Lee, for example, in the *Ike Brown*
21 case would not let lawyers on either side ask for whom
22 people voted.

23 COMMISSIONER YAKI: Right.

24 MR. COATES: We did that investigation.
25 And I recommended that we do a complete investigation

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1 in Panola County because I felt that those questions
2 were inappropriate and improper and it was not a way
3 to properly conduct a voting fraud investigation.

4 My recommendation in that regard was not
5 followed, and the matter was not followed up.

6 COMMISSIONER YAKI: Who did you send that
7 recommendation to?

8 MR. COATES: Mr. Schlozman.

9 COMMISSIONER YAKI: Okay. I am going to
10 turn a little bit back to the -- I have so many
11 questions, but I am going to stick with this for now.

12 On the *New Black Panther* case, I am
13 fascinated by one aspect of the entire case. And that
14 is the incident occurred on Election Day 2008. And,
15 as you said, you assigned Mr. Popper and Mr. Adams as
16 part of the team. They prepared a j-memo I think,
17 according to what we have, December 22nd, 2008. The
18 complaint was filed January 2007.

19 I am going to give you a series of e-mails
20 that were produced that are not privileged because
21 they were sent by -- chronologically they go from most
22 recent to the earliest. I think what I would like to
23 draw your attention to, in particular, is -- hang on
24 just one second -- that's what happens when you have
25 too many papers on your desk.

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1 Okay. On the very last page --

2 MR. COATES: Okay.

3 COMMISSIONER YAKI: This is December 10th,
4 2008. This is from Christian Adams to redacted,
5 redacted being for privacy reasons, we won't tell.
6 "I've got a real problem on this. I'm trying to
7 figure out who the poll worker was inside that got
8 harassed. I'm getting about three different versions
9 of events depending on if I talk to 'blank' or 'the
10 RNLA guys.' I would like to show a poll worker got
11 harassed because of his race," but basically if you
12 read that e-mail and then the one on top, he says in
13 the one dated December 10th at 4:57 p.m., the last two
14 lines are "I've tried to seek John Giordano on this,
15 too, to get some clarity. That 'narrative' can't come
16 quick enough, as you can imagine."

17 Listening to what you had talked about in
18 terms of the other investigations involving possible
19 voter intimidation, whether it was in Pima or whether
20 it was in Mississippi, whether it was the two other
21 instances you referred to in your testimony that, one
22 you described as prolonged, the other one for various
23 reasons, Justice did not take any action in those that
24 you think was justified.

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1 My question as I'm reading this is that
2 you said --

3 CHAIRMAN REYNOLDS: Commissioner Yaki, you
4 are out of time.

5 COMMISSIONER YAKI: Okay. Well, I just
6 want you to understand that. My next question is
7 going to be about that.

8 CHAIRMAN REYNOLDS: Okay. Commissioner
9 Kirsanow?

10 COMMISSIONER KIRSANOW: Thank you, Mr.
11 Chairman.

12 Mr. Coates, despite the dismissal of the
13 *New Black Panther* case, it is still your position, I
14 take it, that both the legal and factual bases behind
15 bringing the federal government's case against these
16 defendants was sound, correct?

17 MR. COATES: That's correct.

18 COMMISSIONER KIRSANOW: Okay.

19 MR. COATES: All four defendants and the
20 injunctive relief that we asked for.

21 COMMISSIONER KIRSANOW: Is it your
22 position that the dismissal of the *New Black* --
23 without getting into deliberative process privilege,
24 is it your position that dismissal of the *New Black*
25 *Panther* case reflects or is because of the hostility

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1 that you described toward the non-neutral enforcement
2 of voting rights laws that exist in the Voting Section
3 or Civil Rights Division broadly?

4 MR. COATES: Yes.

5 COMMISSIONER KIRSANOW: Okay. We
6 understood that the Justice Department was asserting a
7 deliberative process privilege with respect to any
8 testimony that was to be provided by any DOJ employee
9 and, thus, refused to produce certain trial team
10 employees. And Mr. Adams resigned his employment and
11 testified before us but steered clear of deliberative
12 process privilege, as have you.

13 We then sought an accommodation with the
14 Justice Department and asked that they produce, among
15 others, you to testify exclusively about
16 non-privileged matters. I think we made that
17 accommodation in mid August.

18 Did anybody from the Department of Justice
19 contact you with respect to whether or not you would
20 be testifying on non-privileged matters?

21 MR. COATES: No. The only communication
22 that I got in that regard is that a copy of the letter
23 that Mr. Perez sent to the Chairman on August the
24 11th, a copy of that was sent to me, I think. I may

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1 have gotten it off your website. But, anyway, I have
2 a copy of the letter.

3 But people from the Department called me
4 saying, "We've got this request for you to testify,
5 but you can't talk about deliberative process. Now,
6 tell us how that would go and how that would be done,"
7 no, I didn't have any discussions in that regard.

8 COMMISSIONER KIRSANOW: Okay. That was
9 done, despite the fact that there is a provision in
10 federal law that requires, among others, the Justice
11 Department to cooperate with us in our investigations.
12 And no privileges were asserted by the Department of
13 Justice to preclude you from testifying.

14 I want to pick up on something
15 Commissioner Gaziano touched upon regarding the
16 statements by Ms. Fernandes. To your knowledge, has
17 Ms. Fernandes at any time repudiated, amended, or
18 rescinded the comments she made about the
19 administration not enforcing Section 8 of the Voting
20 Rights Act, National Voting Registration Act?

21 MR. COATES: Not to my knowledge.

22 COMMISSIONER KIRSANOW: To your knowledge,
23 has anybody in a supervisory capacity within the
24 Department of Justice or any political appointee
25 rescinded, repudiated, or amended the statements made

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1 by Ms. Fernandes regarding the administration's
2 disinclination to pursue Section 8 cases?

3 MR. COATES: Not to my knowledge. I have
4 looked for that because I was hoping that it would
5 come, but there has not been any repudiation of that
6 stated practice.

7 COMMISSIONER KIRSANOW: And, similarly,
8 with respect to the statements relating to the
9 enforcement of the Voting Rights Act in a racially-
10 neutral fashion, has there been any repudiation,
11 amendment, or rescission of those statements; that is,
12 bringing cases against minority violators of the
13 Voting Rights Act? Has anyone in the supervisory
14 capacity or Ms. Fernandes, to your knowledge,
15 repudiated, rescinded, or amended those comments?

16 MR. COATES: No, not to my knowledge.
17 There has been some general statements by Mr. Perez.
18 I don't remember whether they've come before or after
19 Ms. Fernandes's statement since September or November
20 of 2009, but, as I have testified previously,
21 generalized cliches is not what we need. We need the
22 kind of statement that you're talking about, is that
23 it has been reported to me that Ms. Fernandes had made
24 such and such statements.

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1 And those are not the policies of the
2 Obama administration. The Obama administration is in
3 favor of the race-neutral enforcement of the Voting
4 Rights Act.

5 That has not been done, to my knowledge.

6 COMMISSIONER KIRSANOW: And, similarly, I
7 take it that, to your knowledge, there has been no
8 disciplinary actions, reprimands, or anything of that
9 nature taken against anyone who may have made any such
10 statements with respect to either Section 8 of the
11 NVRA or of the Voting Rights Act in general?

12 MR. COATES: No, but since I have been in
13 Charleston since the 11th and have not been a manager
14 in the Voting Section, I would not know about that at
15 all --

16 COMMISSIONER KIRSANOW: Understood.

17 MR. COATES: -- if disciplinary action had
18 been taken.

19 COMMISSIONER KIRSANOW: During your 13 and
20 a half years with respect to voting rights cases in
21 the Department of Justice, have you been involved in
22 cases in which --

23 CHAIRMAN REYNOLDS: Commissioner Kirsanow,
24 we will have to follow up.

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1 COMMISSIONER KIRSANOW: Thank you very
2 much.

3 CHAIRMAN REYNOLDS: Commissioner Taylor?

4 COMMISSIONER TAYLOR: I would like to ask
5 you about the lobbying by the traditional civil rights
6 groups in terms of trying to impact the disposition of
7 a case.

8 You indicated in your testimony that the
9 then Chief of the Criminal Section complained that the
10 *Brown* case had caused his section considerable
11 problems in that traditional civil rights community.
12 And then you went on to say that he was correct in
13 claiming that a number of these groups were opposed to
14 the race-neutral enforcement of the Voting Rights Act.

15 MR. COATES: Right.

16 COMMISSIONER TAYLOR: Can you expand upon
17 that statement? And what is the basis of you making
18 the statement that he is correct that they are, in
19 fact, opposed to race-neutral application of the law?

20 MR. COATES: I think that the best
21 indication, that Mr. Kappelhoff raised the subject in
22 a management meeting at the division level because I
23 presume he had received a number of complaints from
24 people in the groups who were asking, "What are you

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1 doing suing Ike Brown in Mississippi?" What are you
2 doing bringing a lawsuit to that effect?"

3 It was common knowledge that a number of
4 people in leadership positions in a number of the
5 civil rights groups, such as Ms. Clarke in LDF,
6 criticized the bringing of the *Brown* case.

7 The meeting that I talked about that took
8 place in the Fall of 2008 was attended by about 20
9 representatives of almost, I won't say every civil
10 rights group, but the major civil rights groups in
11 this country, whether it be ACLU, Lawyers Committee
12 for Civil Rights Under Law, LDF, the national NAACP, a
13 number of others. I'm sorry. The names miss me at
14 this time. Those organizations were represented.

15 And Ms. Clarke did a criticism of the
16 *Brown* case. And all of those organizations were in
17 attendance. And there was not one organization that
18 at the meeting said, "But, by the way," the MALDEF or
19 La Raza or NAACP or ACLU, "we think that you all did
20 right by bringing a case in Noxubee County,
21 Mississippi." There was no opposition.

22 And I don't remember a single -- I talked
23 with leaders of civil rights organizations on a fairly
24 regular basis when I was Chief of the Voting Section.

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1 I think a job of the Chief, if you can, is
2 to keep up good relations because you can hear about
3 complaints, good cases that need to be pursued.

4 And I don't remember any person connected
5 with any civil rights group in the country who
6 congratulated the Voting Section on bringing the *Brown*
7 case or the *New Black Panther* case. And that is not
8 the case when I have been involved in cases on behalf
9 of racial minorities.

10 So it's that that indicates to me that
11 many of the people who are in leadership positions
12 were not in favor of race-neutral enforcement of the
13 Voting Rights Act.

14 COMMISSIONER TAYLOR: Okay.

15 CHAIRMAN REYNOLDS: Okay. Commissioner
16 Yaki?

17 COMMISSIONER YAKI: Thank you very much.

18 Let me go back to where we were. It's a
19 little -- in 2008, December 2008, you still had
20 authority in the Voting Rights Section, correct? It
21 wasn't until some time in early 2009 that you say that
22 your authority started to gradually erode away or
23 leach away, as some people said it. Is that correct?

24 MR. COATES: That's correct. Yes.

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1 COMMISSIONER YAKI: So in December 2008,
2 you were still the man in charge, person in charge, so
3 to speak?

4 MR. COATES: That's right. I had a good
5 relationship with Grace Chung Becker, --

6 COMMISSIONER YAKI: Great.

7 MR. COATES: -- who was AAG at the time.

8 COMMISSIONER YAKI: Well, that e-mail
9 trail is just fascinating to me because it shows that
10 in the week and a half, two weeks -- week and a half,
11 ten days prior to the filing of the j-memo, Mr. Adams
12 is calling third parties because he has no facts. He
13 can't find any voters who are intimidated. He can't
14 find any names of any black poll workers who were
15 intimidated. He is trying to find still shots of the
16 YouTube video apparently to make the case.

17 I just say that because that is what those
18 e-mails state. Now --

19 MR. COATES: I disagree with that.

20 COMMISSIONER YAKI: Well, tell me why.

21 MR. COATES: Okay. Is that we had
22 evidence from a number of sources that indicated that
23 the intimidation that the lawsuit was based on had
24 occurred. I think that what Mr. Adams is referring to

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1 in these e-mails is tracking down particular witnesses
2 and particular pieces of evidence.

3 And it's not unusual for attorneys in
4 investigating a case and investigating it fairly to
5 express some frustration when they can't find a
6 particular document or a particular witness that they
7 are looking at. It does not mean that there is not a
8 legitimate basis for the bringing of the lawsuit at a
9 later time.

10 COMMISSIONER YAKI: You know, Mr. Coates,
11 I understand, but I am just going by the plain words
12 of what he said. He said, "I've got a real problem on
13 this. I'm trying to figure out who the poll worker
14 was inside that got harassed."

15 Obviously you had reports. I understand
16 that. You assigned investigators who were in the area
17 to go to that poll. I understand that. You then
18 assigned attorneys to start looking at developing the
19 case for that. I understand that.

20 I am just going by what is said here. And
21 it says, "I've got a real problem on this. I'm trying
22 to figure out who the poll worker was inside that got
23 harassed."

24 And then I am puzzled by the statement
25 "The narrative can't come quick enough, as you can

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1 imagine." The reason I am puzzled by this, Mr.
2 Coates, is that when you talk to me about Pima, when
3 you talk to me about the Mississippi state
4 investigators, when you talk to me about the two
5 instances, one in Alabama, one of the other ones that
6 you investigated but chose not to because there were
7 other competing remedies that you thought were going
8 on, and even looking at the Noxubee case in terms of
9 the development of the case there, those seem to be,
10 at least from my point of view, rather thoughtful,
11 deliberative processes that took a number of months,
12 the case of Pima, it took two years for something to
13 happen. In Noxubee, I think your notes say you
14 investigated 2003-2004. The complaint was filed in
15 February 2005. And I'll get into Noxubee on a number
16 of different fronts later.

17 I'm just curious as to why was Mr. Adams
18 in a rush because the j-memo comes out December 22,
19 2008. The complaint is filed January 7th, 2009. That
20 is about what, 40 days after the alleged incident.

21 I mean, I am puzzled because it seems to
22 me that you're a much more deliberative person, that
23 you believe in ascertaining facts. And this thing was
24 put together in 45 days.

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1 I just want to know why was that. Was it
2 that easy a case?

3 MR. COATES: Well, it was that simple of a
4 case and --

5 COMMISSIONER YAKI: Tell me why it was
6 simple.

7 MR. COATES: One, you have video.

8 COMMISSIONER YAKI: Okay.

9 MR. COATES: In the *Ike Brown* matter, all
10 of the evidence, nobody had video. So you have to go
11 down to the county, and you have to interview
12 witnesses. You have to interview conflicting
13 witnesses. You have to make a judgment.

14 In the *Panther* case, what makes that a
15 relatively simple case -- of course, probably no law
16 case is ever simple. Well, what makes it relatively
17 simple is that there is a video shot there of the
18 people --

19 COMMISSIONER YAKI: Right.

20 MR. COATES: -- standing in close
21 proximity --

22 COMMISSIONER YAKI: Right.

23 MR. COATES: -- to the entrance to the
24 polling place in uniform with, one of them with, a
25 weapon in hand.

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1 COMMISSIONER YAKI: Did the video -- we're
2 going to ask you about that.

3 CHAIRMAN REYNOLDS: You've run out of
4 time.

5 COMMISSIONER YAKI: Okay.

6 CHAIRMAN REYNOLDS: But I'm exercising the
7 discretion of the Chair, what little I have. Mr.
8 Adams is here today. And if you would like to
9 continue this line of questioning with Mr. Adams, that
10 would be fine.

11 COMMISSIONER YAKI: I may.

12 CHAIRMAN REYNOLDS: Okay. Mr. Melendez?

13 COMMISSIONER MELENDEZ: I will defer to
14 Commissioner Yaki.

15 COMMISSIONER YAKI: Thank you.

16 So, to continue on with my questioning,
17 did you see the video?

18 MR. COATES: Before the j-memo was sent
19 forward, yes.

20 COMMISSIONER YAKI: In the video, did you
21 see them accost any voters?

22 MR. COATES: No. The subjects of the --
23 the two Black Panthers were aware that somebody was
24 walking up with a video. And so under those
25 circumstances, their attention was aimed at the

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1 cameraman, not at voters who were coming to the
2 polling place.

3 COMMISSIONER YAKI: Now, in approving this
4 case going forward, did it bother you in any way the
5 absence of any complaints filed by any voters about
6 this particular precinct?

7 MR. COATES: No.

8 COMMISSIONER YAKI: Okay. Had you ever
9 filed any previous 11(b) actions where there are not
10 allegations by actual voters that they were being
11 intimidated?

12 MR. COATES: The only other 11(b) case
13 that I had been involved in, there --

14 COMMISSIONER YAKI: Noxubee had 11(b)
15 charges.

16 MR. COATES: That's right. And whether or
17 not we had the complaint of a voter at that time or
18 the description of the wrongdoing -- no, no. As a
19 matter of fact, we did.

20 COMMISSIONER YAKI: Yes.

21 MR. COATES: Okay. Because the basis of
22 the 11(b) claim in Noxubee was a newspaper article --

23 COMMISSIONER YAKI: Right.

24 MR. COATES: -- listing 174 whites --

25 COMMISSIONER YAKI: I remember.

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1 MR. COATES: -- Mr. Brown said that he was
2 not going to allow to vote. And it was after the
3 lawsuit, after the lawsuit was originally filed but
4 before we amended to add the 11(b) claim that we found
5 that witness.

6 COMMISSIONER YAKI: Now, did it --

7 MR. COATES: The witness had testified at
8 trial.

9 COMMISSIONER YAKI: I understand. So
10 other than Noxubee, the answer -- I mean, including
11 Noxubee, the answer is prior to this point, you had
12 never filed an 11(b) where there were no actual
13 allegations of voter intimidation.

14 I understand 11(b) covers poll watchers.
15 But I'm just stating in this case there were no actual
16 verifiable complaints by voters that you were able to
17 follow up on, correct?

18 MR. COATES: In Noxubee, I'm saying that I
19 don't think that we found the witness who testified at
20 trial, that she didn't come because of the ad that Mr.
21 Brown ran in the newspaper --

22 COMMISSIONER YAKI: Sure.

23 MR. COATES: -- until after the complaint
24 had been --

25 COMMISSIONER YAKI: I understand.

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1 MR. COATES: -- and the 11(b) claim had --

2 COMMISSIONER YAKI: I understand. Now,
3 was there any -- I mean, let's talk about bias here.
4 I know that you have made some allegations regarding
5 the special interest groups that you claim, such as
6 the NAACP Legal Defense Fund, MALDEF, what have you.
7 Did it give you any pause that the only witnesses
8 identified coming forward making allegations against
9 these two individuals were all either members of the
10 Republican Party or representatives of the McCain
11 campaign?

12 MR. COATES: If that's -- I don't remember
13 that to be the case, but if that were the case, then
14 certainly you always look to try to determine whether
15 or not the person is credible and has a basis for
16 testifying or whether or not they are associated with
17 organizations that might be contrary to what the Black
18 Panthers were doing. And so certainly you would take
19 that into account in making some kind of credibility
20 determination.

21 But in the investigation, we interviewed
22 the people that you're talking about. And my lawyers
23 came to the conclusion that they were credible, that
24 what they were saying occurred at the polling place is
25 -- was, in fact, true.

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1 And nobody has ever claimed, for example,
2 the man -- and I can't recall his name now, but the
3 man who was the chairman of the Robert Kennedy
4 campaign in New York in 1968, who had been in
5 Mississippi in 1964, who we interviewed. Nobody has
6 ever claimed that he -- to my knowledge, he was not
7 telling the truth about what he observed.

8 COMMISSIONER YAKI: And, again, I guess
9 what I'm asking is, there is a depth of investigation
10 here that I am wondering about because, again, with
11 all of the other instances that you talk about, there
12 seemed to be a very well-developed, thoughtful record.

13 Here we have someone who is in a rush to
14 get a narrative who files this complaint within 45
15 days after the election, relying solely on one party's
16 set of poll watchers where the video doesn't show any
17 actual confrontation except with the people doing the
18 video, where the policeman, for example --

19 CHAIRMAN REYNOLDS: Thank you,
20 Commissioner Yaki.

21 COMMISSIONER YAKI: I'm going. Thank you.

22 CHAIRMAN REYNOLDS: Commissioner Heriot?

23 COMMISSIONER HERIOT: I've just got a
24 couple of questions here. One clarification, going
25 back to your transfer to South Carolina, did you

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1 consider -- maybe you have already said this and I
2 just didn't pick up on it. But did you consider the
3 possibility that you might be transferred somewhere
4 that would be less desirable for your family than
5 South Carolina? Is that part of why you volunteered
6 for the transfer that you did take?

7 MR. COATES: That crossed my mind that I
8 could be transferred to a far less desirable job, the
9 empty office where you have nothing to do in
10 Washington, or the Attorney General has the authority
11 to transfer you to a part of the country such as North
12 Dakota, where I don't know anybody there. But I
13 didn't give a lot of consideration to the fact that
14 they might do that.

15 I did give a lot of consideration to the
16 fact that they probably at some point in 2010 were
17 going to remove me from Chief of the Voting Section.
18 So, therefore, I was not giving up taking a job in
19 South Carolina. I wasn't giving up a situation where
20 I was probably going to be extended for a long period
21 of time as Chief.

22 COMMISSIONER HERIOT: The other question I
23 wanted to ask you was about the Section 8 list
24 maintenance cases. My understanding is that there was
25 a case filed. And I'm sure you or someone has to know

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1 a great deal more about this case than I do, but there
2 was a case filed concerning Missouri's list
3 maintenance.

4 MR. COATES: Yes.

5 COMMISSIONER HERIOT: That case has now
6 been dismissed. Can you tell me a little bit about
7 that case, when it was filed, what happened to it?
8 And do you consider this to be evidence for your
9 belief that there is a policy against bringing such
10 cases now?

11 MR. COATES: I'm not going to be real good
12 on this case because the time that it was heavily
13 litigated was a time when I wasn't the Chief. Mr.
14 Popper, who was the deputy who worked on that case,
15 but it was against the state.

16 It involved Section 8 list maintenance, as
17 you say. There was evidence that large numbers of
18 counties in Missouri had not done the list
19 maintenance. The major legal issue was whether or not
20 the Secretary of State from Missouri, Ms. -- she's
21 running for Senate now, Carnahan. She was Secretary
22 of State. She was highly upset that the Department
23 had taken the position that she at the state level had
24 this responsibility to make sure that local

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1 investigators were -- local registration officials
2 were doing the list maintenance.

3 We lost at the District Court on the issue
4 of who had responsibility: the state or the local
5 officials. It went up to the Court of Appeals. The
6 Court of Appeals wrote what appeared to me to be a
7 somewhat ambiguous opinion about that issue.

8 It came back down. And that's when the
9 Obama -- just about the time that it came back down,
10 the Obama administration came in. And they were
11 interested in dismissing the case. And that is what
12 was done.

13 And I dealt with Mr. Rosenbaum mostly on
14 that issue.

15 COMMISSIONER HERIOT: And do you know why
16 it was dismissed?

17 MR. COATES: The reason given to me, as I
18 recall, is that it had to do with that their reading
19 of the Court of Appeals decision pretty much required
20 that it be dismissed. I didn't necessarily agree with
21 that reading, but -- and the people on the trial team
22 didn't either. But that is my recollection of what
23 was said.

24 And as to your question as to whether or
25 not I felt that the dismissal of that case indicated

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1 some hostility to Section 8 list maintenance cases,
2 the answer is yes.

3 COMMISSIONER GAZIANO: I would like to go
4 back to that September 29 lunch meeting that Julie
5 Fernandes, who is the politically appointed Deputy
6 Assistant Attorney General, led.

7 And your testimony about that is as
8 follows, and I quote, "Ms. Fernandes responded by
9 telling the gathering that the Obama administration
10 was only interested in bringing traditional types of
11 Section 2 cases that would provide political equality
12 for racial and language minority voters. And she went
13 on to say that this was what we were all about or
14 words to that effect."

15 Mr. Adams' testimony a few months ago was
16 almost exactly the same. And you both drew almost
17 exactly the same conclusion. Your testimony says you
18 understood that everyone in the room -- this is your
19 testimony -- understood exactly what she meant: no
20 more cases like *Ike Brown* or NBPP.

21 Now, by "no more cases like *Ike Brown* or
22 NBPP," I don't think you mean with those names. You
23 mean no more cases where the defendants are black or
24 minority. Is that what you mean?

25 MR. COATES: Right.

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1 COMMISSIONER GAZIANO: Now, it is your job
2 as Chief of the Voting Section at that time to
3 understand the instruction that is being given. And
4 it is your job to make sure that people under you
5 understand what the instruction was.

6 You had subsequent -- by the way, this
7 isn't deliberative process. This is an instruction,
8 an order. You had subsequent conversations, I assume,
9 with other employees under you. Did anyone come to
10 any different conclusion about what Ms. Fernandes was
11 ordering?

12 MR. COATES: No. The people who came and
13 talked to me -- I don't remember how many in the
14 Section, but the people who talked to me after Ms.
15 Fernandes gave that instruction all construed her
16 directive in the same way that I did.

17 COMMISSIONER GAZIANO: Okay. Well, this
18 is Mr. Adams' understanding of what those exact same
19 words meant, "Cases are not going to be brought
20 against black defendants for the benefit of white
21 victims, that if someone wanted to bring these cases,
22 it was up to the U.S. Attorney." By the way, U.S.
23 Attorneys aren't going to bring civil rights cases in
24 your specialty. But, anyway, "But that the Civil
25 Rights Division was not going to be bringing it."

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1 Is that consistent with your understanding
2 of what she was telling you to do?

3 MR. COATES: Yes.

4 COMMISSIONER GAZIANO: And you say no one
5 in your Section had any different understanding?

6 MR. COATES: Nobody came to me and said,
7 "Notwithstanding what Ms. Fernandes said, I think that
8 if I come across another *Ike Brown* case, I would be
9 free to investigate."

10 COMMISSIONER GAZIANO: Well, what is the
11 likelihood, what is the chance, you think -- is it
12 slim, moderate, high? -- that you all misunderstood
13 what she was saying, that her phrase, "traditional
14 civil rights" --

15 MR. COATES: "Traditional Section 2."

16 COMMISSIONER GAZIANO: Let me get the
17 exact, "traditional types of Section 2 cases that
18 would provide political equality for racial and
19 language minority voters" really meant for other types
20 of voters, too. Is there a possibility -- how likely
21 is it that you misunderstood what she was trying to
22 tell you?

23 MR. COATES: No. I understood it and
24 everybody else in the room understood it. Because the
25 history had taken place before the Bush administration

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1 came in, nobody in the Civil Rights Division had filed
2 the kind of case that we had filed in *Ike Brown* and in
3 *New Black Panther Party*.

4 A new administration comes in. A woman is
5 appointed Deputy Assistant Attorney General from the
6 -- one of the premier civil rights groups in the
7 country, Leadership for Civil Rights. And she comes
8 in.

9 And so if she had wanted, if Julie had
10 wanted to ensure people that if you came across an *Ike*
11 *Brown* case or *New Black Panther* case, bring it to the
12 front office and we would be willing to -- they would
13 be willing to look at it, she would have chosen
14 different words.

15 She chose the words that I have ascribed
16 to her and that Mr. Adams had ascribed to her because
17 she intended to tell people that the kind of cases
18 that have been brought in Noxubee County and with
19 regard to the Philadelphia Panthers is not going to
20 continue.

21 COMMISSIONER GAZIANO: And so your
22 statement is these may be some sort of code word, but
23 they weren't subtle code words. Everyone understood
24 what they meant?

25 MR. COATES: That's right.

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1 COMMISSIONER GAZIANO: Okay. Well, let me
2 go back now to the question that was --

3 MR. COATES: I'm not sure it was September
4 29th. It was sometime in September.

5 COMMISSIONER GAZIANO: Okay. September of
6 2009.

7 MR. COATES: Okay.

8 COMMISSIONER GAZIANO: In that meeting you
9 had where you were on the conference call with Mr.
10 Perez right before he testified, did anyone make him
11 aware of any kind of racial hostility to the
12 race-neutral enforcement of the Voting Rights Act in
13 that conversation?

14 MR. COATES: Yes.

15 COMMISSIONER GAZIANO: Okay.

16 CHAIRMAN REYNOLDS: Okay. We're out of
17 time. At this point we are going to take a break. We
18 will reconvene at 12:45.

19 (Whereupon, the foregoing matter went off
20 the record at 12:33 p.m. and went back on the record
21 at 12:52 p.m.)

22 CHAIRMAN REYNOLDS: We will start off with
23 Commissioner Gaziano. He has something that he would
24 like to enter into the record. And after that, we are
25 going to wind this matter down.

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1 VICE CHAIR THERNSTROM: Mr. Chairman, I
2 would have personally had a preference for an allotted
3 amount of time which is split between --

4 COMMISSIONER GAZIANO: No.

5 VICE CHAIR THERNSTROM: -- Mr. Gaziano,
6 Commissioner Gaziano, and Commissioner Yaki. And I
7 would say 30 minutes. And then let's get out of here.

8 CHAIRMAN REYNOLDS: Well, we're going to
9 do better. We're going to finish it up now. We have
10 gone. We have had several rounds. In fact, both
11 Commissioners Gaziano and Yaki have had the lion's
12 share of the time in terms of their ability to
13 question the witnesses. And I think that we have
14 reached the point of diminishing returns.

15 COMMISSIONER YAKI: Actually, I would
16 strongly disagree, Mr. Chair. There is one section
17 that -- I broke up my questions in different sections.
18 There is one section left that I believe needs to be
19 addressed and has not been addressed in the other
20 questions. And I think it would be a grave disservice
21 to the fact finding of this panel if I am denied the
22 ability to answer my questions on this particular
23 round.

24 I am willing to forego the other sections,
25 but there is one section of questioning I absolutely

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1 must do in fairness to what has been said here today
2 and to the facts as they should be put before us.

3 COMMISSIONER GAZIANO: Mr. Chair, can I
4 offer a compromise maybe?

5 CHAIRMAN REYNOLDS: Commissioner Yaki,
6 your feelings are shared with an equal amount of
7 passion by Commissioner Gaziano. And so if you were
8 denied, he as well will be denied. So I --

9 COMMISSIONER GAZIANO: May I offer a
10 compromise?

11 CHAIRMAN REYNOLDS: Well, let's listen.
12 Yes. What do you have to say?

13 COMMISSIONER GAZIANO: I was not going to
14 -- if it was the ruling of the rest of the
15 Commissioners and the Chair that we cut off questions,
16 I was just going to enter the documents into the
17 record. But since my last round of questioning ended
18 with a very significant yes that Mr. Perez was
19 informed, is it possible that Commissioners, like
20 Commissioner Yaki and I, could submit written
21 questions to the witness?

22 CHAIRMAN REYNOLDS: Yes.

23 COMMISSIONER GAZIANO: Could we maybe ask
24 the witness whether he would consider providing
25 answers to our written questions.

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1 CHAIRMAN REYNOLDS: Mr. Coates, if you
2 received a set of written questions from
3 Commissioners, would you be willing to entertain them?

4 MR. COATES: Yes, but I have taken leave
5 to come up here. And when I go back, I'm going to
6 have a lot of -- I'm Assistant U.S. Attorney in the
7 Southern District -- I mean, in the district of South
8 Carolina. And I have assigned cases. And so I will
9 be busy with my present job.

10 CHAIRMAN REYNOLDS: Understood.

11 MR. COATES: And I will do the best I can
12 in terms of responding to the questions.

13 COMMISSIONER HERIOT: Might it be quicker
14 just to do a three-minute lightning round with
15 Commissioners Gaziano and --

16 VICE CHAIR THERNSTROM: More than three
17 minutes. Let the two of them have a little bit more
18 time. You know, it's --

19 CHAIRMAN REYNOLDS: Entertain the
20 compromise because, if we don't, I like the idea of
21 allowing the Commissioners to submit as many
22 questions, written questions, as they would like for
23 the witness.

24 COMMISSIONER GAZIANO: Within reason to
25 the witness.

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1 COMMISSIONER YAKI: I was about to say --

2 COMMISSIONER HERIOT: The problem is it's
3 got to be reasonable for the witness.

4 COMMISSIONER YAKI: From what I have heard
5 from the witness, he is taking time here today. He
6 has made himself available today. When he goes back,
7 he is an AUSA with lots of responsibilities answering
8 -- propounding interrogatories, rather than having to
9 answer ours. All I need, Mr. Chair, is I think ten
10 minutes. And that will be it for me.

11 CHAIRMAN REYNOLDS: Okay.

12 VICE CHAIR THERNSTROM: Give each of them
13 ten minutes.

14 CHAIRMAN REYNOLDS: Here's the compromise.
15 You each have five minutes. Well, let's back up. Do
16 any of you other Commissioners have questions that you
17 would like to ask?

18 COMMISSIONER KIRSANOW: I think we all
19 have questions, but I think that we are at a point of
20 diminishing returns. I don't have a major objection
21 to giving each Commissioner Yaki and Gaziano three
22 minutes apiece or five minutes, as you suggested.

23 CHAIRMAN REYNOLDS: Vice Chair Thernstrom,
24 do you have any questions you would like to ask?

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1 VICE CHAIR THERNSTROM: Mine can be held.
2 And I would like each of them to have ten minutes
3 because I don't think it's fair to Mr. Coates to ask
4 him to try to fit into his very busy professional life
5 once he leaves here answers to what may be complicated
6 and nuanced questions that, you know --

7 CHAIRMAN REYNOLDS: Okay. The compromise
8 is that Commissioners Gaziano and Yaki will have seven
9 minutes apiece.

10 VICE CHAIR THERNSTROM: Okay.

11 CHAIRMAN REYNOLDS: All right.

12 VICE CHAIR THERNSTROM: Can you set that
13 thing for seven, instead of five?

14 CHAIRMAN REYNOLDS: She is, yes. Very
15 good.

16 COMMISSIONER GAZIANO: Seniority.

17 CHAIRMAN REYNOLDS: Commissioner Yaki,
18 begin this last round.

19 COMMISSIONER YAKI: Thank you very much,
20 Mr. Chair. Thank you very much, Mr. Coates, for
21 staying here.

22 MR. COATES: Yes, sir.

23 COMMISSIONER YAKI: I am going to shift
24 gears a little bit and talk about your time at Justice
25 because I was fascinated by the fact that you felt the

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1 need to engage in questioning on ideology for the
2 purpose of hiring. Were you aware of the -- you were
3 there, present, during when the report came out from
4 the OIG and OPR regarding investigation of the Civil
5 Rights Division?

6 MR. COATES: First of all, I did not
7 question on the basis of ideology. The question that
8 I was asking is whether or not applicants would be
9 willing to race-neutrally enforce the Voting Rights
10 Act.

11 COMMISSIONER YAKI: Right. But were you
12 present when that report came out?

13 MR. COATES: Yes, sir.

14 COMMISSIONER YAKI: And part of the
15 conclusions of that report was that Mr. Schlozman,
16 your superior, one of your superiors at the time, had
17 engaged in ideological and partisan filling of career
18 Civil Service positions. That was one of the
19 conclusions of the report, correct?

20 MR. COATES: Yes.

21 COMMISSIONER YAKI: Did you agree with
22 that? Did you agree with the conclusion of that
23 report?

24 MR. COATES: I believe that Mr. Schlozman
25 made a -- Mr. Schlozman found a Civil Rights Division

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1 that was almost totally left liberal in the basis of
2 the ideology of the people who were working in it and
3 that he made some concerted effort to diversify the
4 Division so that conservatives as well as liberals
5 could find work there.

6 I found the criticism by the career
7 management in the Civil Rights Division that Mr.
8 Schlozman had hired on ideological grounds to be akin
9 to Pete Rose criticizing Willie Nelson for not paying
10 his federal income tax.

11 (Laughter.)

12 COMMISSIONER YAKI: That may be very
13 interesting, Mr. Coates, but I am talking about the
14 conclusions of the Inspector General, the conclusion
15 that found that he had engaged in political and
16 ideological affiliations when hiring or taking other
17 personnel actions related to career attorneys.

18 Are you basically defending Mr.
19 Schlozman's actions here today? Is that what you're
20 saying?

21 MR. COATES: No. I think that Mr.
22 Schlozman made a concerted effort to diversify the
23 workforce in the Civil Rights Division. And to that
24 extent, he hired conservative people and liberal
25 people.

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1 And in terms of him taking into account
2 ideology in some cases, I think that there is probably
3 evidence. There is probably evidence in that
4 investigation to support that.

5 But the idea that that was the first time
6 that that had ever occurred in the Civil Rights
7 Division is not. Maybe the more appropriate analogy
8 than the Pete Rose-Willie Nelson analogy would be for
9 our younger folks, is that to criticize Schlozman for
10 hiring on the basis of ideology, for the career people
11 in the Civil Rights Division to do that is like Snooki
12 on the show "Jersey Shore" to criticize Lady Gaga for
13 dressing extravagantly.

14 (Laughter.)

15 COMMISSIONER YAKI: I'm impressed by your
16 knowledge of popular culture, but I am asking about an
17 Inspector General report, which I think you would take
18 very seriously as a member of the Civil Rights
19 Division, correct?

20 And they made a finding of this, of the
21 fact that he acted in this manner. It sounds to me in
22 this roundabout way that you're talking that you are
23 defending him, but we'll leave that to others to
24 judge.

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1 MR. COATES: I agreed with some of the
2 findings by the AG, and some of the findings I did
3 not.

4 COMMISSIONER YAKI: Are you a friend of
5 Mr. Schlozman?

6 MR. COATES: Yes, I consider him a friend.
7 Okay. And I --

8 COMMISSIONER YAKI: Did you -- let me.
9 Did you at one point apply for a position as an
10 immigration judge?

11 MR. COATES: I did.

12 COMMISSIONER YAKI: And did Mr. Schlozman
13 make a recommendation for you?

14 MR. COATES: I don't know if he -- I don't
15 think he wrote a recommendation. He sent an e-mail to
16 --

17 COMMISSIONER YAKI: Monica Goodling.

18 MR. COATES: -- Monica Goodling.

19 COMMISSIONER YAKI: And so you are the
20 person referenced in the report, in that e-mail, in
21 which it says, "Don't be dissuaded by his ACLU work on
22 voting matters from years ago. This is a very
23 different man on particularly immigration issues. He
24 is a true member of the team. That was in reference
25 to you."

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1 MR. COATES: I think that that is correct.
2 And one of the reasons I didn't agree with that IG
3 report is because of that entry. Nobody -- I was
4 interviewed with regards to the IG report. I don't
5 remember them asking me any questions about that.

6 In fact, Mr. Schlozman relates to a period
7 of time in that e-mail when he did not know me. And
8 some of my conservative views as well as liberal views
9 were in evidence in the 1980s. So the idea that I
10 changed ideology completely upon coming to Washington
11 is not accurate.

12 I think Mr. Schlozman as a friend was
13 writing that e-mail to try to help me, but the e-mail
14 is not factually correct.

15 COMMISSIONER YAKI: What do you mean,
16 "factually correct"? As in, you didn't experience a
17 conversion or you were not a true member of the team?

18 MR. COATES: That I am more conservative
19 now than I was 20 years ago.

20 COMMISSIONER YAKI: But his statement that
21 you were a member of the team is correct?

22 MR. COATES: Well, Mr. Schlozman and I had
23 some very, very ferocious battles about cases, such as
24 Panola. So in terms of the team, did Mr. Schlozman
25 and I always agree? No.

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1 And so if you're reading the term as a
2 member of the team to mean that I agreed with him in
3 everything that he did, no. But do I consider him a
4 friend? Yes, I do.

5 COMMISSIONER YAKI: How about Hans von
6 Spakovsky? Do you consider him a friend as well?

7 MR. COATES: Yes.

8 COMMISSIONER YAKI: Okay. And both of
9 those people were your supervisors at the time?

10 MR. COATES: Well, Mr. Schlozman was my
11 supervisor when he was Acting AAG. He was my
12 supervisor when he was Deputy AAG. And Mr. von
13 Spakovsky supervised voting in his position as special
14 counsel. So most of the time that we worked in the
15 Division together, I was in a subordinate position to
16 them on the Division hierarchy.

17 COMMISSIONER YAKI: And just one last
18 question. When you talk about the meeting in
19 September '09, when Julie Fernandes said the word,
20 "traditional," what exactly were the exact words that
21 she used, to the best of your recollection?

22 MR. COATES: The ones that I have in my
23 written statement.

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1 COMMISSIONER YAKI: Well, would you refer
2 specifically to what words you said she specifically
3 said?

4 MR. COATES: Okay.

5 COMMISSIONER YAKI: I think it's page 13.

6 COMMISSIONER GAZIANO: Bottom of page 13,
7 top of page 14.

8 MR. COATES: I've got large print.

9 COMMISSIONER YAKI: Mr. Chair, would you
10 mind if he answered that question?

11 CHAIRMAN REYNOLDS: Yes. You put the
12 question out before your time expired.

13 COMMISSIONER YAKI: Thank you.

14 MR. COATES: Okay. My recollection is
15 that she used the term "traditional types" of Section
16 2 cases and that she used the term "political equality
17 for racial and language minority groups" and that she
18 used the term "That is what we are all about."

19 COMMISSIONER YAKI: Okay. Thank you.

20 CHAIRMAN REYNOLDS: Okay. If that is your
21 answer, Commissioner Gaziano?

22 COMMISSIONER GAZIANO: Thank you again.
23 Thank the rest of my Commissioners.

24 In the last round of questioning, you
25 answered "Yes" to my question did anyone at that

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1 meeting where you were participating by conference
2 phone right before Perez testified to us tell him
3 about the race-hostile opposition to equal enforcement
4 of the Voting Rights Act? Were you one of the people
5 who told him?

6 MR. COATES: Yes.

7 COMMISSIONER GAZIANO: Who else? Did
8 anyone else?

9 MR. COATES: I don't recall.

10 COMMISSIONER GAZIANO: Okay.

11 MR. COATES: I don't recall. I remember
12 specifically saying it because I knew about his
13 testimony for Congress. And I wanted Mr. Perez to
14 know if there was any question about it that I
15 strongly felt that the reason that the *New Black*
16 *Panther* case was disposed of in the way in which it
17 was was because of the hostility on the part of people
18 who do not believe in race-neutral enforcement.

19 COMMISSIONER GAZIANO: That's important.
20 And I respect you that you are going to follow the
21 Justice Department's claim of deliberative process
22 privilege.

23 You know I think it hasn't been properly
24 -- well, I'll just tell you. I don't think it's been
25 properly invoked. I think that privilege is in

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1 violation of the *United States v. Reynolds* Supreme
2 Court case, that it is in violation of the
3 Department's own binding precedent.

4 But I respect that you have to follow --
5 if there's any argument, you have to follow the
6 Department's position on what I think is a frivolous
7 privilege. So you haven't given us the details about
8 the conversations you have had with Rosenbaum or King
9 that lead you to the conclusion that they have
10 hostility to race-neutral application of the voting
11 rights laws.

12 If the Department of Justice waived the
13 privilege or if the courts determined that it was not
14 properly invoked by the President because it's part of
15 executive privilege or that it doesn't apply to cover
16 up potential wrongdoing, as I think is the case here,
17 would you be willing to give us the details behind
18 your conclusion?

19 MR. COATES: Yes. If the Department
20 waives a privilege or if a court rules that the
21 privilege does not apply, then if you subpoenaed me
22 again and asked me the questions about what was said,
23 I would give you the answers.

24 COMMISSIONER GAZIANO: Thank you. Now, I
25 understand that you are not going to tell us the

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1 content of any writings, but were you asked or did you
2 create any writings that document conversations or
3 other evidence relating to hostility toward
4 race-neutral enforcement of the civil rights laws?

5 In a sort of Vaughn Index, we're entitled
6 to know whether they exist, even if there is a
7 privilege.

8 MR. COATES: Specifically related to the
9 *Black Panther* case?

10 COMMISSIONER GAZIANO: Either the *Black*
11 *Panther* or otherwise.

12 MR. COATES: There are -- I have created
13 some documents that would address the subject of
14 whether or not I believe that there is that.

15 COMMISSIONER GAZIANO: Okay. Was there
16 one in the spring, let's say, April or May, prior to
17 when Perez testified, that was submitted to people
18 above your pay grade? Normally in the privilege sort
19 of situation, we're entitled to know at least, you
20 know, who it was sent to, what the date was.

21 MR. COATES: No.

22 COMMISSIONER GAZIANO: I'm not trying to
23 --

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1 MR. COATES: Yeah. The document that I
2 have in mind right now would have been documents that
3 I prepared with regards to other investigations --

4 COMMISSIONER GAZIANO: Okay.

5 MR. COATES: -- of the *Black Panther*
6 matter --

7 COMMISSIONER GAZIANO: Yes.

8 MR. COATES: -- but other --
9 investigations by other entities.

10 COMMISSIONER GAZIANO: Okay. And I might
11 ask the Department whether we can get a proper Vaughn
12 index of those type of documents, but also you did not
13 identify by name some of the employees who engaged in
14 the harassment of others who were on your Noxubee team
15 or New Black Panther team.

16 And I understand why you didn't identify
17 the lower level of people. You didn't necessarily
18 want to expose them. And I don't think that we
19 necessarily need to know their names because that is
20 uncontroverted testimony. And that uncontroverted
21 testimony is supported by sworn affidavits filed by
22 Hans von Spakovsky, Mr. Bowers, and articles by
23 Asheesh Agarwal and other information from Mark
24 Corallo and Robert Driscoll. So it all seemed
25 perfectly corroborated.

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1 But if there is some dispute about all of
2 these incidents of harassment, would you be willing to
3 identify these individuals?

4 MR. COATES: If you have conflicting
5 testimony and you want to call me back as a witness,
6 then I would certainly consider honoring your
7 subpoena.

8 COMMISSIONER GAZIANO: Okay. Well, as far
9 as I am concerned, we might not need to because it's
10 uncontroverted testimony that is supported by all of
11 these affidavits.

12 At this time I would like to enter into
13 the record an article, Weekly Standard, by Hans von
14 Spakovsky, January 23rd, 2009 that disputes the
15 findings of the IG report, and also an article in
16 Pajamas Media by Hans von Spakovsky, September 20th of
17 this year that casts further light that is both
18 consistent with yours and Mr. Adams' sworn testimony
19 regarding various misconduct by Mr. Rich.

20 Mr. Chairman, will these be received into
21 the record?

22 CHAIRMAN REYNOLDS: Yes, yes.

23 COMMISSIONER GAZIANO: Thank you. No
24 further questions.

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1 MR. COATES: Mr. Chairman, could I say one
2 further thing with regards to the examination?

3 CHAIRMAN REYNOLDS: Yes, please.

4 MR. COATES: Commissioner Yaki asked me if
5 I was a friend of Mr. Schlozman's. And one of the
6 reasons that I am a friend is that Mr. Schlozman,
7 notwithstanding his conservative leanings, appointed
8 me, a former ACLU lawyer, to a management position in
9 the Voting Section. He did not allow my past
10 activities in the vote dilution areas in my present
11 activities at a time that he appointed me to keep me
12 from having an opportunity to be promoted.

13 And because of that, I respect Mr.
14 Schlozman's judgment in that regard. And I will
15 always be thankful that he judged me not on the basis
16 of the fact that I worked with an organization that he
17 might be at odds with, the ACLU, in the past, but he
18 is willing to judge me on the work that I was doing in
19 the Voting Section.

20 CHAIRMAN REYNOLDS: All right. Thank you,
21 Mr. Coates. You have provided some powerful
22 testimony. I appreciate and we all appreciate the
23 fact that you had to make a hard decision. And it
24 shows the character that you have.

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1 I would also like to tell you that we are
2 not going to release the subpoena in the event that we
3 have additional need to question you. At this point,
4 though, this concludes our hearing for today. We
5 adjourn this meeting sine die.

6 We will hold the record open for
7 additional evidence pursuant to 45 CFR Section 702.8.
8 Individuals who wish to submit items for consideration
9 to be included in the record may send them to the
10 General Counsel at the Commission, which is located at
11 624 9th Street, Northwest, Washington, D.C. 20425.

12 Thank you.

13 MR. COATES: Thank you.

14 (Whereupon, the foregoing matter was
15 adjourned sine die at 1:13 p.m.)
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U.S. COMMISSION ON CIVIL RIGHTS

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TUESDAY, JULY 6, 2010

+ + + + +

THE NEW BLACK PANTHER PARTY HEARING (2)

+ + + + +

The Commission convened in Room 540 at 624 Ninth Street, Northwest, Washington, D.C. at 9:30 a.m., Gerald A. Reynolds, Chairman, presiding.

PRESENT:

GERALD A. REYNOLDS, Chairman
TODD F. GAZIANO, Commissioner
GAIL L. HERIOT, Commissioner
PETER N. KIRSANOW, Commissioner
ASHLEY L. TAYLOR, JR., Commissioner

MARTIN DANNENFELSER, Staff Director

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel, OGC
CHRISTOPHER BYRNES, Director, RPCU
DEMITRIA DEAS
LILLIAN DUNLAP
PAMELA A. DUNSTON, Chief, ASCD
LENORE OSTROWSKY
JOHN RATCLIFFE, Chief, Budget and Finance
KIMBERLY TOLHURST
VANESSA WILLIAMSON
AUDREY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COLTEN
ALEC DEULL (via telephone)
TIM FAY
DOMINIQUE LUDVIGSON
JOHN MARTIN
ALISON SCHMAUCH

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I. INTRODUCTION BY CHAIR 3

II. TESTIMONY OF J. CHRISTIAN ADAMS, 8
FORMER DEPARTMENT OF JUSTICE VOTING
RIGHTS ATTORNEY

 Exhibit A 16
 Exhibit B 27
 Exhibit C 32

III. Adjourn 130

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P R O C E E D I N G S

9:31 a.m.

I. INTRODUCTION BY CHAIR

CHAIRPERSON REYNOLDS: On the record. Okay. Good morning, ladies and gentlemen. Before I begin, I'd like to ask each Commissioner and the audience to please take a moment to silence your cell phones and for Commissioners to move your phones away from your microphone.

I'd also like to note that we have a sign language interpreter for anyone who may need one. Those who need those services please contact Pam Dunston. Ms. Dunston, please raise your hand so folks can see you.

(Show of hand.)

Thank you.

This hearing is called to order. Today we embark on a continuation of a hearing that we started on April 23, 2010 examining the Justice Department's handling of voter intimidation litigation involving the New Black Panther Party. This hearing is being conducted pursuant to 42 USC Section 1975(a) and the Commission Regulations at 45 CFR Section 702.

I'd like to thank all the Commissioners here today who worked to arrange their holiday travel

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1 plans and vacation schedules to be here for this
2 important hearing into the New Black Panther Party
3 matter. We had to accommodate a number of schedules
4 including our witness and his attorney as well as the
5 Commissioners. It's needed so that we can complete
6 our investigation, finalize our report and submit our
7 report to Congress, the President and the American
8 people.

9 So, again, thank you for -- I'd like to
10 thank all the Commissioners for rearranging your
11 schedules to be here.

12 In the course of this investigation which
13 began over a year ago in June 2009, the Commission has
14 heard from various fact witnesses who witnessed the
15 Election Day 2008 incident that is at the heart of our
16 analysis. We've heard from Representative Frank Wolf,
17 a former DOJ official, Greg Katsas and the Assistant
18 Attorney General for the Civil Rights Division, Thomas
19 Perez.

20 As most of you are aware by now, the
21 litigation stemmed from an incident on Election Day
22 2008 in which two members of the New Black Panther
23 Party appeared at a polling station in Philadelphia.
24 Video and eyewitness testimony showed that they stood
25 at an entrance to a polling place dressed in

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1 paramilitary garb and black combat boots. One
2 brandished a nightstick. They hurled racial epithets
3 at whites and blacks alike, taunting poll watchers and
4 poll observers who were there to aid voters.

5 The Department of Justice at first
6 aggressively pursued this case, filing voter
7 intimidation charges against four defendants: the two
8 New Black Panthers who appeared at the Philadelphia
9 polling place on the Election Day, the New Black
10 Panther Party chairman, and the organization itself.
11 None of the defendants contested the charges and the
12 Department was poised to seek a default judgment in
13 the case and to seek an injunction to stop further
14 acts of intimidations.

15 But on the eve of the date which the court
16 set for the Department's request for a default
17 judgment, the trial attorneys in the case were
18 instructed to request a continuance by then-Acting
19 Assistant Attorney General for Civil Rights Loretta
20 King. In the days that followed, and despite the
21 robust justification that they had prepared at the
22 inception of the case to support its request to file
23 the suit, the experienced line career attorneys
24 responsible for the case were put under intense
25 pressure to justify the lawsuit against the Panthers,

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1 and they were required to prepare a defense of their
2 proposed injunction and request for default.

3 In addition, Ms. King sought a review of
4 the matter by the Division's appellate section, which
5 agreed with the Department that the Department could
6 make a reasonable argument in favor of default relief
7 against all of the defendants and probably should,
8 given the unusual procedural posture of the case. And
9 just to unpack that, the defendants did not contest
10 the case. They essentially had defaulted.

11 A total of at least six career attorneys
12 intimately familiar with the details of the case
13 shared this view, including the two who opined from
14 the appellate section. Nonetheless, charges were
15 dropped against all of the defendants but one,
16 Minister King Samir Shabazz, who had wielded the billy
17 club that day. The case against Jerry Jackson, the
18 other New Black Panther Party member at the polling
19 station that day, was dropped, as were charges against
20 the party and its chairman. Furthermore, the
21 injunctive relief sought against King Samir Shabazz
22 was limited to prevent acts of intimidation by him
23 solely in the City of Philadelphia and only through
24 Election Day November 2012.

25 Last month, we heard testimony from Thomas

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1 Perez, who is the Assistant Attorney General for Civil
2 Rights, regarding the Department's decision to largely
3 dismiss the case. He testified that the facts and the
4 law supported dismissal of the case against all but
5 one defendant and the narrowing of the injunction
6 sought against the defendant.

7 This morning we will present one witness,
8 J. Christian Adams, a member of the trial team in the
9 New Black Panther Party case and a former DOJ lawyer
10 who has resigned over the Department's handling of the
11 case. Mr. Adams has spoken publicly regarding what he
12 views as the serious mishandling of the New Black
13 Panther Party case and will answer questions for us
14 today as a part of our investigation of this matter.

15 Our general counsel, Mr. Blackwood, will
16 initiate the questions. Following Mr. Blackwood, the
17 Commissioners will have an opportunity for at least
18 two rounds of questions. Each Commissioner will have
19 five minutes per round and we will proceed in the
20 following order. I will go first. The Vice Chair is
21 not with us today and then the remaining Commissioners
22 in order of seniority.

23 Commissioners may, of course, yield their
24 time to one another. I may allow additional rounds of
25 questioning as time permits.

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1 **II. TESTIMONY OF J. CHRISTIAN ADAMS,**
2 **FORMER DEPARTMENT OF JUSTICE**
3 **VOTING RIGHTS ATTORNEY**

4 CHAIRPERSON REYNOLDS: Mr. Adams, thank
5 you for appearing before the Commission today. I'd
6 like to swear you in. Please raise your right hand.
7 Do you swear or affirm under penalty of perjury that
8 the testimony you're about to give will be the truth,
9 the whole truth and nothing but the truth.

10 MR. ADAMS: I do.

11 CHAIRPERSON REYNOLDS: Kind sir, thank you
12 for being here. I appreciate the dedicated service
13 that you've provided over the years. And I want to
14 recognize your courage for speaking out against what
15 you believe is wrongdoing.

16 At this point, I would like to turn it
17 over to our general counsel, Mr. Blackwood.

18 MR. BLACKWOOD: Good morning. Mr. Adams,
19 you're here with counsel today. Is that correct?

20 MR. ADAMS: That's correct.

21 MR. BLACKWOOD: Could you please identify
22 him?

23 MR. ADAMS: This is Mr. Richard Bolen.

24 MR. BLACKWOOD: Good morning.

25 MR. BOLEN: Good morning.

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1 MR. BLACKWOOD: Now, Mr. Adams, you're
2 here because the --

3 MR. DANNENFELSER: Did you have a question
4 at this time?

5 MR. ADAMS: I don't right now.

6 MR. DANNENFELSER: All right.

7 MR. BLACKWOOD: You're here because of a
8 subpoena issued by the Commission. Is that correct?

9 MR. ADAMS: It is and I do have something
10 I'd like to say about that.

11 MR. BLACKWOOD: Go ahead.

12 MR. ADAMS: Okay. I would rather not be
13 here to testify despite reports to the contrary. I
14 and my attorneys have invited the Department to file a
15 motion to quash for the subpoena, and we informed the
16 Department that we would not object to the motion to
17 quash and, frankly, would probably have encouraged it.

18 Obviously, the motion to quash was not forthcoming.

19 We were instructed, Mr. Coates and I,
20 particularly me, that the Department of Justice would
21 not enforce this subpoena against me and that
22 therefore I need not comply with the subpoena which,
23 of course, provides cold comfort to anybody who is
24 under subpoena. For example, the Department recently
25 reversed a number of declamations not to prosecute

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1 from the previous administration and reopen the
2 examination of a number of matters which I won't
3 detail here.

4 So administrations change and policies
5 toward my dodging a subpoena in the future might also
6 change over. Even if true, it seemed improper to tell
7 me not to comply with the subpoena issued pursuant to
8 Federal law simply because they don't intend to
9 enforce it and to comply with the request from the
10 Commission as the law permits the Commission to do.
11 Congress has noted, some members, that they want a
12 special prosecutor appointed in this case to enforce
13 subpoenas, which further complicated my legal position
14 in not complying with the subpoena.

15 The Department has asserted a variety of
16 privileges regarding this case, and these assertions
17 of privilege have been the subject of debate by some
18 very, very able attorneys, with some saying the
19 privileged assertions are meritless and the Department
20 asserting they are legitimate. I had hoped executive
21 privilege would be asserted to resolve the matter
22 conclusively. But the Department informed me that
23 they had not exerted executive privilege.

24 Nevertheless, in order to avoid these
25 concerns, I will not testify about genuine

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1 deliberative process in this case, not because I
2 concede those objections are valid but because I have
3 far different matters to testify about which have
4 absolutely nothing to do with any colorable privilege
5 relating to the Black Panther case.

6 I will not discuss the mechanics or
7 particularly the legal and factual debate within the
8 Department in the case. You already have one side of
9 that debate presented by Mr. Perez in various
10 Department responses. On the other hand, Mr. Gregory
11 Katsas testified to you and presented a legal analysis
12 in his testimony that seeks to rebut many of the
13 claims of the Department.

14 I'll not provide my opinion or
15 recollection of those internal legal debates here.
16 Please understand, therefore, that my attorney or I
17 may have objections to answering some questions you
18 ask regarding matters that may offend the Department's
19 position, whether correct or not, regarding genuine
20 deliberative process.

21 On the other hand, I am confident that
22 what I will testify about today would be corroborated
23 if Mr. Christopher Coates were allowed to comply with
24 his subpoena. In fact, I would encourage the
25 Commission to broaden its inquiry and subpoena

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1 individuals who recently left the Department, who no
2 longer work there over the last four years, and work
3 within the voting section because they, too, I believe
4 would corroborate the testimony I'm going to give
5 today.

6 Other current employees also could
7 corroborate the testimony because I have absolute
8 confidence, the deeper that your inquiry about matters
9 I will speak about goes, the greater the certainty
10 that I am describing matters accurately.

11 Mr. Bolen, one of my attorneys, has worked
12 with the Department, as well as Mr. Jim Miles who is
13 not here today who tried to reach a resolution. Mr.
14 Miles could not be here because he's actually in
15 Alaska until the snow starts to fly. So your schedule
16 will not permit him to be here.

17 This matter has resulted in me paying
18 attorneys, and I wish that the parties had reached a
19 resolution that fully respected the legal obligations
20 of the individuals subpoenaed.

21 Finally, for the record, I want to point
22 out that the Department has previously allowed Mr.
23 Christopher Coates to appear before this very
24 Commission pursuant to a subpoena in 2008. Moreover,
25 the Department has permitted line attorneys to testify

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1 before Congress on at least three occasions. Chief
2 John Tanner in the voting section went before the
3 House Judiciary Committee in October 2007. Line
4 attorney Gerry Hebert appeared before the Senate
5 Judiciary Committee on March 18, 1986 to oppose the
6 nomination of Judge Sessions to the District Court in
7 Alabama. The next day Paul Hancock, another voting
8 section line attorney, appeared with Barry Kowalsky, a
9 deputy in the criminal section, and Daniel Bell,
10 another deputy in the criminal section, to provide
11 evidence unhelpful to Mr. Sessions' nomination to the
12 United States District Court in Alabama.

13 Therefore, I am here and ready to provide
14 you as much information as possible.

15 MR. BLACKWOOD: Thank you. I do want to
16 point out that, although I understand your assertion
17 of privilege relating to decision making within the
18 Department of Justice, this Commission is not
19 necessarily bound. But that said, let's proceed.

20 There are two main issues that I want to
21 address today. First is obviously the Black Panther
22 matter, the case, and what happened in that case.
23 Also about what you have described as the open and
24 pervasive hostility within the Justice Department to
25 bringing civil rights cases against nonwhite

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1 defendants on behalf of white victims. But to start
2 with, let's go through some of the Black Panther
3 matter.

4 As the Chairman pointed out, on Election
5 Day in Philadelphia in 2008, there was an incident
6 outside the Fairmount Street polling place. How did
7 you become involved in that incident?

8 MR. ADAMS: Well, at the time I was an
9 attorney in the voting section in Washington.
10 Normally, on Election Day, the Department sends
11 attorneys all over the country, as well as Federal
12 observers and as well as other observers to monitor
13 the election. I ball-parked that we had somewhere
14 between 400 and 700, just ball-parking, attorneys
15 around the country and Federal observers that day.

16 I was back in Washington to help
17 coordinate the information flow of incidents as they
18 arose throughout the country on November 4, 2008. So
19 that's how the matter came to my attention.

20 MR. BLACKWOOD: Now we've had several
21 witnesses who were present at Fairmount Street and
22 they indicate that the Department of Justice lawyers,
23 part of a roving team, met with them on Election Day
24 to take some statements. Do you know who those
25 individuals were?

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1 MR. ADAMS: I do not, actually. I knew
2 that there was a team deployed to Fairmount Street,
3 but I don't know who the individuals were.

4 MR. BLACKWOOD: Do you know whether those
5 individuals took written statements from any of the
6 witnesses?

7 MR. ADAMS: I know they took statements
8 from the witnesses.

9 MR. BLACKWOOD: Did you actually see them?

10 MR. ADAMS: I did not.

11 MR. BLACKWOOD: Okay. As you became
12 involved in the matter, did you meet with and take
13 notes with regard to any of the witnesses that you
14 spoke with?

15 MR. ADAMS: Of course. There's -- Of
16 course. Any attorney would do that.

17 MR. BLACKWOOD: We have asked for those
18 statements and the Department has indicated that
19 they're not going to turn them over. And it's been
20 extremely frustrating. Can you tell us whether those
21 statements were straightforward fact statements or did
22 they also include legal analysis and your
23 observations? Or was it strictly the fact-finding?

24 MR. BOLEN: I'm going to have to object
25 because, again, it's deliberative process as they were

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1 preparing the case.

2 MR. ADAMS: Yes. I mean, you're getting
3 into the mechanisms of how the Department conducts an
4 investigation and the particulars of what records
5 there are. The existence of records the Department
6 has asserted as somehow privileged, just the mere
7 listing of what's there. So, I mean, you're getting
8 to an area that I can't be very helpful in.

9 MR. BLACKWOOD: Do you have exhibits in
10 front of you, Mr. Court Reporter?

11 COURT REPORTER: Yes.

12 MR. BLACKWOOD: Let me ask you to look at
13 Exhibit A which is the J memo.

14 MR. ADAMS: Oh.

15 MR. BLACKWOOD: And we have obtained
16 Exhibit A as part of our investigation into this
17 matter, and the J memo is an attempt to summarize what
18 the trial team is finding with regard to the case, and
19 to suggest a particular action and approval by higher
20 ups. Is that accurate?

21 MR. ADAMS: Yes. I mean, yes. It stands
22 for justification. Every case that the Voting section
23 brings, you produce a justification memorandum.

24 MR. BLACKWOOD: Okay. Now this memorandum
25 has, indicates that it is from Chris Coates, Robert

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1 Popper, yourself and Spencer Fisher. Is that right?

2 MR. ADAMS: That's what it says.

3 MR. BLACKWOOD: And is it fair to say at
4 that time that each of those four individuals
5 including yourself supported the recommendation of the
6 J memo?

7 MR. ADAMS: It's customary practice in the
8 Department that you do not attach your name to a
9 document that you disagree with.

10 MR. BLACKWOOD: Okay. And each of those
11 four individuals, Mr. Coates, Mr. Popper, yourself and
12 Mr. Fisher, you're all career employees, correct?

13 MR. ADAMS: That is correct.

14 MR. BLACKWOOD: Did -- In preparing the
15 lawsuit, did the Department consider any criminal
16 charges?

17 MR. ADAMS: Again, that's something I'm
18 not going to answer.

19 MR. BLACKWOOD: Okay. The fact is that
20 you sought, the suit sought, remedies under Section
21 11(b) of the Voting Rights Act. Right?

22 MR. ADAMS: 11(b) is a civil provision in
23 the Voting Rights Act of 1965.

24 MR. BLACKWOOD: In preparing the suit, did
25 you all, you the trial team, have any concerns about

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1 the First Amendment having any implications in a
2 Section 11(b) case?

3 MR. ADAMS: Well, I'll speak broadly, but
4 not specifically. The First Amendment, this is of
5 course an issue in any case involving elections,
6 politics, speech. Where the boundaries of the First
7 Amendment concerns start and stop is often a very
8 difficult issue. And I don't want to belabor the
9 jurisprudence here, but you'd clearly have to consider
10 First Amendment issues when you're dealing with any
11 form of political speech or activity.

12 If you look at the U.S. v. Brown case, for
13 example, which the Fifth Circuit affirmed and I'll get
14 to in greater detail later, the defendants in the U.S.
15 v. Brown case asserted a First Amendment defense to
16 their blatant racial discrimination against white
17 voters in Mississippi. So often times, or at least in
18 that instance, the assertion of the First Amendment
19 was suspect from the beginning, but nonetheless they
20 asserted it.

21 The Fifth Circuit Court of Appeals took up
22 the First Amendment defense in that particular case
23 and said it was meritless that when you break the law,
24 in and of itself, when you're breaking the law through
25 an act that is separate from the First Amendment, that

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1 is satisfactory to proceed against that breaking of
2 the law and the First Amendment concerns or defenses
3 exist outside of the civil action to remedy the law-
4 breaking. And in that particular case, the Fifth
5 Circuit Court of Appeals agreed with the position of
6 mine and held that there was no First Amendment
7 defense to stop what Ike Brown was doing in
8 Mississippi.

9 MR. BLACKWOOD: The defendants named in
10 the Black Panther case included the two individuals at
11 the polling place, King Samir Shabazz and Jerry
12 Jackson. But the complaint also pursued action
13 against the party itself, the New Black Panther Party,
14 and Malik Zulu Shabazz. What was the basis of naming
15 the latter two in this lawsuit?

16 MR. ADAMS: Well, I would turn -- I would
17 suggest you look at the complaint. The complaint
18 makes allegations that, for example, Malik Zulu
19 Shabazz, who is the national party chairman of the New
20 Black Panther Party, was responsible for organizing
21 the deployment and, more importantly, endorsed the use
22 of the weapon after the deployment occurred and to
23 paraphrase the allegation that he was aware the weapon
24 was used and that's just how it had to be. And for
25 somebody to assent to that sort of illegal behavior as

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1 the chairman of an organization would tend, and as Mr.
2 Katsas testified to you, create an agency liability
3 for Shabazz.

4 The organization is a similar situation.
5 If you look at the complaint, you'll see that the same
6 agency principles were discussed in the complaint.
7 And for -- they were addressed -- the Panthers were
8 dressed in a trade dress of the organization. The
9 Panthers had announced before the election -- I
10 believe the week before the election, October 28th
11 perhaps -- that they were going to have a nationwide
12 deployment of 300 Panthers at polls. And this was on
13 the Black Panther webpage. It's probably still there
14 if someone looks.

15 So when you have an organization, whether
16 it's the KKK or the Black Panthers or the Aryan
17 Nation, announcing before an election that they're
18 going to do X and then on Election Day X occurs, as
19 Mr. Katsas testified, it might create agency liability
20 for that organization.

21 MR. BLACKWOOD: In an interview that Malik
22 Zulu Shabazz gave on Fox News several days after the
23 election, he indicated that the reason Black Panther
24 members were at the polling place and armed was
25 because of the presence of skinheads and white

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1 supremacists. Did you all look into those
2 allegations?

3 MR. ADAMS: Well, that's one of the
4 questions about the extent and nature of the
5 Department's investigation I will not answer. But I
6 can say that no credible public information has ever
7 appeared to establish there were skinheads.

8 If you listen to that interview and you
9 may get to this in your question, your next question,
10 Mr. Malik Shabazz said on Fox News that the use of the
11 weapons, I believe, was an emergency response, that
12 again he was endorsing the behavior of the Panthers on
13 Election Day in Philadelphia. So you have him on
14 national television saying that he was involved in
15 this incident in Philadelphia in one way or another.

16 MR. BLACKWOOD: In the J memo, it's
17 indicated that you actually talked to Malik Zulu
18 Shabazz. Is that accurate?

19 MR. ADAMS: Well, the J memo probably says
20 that. I haven't looked at it for a long time. But I
21 won't dispute that.

22 MR. BLACKWOOD: Okay. Did you actually
23 talk to him and what was said?

24 MR. ADAMS: I did talk to him.

25 MR. BLACKWOOD: And did he defend the

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1 presence of the Panthers at the polling place?

2 MR. ADAMS: Yes, and he said the weapon
3 was necessary.

4 MR. BLACKWOOD: In some of your recent
5 writings, you indicated that there were prior acts of
6 the Black Panthers at polling places during the
7 primaries. Could you tell us about that?

8 MR. ADAMS: I can, and let me stress that
9 this is very preliminary and this is also in the
10 public domain if anybody cares to actually do some
11 work and look at it. There were indications, and I
12 will concede that indications as not admissible
13 evidence, but indications are where every single case
14 starts.

15 There were indications that the Black
16 Panthers were also doing the same thing to supporters
17 of Hillary Rodham Clinton in the primaries, especially
18 and particularly I believe in March and April of 2008.

19 Those were simple indications that certainly would
20 have been followed up on at some point by me, because
21 I don't ever leave any stone unturned on these kind of
22 cases if it had gone forward. Had there been a
23 beginning of this activity going back to the
24 primaries, it would have been very, very significant
25 from my view to what was happening on Election Day.

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1 MR. BLACKWOOD: When did you become aware,
2 though, of alleged acts during the primary? Before
3 the prosecution of this case?

4 MR. ADAMS: I can't -- no, certainly not
5 before. It never came to my attention before the
6 prosecution of this case. But at some point in 2009 I
7 picked up on some information that indicated this
8 behavior was happening well before November 4th.

9 MR. BLACKWOOD: Now, on their website, the
10 date is in question, but the Black Panthers allegedly
11 renounced the acts that occurred on Election Day and
12 also suspended Jerry Jackson and King Samir Shabazz.
13 Was there any indication that that occurred, these
14 acts occurred, directly as a result of the election,
15 you know, right after Election Day, or that it
16 occurred only after the lawsuit was filed?

17 MR. ADAMS: I think it only occurred after
18 we started calling Malik Zulu Shabazz to talk to him.
19 I mean, that's my view.

20 MR. BLACKWOOD: Do you -- One of those
21 comments renouncing the event was dated anyway
22 Election Day. Do you have any indication whether that
23 actually occurred on Election Day or whether it was
24 posted some time and just back dated?

25 MR. ADAMS: Whether or not this

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1 information was on the web for the public to consume
2 on Election Day or shortly thereafter or on January
3 4th when the lawsuit was filed, I cannot conclusively
4 answer with certainty.

5 MR. BLACKWOOD: Okay. At this part, I'd
6 like to walk through some of the chronology of the
7 Panther case and we have up on the screen some of the
8 more important dates but just -- You should have it
9 also in front of you. But let me walk you through.

10 First off, the suit gets filed. The
11 defendants are served, but they don't file an answer.

12 Correct?

13 MR. ADAMS: That's correct. They didn't
14 file an answer. There's no answer in the public
15 record.

16 MR. BLACKWOOD: And the failure to file an
17 answer under Federal Rule 8 means the liability is
18 conceded, right?

19 MR. ADAMS: All facts as pled are taken in
20 favor of the plaintiff in that circumstance.

21 MR. BLACKWOOD: As indicated, on April
22 28th, the record that we have received indicates that
23 notices were sent to the defendants of the
24 Department's intent to seek a default judgment. But
25 cross reports indicated something occurred on April

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1 29th with regard to an objection by Mr. Rosenbaum.
2 Can you tell us about that?

3 MR. ADAMS: I really can't. I mean,
4 again, I'm not going to discuss the internal
5 deliberations that went on and particularly this time
6 period about the merits of those deliberations. I'm
7 not going to talk about what the arguments were on
8 each side. I just -- As I've stated in my opening,
9 while I may not concede that that's deliberative
10 process at this point, I'm nonetheless going to
11 respect the Department's position that that's
12 deliberative process.

13 MR. BLACKWOOD: All right. This is part
14 of a press report that occurred in the *Weekly*
15 *Standard*. Let me just ask factually. Did Mr.
16 Rosenbaum note an objection that date?

17 MR. ADAMS: Well, I think Mr. Perez told
18 you that he did, and I'd have no reason to differ with
19 that testimony of Mr. Perez.

20 MR. BLACKWOOD: And was that the first
21 objection noted by anyone higher up?

22 MR. ADAMS: I'm not sure if April 28th is
23 the date. But suffice to say we were proceeding as
24 the public record shows, and the court files, we were
25 proceeding along merrily up until this point.

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1 MR. BLACKWOOD: Okay. The press reports
2 also indicate that that date, the date that Mr.
3 Rosenbaum first raised an objection, the trial team
4 prepared a response. Was this in the form of a
5 memorandum or an email?

6 MR. ADAMS: Probably both.

7 MR. BLACKWOOD: Did you ever receive a
8 response?

9 MR. ADAMS: I never received a
10 communication from Mr. Rosenbaum.

11 MR. BLACKWOOD: Now your position is that
12 you're not going to tell us what the basis of the
13 objections were.

14 MR. ADAMS: Well, I mean listen. You had
15 the Assistant Attorney General for Civil Rights come
16 here and tell you a whole litany of things that
17 justified dismissing the case, facts in law, First
18 Amendment, agency, all those things. Let's just put
19 it this way. Those are not new arguments to me.

20 MR. BLACKWOOD: Okay. The press reports,
21 that same article that I referenced before from the
22 *Weekly Standard*, also indicated that, right after Mr.
23 Rosenbaum made his objections, after a response was
24 prepared by the trial team, there was "two days of
25 yelling." Can you confirm that?

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1 MR. ADAMS: Yelling was part of it. There
2 were other things, profanity, tossing of papers at
3 each other, all-nighters.

4 MR. BLACKWOOD: All-nighters by the trial
5 team?

6 MR. ADAMS: Correct.

7 MR. BLACKWOOD: Defending their position?

8 MR. ADAMS: Correct.

9 MR. BLACKWOOD: In any case, on May 1st,
10 the motion to extend the deadline was filed to
11 evidently give more time, is that correct, for the
12 Department to consider what it's going to do?

13 MR. ADAMS: The face of the pleading, I
14 believe, states that, due to the weighty issues
15 involved in this case, we need more time to consider
16 what would be an appropriate remedy.

17 MR. BLACKWOOD: Okay. So the Department
18 buys itself an extra 15 days.

19 MR. ADAMS: That's right.

20 MR. BLACKWOOD: And during that 14 days
21 what occurs?

22 MR. ADAMS: More of the same.

23 MR. BLACKWOOD: Well, let me show you --
24 You should have in front of you what's marked as
25 Exhibit B, which is a remedial memorandum dated May 6,

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1 2009 which we have received as part of our
2 investigation. Is that an accurate copy of that
3 memorandum?

4 MR. ADAMS: I suppose it is. It doesn't
5 look -- I mean I have no reason to dispute its
6 accuracy.

7 MR. BLACKWOOD: Okay. Again, on the
8 front, it indicates that Mr. Coates, Mr. Popper,
9 yourself and Mr. Fisher all join in support of the
10 memorandum. Is that correct?

11 MR. ADAMS: As I stated, it is customary
12 practice in the Department to not attach somebody's
13 name to a document with which they disagree.

14 MR. BLACKWOOD: That memorandum, if you
15 won't talk about it, the public can at least review
16 the memorandum, and it points out or addresses a
17 variety of arguments including First Amendment
18 concerns. One of the matters that Mr. Perez testified
19 about was Rule 11. And he made public comments before
20 Congress indicating that there were Rule 11 concerns.

21 Could you describe for the public what Rule 11 is and
22 why that might have caused consternation among the
23 trial team?

24 MR. ADAMS: Yes. This is an issue near
25 and dear to my heart. Rule 11, any lawyer knows, is

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1 an ethical obligation to only sign a complaint or a
2 pleading that can be supported by the facts of the
3 law. It's one of the first things you learn in law
4 school. And most lawyers, in my experience, and all
5 lawyers in my experience at the Department, take it
6 very, very, very seriously. It's one of the most
7 important parts of the whole Rules of Civil Procedures
8 in my view.

9 When I heard the testimony that Rule 11
10 would not support going forward in this case, I -- my
11 blood boiled because I've never done anything like
12 that in my life and never will. And for someone to
13 assert that a pleading we signed and something this
14 important could not be ethically supported was a very
15 low moment. And it is false.

16 MR. BLACKWOOD: Has anybody at any time
17 during your time at the Department, with regard to the
18 Black Panther case, ever to your face accused you or
19 any other members of the trial team that you're aware
20 of of having violated Rule 11?

21 MR. ADAMS: Of course not. And there are
22 so many procedures in place. For example, if Rule 11
23 was at risk, why wasn't there an OPR investigation of
24 Christian Adams and Christopher Coates and Robert
25 Popper? There's an OPR investigation with somebody

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1 else, but it's not us. If there's a Rule 11 violation
2 here, then bring it on because we didn't do anything
3 wrong.

4 MR. BLACKWOOD: One of the things that you
5 have mentioned in the two articles that you wrote
6 immediately or last week or so, one with the
7 *Washington Times* and then *Pajamas Media*, you mentioned
8 an incident where the remedial memo or other memos
9 were thrown at Steven Rosenbaum by Chris Coates. Can
10 you tell us about that?

11 MR. ADAMS: Well, I could. Again, I
12 hardly consider profanity and assaults to be -- and
13 I'm using the term "assault" in the lightest of terms
14 -- it's a piece of paper -- could be considered
15 deliberative process. It's kind of a lack of
16 deliberation. Mr. Rosenbaum told Mr. Coates, and I'm
17 sure Mr. Coates would testify under oath if he were
18 able to comply with the subpoena, that he hadn't even
19 read these memos.

20 MR. BLACKWOOD: He Rosenbaum.

21 MR. ADAMS: That's correct. Before he
22 began to argue against this case. And Coates was so
23 outraged. He said, "That's bullshit. How dare you.
24 That's bullshit." And Coates threw the memo at him
25 and said, "You can't do that."

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1 MR. BLACKWOOD: Who is Steve Rosenbaum?

2 MR. ADAMS: At the time he was the Acting
3 Deputy Assistant Attorney General for Civil Rights.

4 MR. BLACKWOOD: Had he been assigned to
5 the voting rights section any time before that?

6 MR. ADAMS: Fifteen years ago he was in
7 the voting -- I think at one point he was an acting
8 chief. But I'm not sure about the chronology.

9 MR. BLACKWOOD: But immediately before
10 this election, before 2008, was Steve Rosenbaum in the
11 voting rights section?

12 MR. ADAMS: Yes, I think he was fifteen
13 years ago.

14 MR. BLACKWOOD: Okay.

15 MR. ADAMS: Maybe 14, 16. But I wasn't
16 there. I can't tell you exactly when.

17 MR. BLACKWOOD: To what section was he
18 assigned during the election?

19 MR. ADAMS: At the time?

20 MR. BLACKWOOD: Yes.

21 MR. ADAMS: Okay. He is currently the
22 Housing Chief in the housing section, Housing and
23 Civil Enforcement, which has, of course, nothing to do
24 with voting, and has been in housing for a long time.
25 But I don't know exactly when he started.

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1 MR. BLACKWOOD: Okay. Now the incident
2 you mentioned about the throwing of the memorandum,
3 were you there?

4 MR. ADAMS: I was not but, as I said, if
5 Mr. Coates were allowed to comply with the subpoena
6 and if Mr. Popper was sitting in this chair right now,
7 I have absolute certainty that they would say this,
8 and it's not hearsay that Mr. Coates and Mr. Popper
9 told me this. It's hearsay what happened. But it's
10 not hearsay that I was told this.

11 MR. BLACKWOOD: During this period from
12 May 1st when the case got extended until May 15th when
13 the response is due to the court, did you become aware
14 that the appellate section was asked to review the
15 case as well?

16 MR. ADAMS: Well, that's one of the
17 questions that will deal with something involving the
18 deliberative process that I'll not answer.

19 MR. BLACKWOOD: Okay. Before you, you
20 should have Exhibit C which is another document that
21 we received through our investigation, which purports
22 to be an email from Diana Flynn, also includes
23 supporting information from Marie McElderry. Do you
24 know who those individuals are?

25 MR. ADAMS: Diana Flynn is currently, as

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1 far as I know, the Chief of the Appellate section. I
2 don't know who the other person is.

3 MR. BLACKWOOD: Do you know whether Diana
4 Flynn is a career employee?

5 MR. ADAMS: Yes.

6 MR. BLACKWOOD: In that memorandum it
7 states at the beginning of numbered paragraph one, and
8 this is from the Appellate section --

9 MR. ADAMS: Can I interrupt you?

10 MR. BLACKWOOD: Yes.

11 MR. ADAMS: The answer to my last question
12 simply said whether I knew she was a career employee.

13 MR. BLACKWOOD: Yes.

14 MR. ADAMS: That I do know whether or not
15 she is and the answer is, yes, she is a career
16 employee.

17 MR. BLACKWOOD: Okay.

18 MR. ADAMS: I've read too many
19 depositions.

20 MR. BLACKWOOD: All right. Going back to
21 Exhibit C, which purports to be a memorandum, an
22 email, from the Appellate section. Ms. Flynn
23 indicates "We can make a reasonable argument in favor
24 of default relief against all defendants and probably
25 should given the unusual procedural situation."

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1 During that time between May 1st and May 15th, did you
2 become aware of the opinion of the Appellate section?

3 MR. ADAMS: I have seen this document
4 before.

5 MR. BLACKWOOD: All right. But at that
6 time did you -- were you aware of it?

7 MR. ADAMS: Yes.

8 MR. BLACKWOOD: At that point then, you
9 have the trial team, Mr. Coates, Mr. Popper, yourself,
10 and Mr. Fisher, and also now Diana Flynn and Marie
11 McElderry. All six are career employees and all six
12 say the case should go forward. Is that correct?

13 MR. ADAMS: I won't dispute that.

14 MR. BLACKWOOD: Is it unusual to have six
15 career employees overruled like that?

16 MR. ADAMS: Well, if you listen to the
17 press accounts from the Bush Administration, you think
18 it happened every day. But it really didn't. It is
19 unusual.

20 MR. BLACKWOOD: Have you ever heard of the
21 Appellate section reviewing a case that was in a
22 default procedure or a default status?

23 MR. ADAMS: In my experience, no. And I'm
24 quite confident, if Christopher Coates was sitting in
25 this chair and were able to comply with the subpoena,

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1 he will tell you the same thing. And he's been there
2 since 1996.

3 MR. BLACKWOOD: Was there any indication
4 that anyone higher up than Loretta King or Steve
5 Rosenbaum was making the decision to override the six
6 career attorneys who said the case should go forward?

7 MR. ADAMS: None that I had any indication
8 of.

9 MR. BLACKWOOD: When you were told, or the
10 trial team was told, to dismiss the claims as to three
11 of the defendants, was any reason given?

12 MR. ADAMS: Well, I mean, listen. You had
13 Assistant Attorney General Perez come and tell you
14 what he told you in his testimony here. And, as I
15 indicated, those were not unfamiliar arguments to me.

16 MR. BLACKWOOD: As of today, you're not in
17 the -- or don't feel free to testify exactly what you
18 were told at that time.

19 MR. ADAMS: I will not.

20 MR. BLACKWOOD: During this process that
21 went on between May 1st and May 15th, were there
22 emails that you saw, documents back and forth,
23 discussing the merits of the case?

24 MR. ADAMS: Well, that gets back into
25 things I won't testify about.

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1 MR. BLACKWOOD: I'm not asking about the
2 substance. But is there a paper trail out there?

3 MR. ADAMS: There is a -- there are large
4 volumes of documents about this case.

5 MR. BLACKWOOD: Okay. You don't have
6 those documents. Is that correct?

7 MR. ADAMS: No, sir.

8 MR. BLACKWOOD: They're back with the
9 Department. Is that right?

10 MR. ADAMS: Or wherever else they might
11 be. You know, they may be at the Assistant's office.

12 I have no -- I mean, they're mostly electronic. I
13 mean, we reduced everything. The Department has this
14 wonderful software package called Summation where we
15 crank everything into Summation so it can be text
16 searchable.

17 Now there was a lot of video, obviously,
18 if you look on the web. And those don't lend
19 themselves to Summation quite as easily. But,
20 nonetheless, everything was converted to electronic
21 because, when you go to trial, you want to have
22 everything electronic. And you might as well do it at
23 the very beginning.

24 There's no sense in saying a month before
25 trial "Let's convert everything electronically." We

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1 were cranking things electronic as we got it.

2 MR. BLACKWOOD: Okay. So that would
3 include -- This electronic database, if you will,
4 would have not only the information about the
5 substance of the case but also the communications back
6 and forth between the trial team and higher ups.

7 MR. ADAMS: Probably, but I'm not sure
8 about the latter part of your question. About the
9 communications, I'm just not sure. Those will be
10 electronic but maybe not in that database.

11 MR. BLACKWOOD: During the decision making
12 process about the Panther case, did you hear that
13 anyone at the Department was consulting with any
14 outside groups such as the NAACP Legal Defense Fund?

15 MR. ADAMS: Well, I did, but we were also
16 consulting with outside groups. We visited the
17 Southern Poverty Law Center. We visited the Anti-
18 Defamation League and would have probably hired them
19 as an expert in this case if it had gone forward.
20 Because, of course, the Black Panthers, they're a
21 militant, anti-Semitic group. They're not just black
22 nationalists. They hate Jews. And the ADL has an
23 extensive database on this organization.

24 MR. BLACKWOOD: But the -- Your
25 communications with the ADL and the Southern Poverty

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1 Law Center, I assume, were related to the substance of
2 the case.

3 MR. ADAMS: That's correct.

4 MR. BLACKWOOD: Do you know whether
5 anybody was consulting as to whether to proceed on the
6 merits of the case with the NAACP Legal Defense Fund?

7 MR. ADAMS: Well, listen. This is not
8 firsthand. But I was told by section management that
9 NAACP members or staffers were talking with a voting
10 section attorney in March of 2009 and asking, "When is
11 this case going to get dismissed" which, of course, is
12 interesting to hear for the first time that someone's
13 even thinking about dismissing the case that you're in
14 the middle of building. And that was -- It seemed
15 strange. But it didn't really give me much pause
16 other than to think that's a really strange request.

17 MR. BLACKWOOD: Well, all press reports
18 indicated a conversation between Kristen Clarke of the
19 Legal Defense Fund and a Laura Coates of the
20 Department. Who is Laura Coates?

21 MR. ADAMS: She is a line attorney in the
22 voting section, no relation to Christopher Coates.

23 MR. BLACKWOOD: And, according to the
24 press reports, Laura Coates reported this contact,
25 this conversation, with Kristen Clarke of the NAACP

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1 Legal Defense Fund "to her superiors." Do you know
2 whether that occurred?

3 MR. ADAMS: I do. And, if Mr. Coates were
4 able to comply with his subpoena and testify under
5 oath, I'm quite confident that he would be able to
6 share the full details of those communications as
7 conveyed to him.

8 MR. BLACKWOOD: But you're not in the
9 position to do that.

10 MR. ADAMS: Other than they existed and
11 you accurately -- and that I characterized them as a
12 request as to when the case was going to be dismissed
13 as conveyed to me by Mr. Coates.

14 MR. BLACKWOOD: After the decision is made
15 -- And let me back up for a second about the merits of
16 the case or what happens -- the Department orders the
17 trial team to dismiss the case as to three of the
18 defendants. Correct?

19 MR. ADAMS: That's correct.

20 MR. BLACKWOOD: That's Jerry --

21 MR. ADAMS: That's in the public
22 pleadings.

23 MR. BLACKWOOD: Right.

24 MR. ADAMS: That's what happened.

25 MR. BLACKWOOD: Okay. And also the

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1 injunctive relief that was sought was decreased from
2 what was sought in the complaint to the ultimate
3 relief that was sought.

4 MR. ADAMS: I won't dispute that.

5 MR. BLACKWOOD: Okay. And those are
6 direct orders from Steve Rosenbaum and Loretta King?

7 MR. ADAMS: Those are direct orders from
8 Christopher Coates to me on May 15th to prepare those
9 pleadings. And, as I said, if Mr. Coates were allowed
10 to testify about what the orders were, he would be
11 able to corroborate what I'm telling you today.

12 MR. BLACKWOOD: Did he indicate who he
13 received the orders from?

14 MR. ADAMS: Well, he put the phone down
15 and said what the orders were and I seemed to recall
16 it came from Rosenbaum. But I might be wrong. But
17 Coates would be able to answer that question.

18 MR. BLACKWOOD: Something you just
19 mentioned struck me. You were told that on May 15th,
20 the day that the filings were due?

21 MR. ADAMS: A couple hours before they
22 were due.

23 MR. BLACKWOOD: Isn't that slightly
24 unusual to have direction like that on a case of this
25 magnitude, to get the decision the same day that the

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1 pleading was due?

2 MR. ADAMS: I'll differ slightly. The
3 Department frequently has tight deadlines. There is
4 so much litigation going on, litigation I would be
5 doing. And at this time period Rosenbaum was
6 reviewing absolutely everything that Coates was doing,
7 everything. And so he had a heavy workload because he
8 was essentially acting in large status as the chief of
9 the Voting section in place of Coates. So I can
10 understand that Mr. Rosenbaum was probably backed up.

11 MR. BLACKWOOD: All right. What you just
12 mentioned, that Mr. Rosenbaum was monitoring Mr.
13 Coates, when did that begin?

14 MR. ADAMS: After the Inauguration and Mr.
15 Rosenbaum moved into that position. If Mr. Coates
16 were here to comply with the subpoena, I'm quite sure
17 he would tell you all about that particular
18 development.

19 MR. BLACKWOOD: All right. So it wasn't
20 just the Black Panther case that precipitated this
21 dispute or being reviewed. It was shortly after the
22 election that Mr. Rosenbaum was overseeing Mr. Coates
23 -- how do you put it -- rather closely or excessively
24 closely?

25 MR. ADAMS: That's the gentle way.

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1 MR. BLACKWOOD: Okay.

2 MR. ADAMS: Yes.

3 MR. BLACKWOOD: Literally every piece of
4 paper issued?

5 MR. ADAMS: Every single paper that would
6 go to court would have to be reviewed by Mr.
7 Rosenbaum, which was a departure from the previous
8 eight years, at least, the previous four years in my
9 personal experience. No front office in my mind would
10 have ever had the time to do that sort of thing, but
11 they found it.

12 MR. BLACKWOOD: After the dismissal of the
13 Black Panther case on May 15th or, I won't say
14 dismissal of the case, but dismissal as to three, the
15 reduction of the injunctive relief sought, did Mr.
16 Coates' position worsen?

17 MR. ADAMS: Of course.

18 MR. BLACKWOOD: Tell us how.

19 MR. ADAMS: He was, as I write in my
20 *Pajamas* video piece, all of his power was slowly
21 sucked away. He couldn't make decisions about to whom
22 to assign a case. He couldn't make decisions about
23 who would review a case, which deputy. He had a very
24 difficult existence after the dismissal of the Black
25 Panther case and I'm quite certain that, if he were

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1 allowed to comply with his subpoena, he would fully
2 inform the Commission of what happened.

3 MR. BLACKWOOD: Just so I'm clear, it's
4 almost like a two-step process. After the
5 Inauguration, Steve Rosenbaum also steps up the
6 monitoring of Mr. Coates. Every piece of paper and
7 litigation has to be reviewed by him. And then after
8 the Black Panther case dismissal, all of a sudden,
9 his duties start to disappear as well.

10 MR. ADAMS: Yes. And it's far more
11 extensive than this and I'm not going to fully get
12 into it. I'm not going to speak for Mr. Coates. But
13 as someone who admired his 30 some career years in
14 Voting Rights, it obviously was disappointing to see,
15 because nobody knew this area of the law better than
16 Mr. Coates except perhaps the current Chief, whose
17 results are also very good.

18 And so Mr. Coates had a very difficult
19 time. And I'm sure he would testify about precisely
20 why he thinks this was happening if he were allowed to
21 testify.

22 MR. BLACKWOOD: Certainly within the
23 Department and the line attorneys, there must have
24 been some explanation that was circulating as to why
25 this was happening to Mr. Coates.

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1 MR. ADAMS: Well, I don't -- I can't
2 quantify that. I mean there's always talk in an
3 office, so...

4 MR. BLACKWOOD: How about your duties?
5 Did they change after the dismissal?

6 MR. ADAMS: Not so much. I was litigating
7 a great case for the benefit of African Americans in
8 Florida called United States v. Lake Park, which is a
9 redistricting case or vote dilution case under Section
10 2 in the Southern District of Florida. And I had a
11 wonderful summer litigating that case after the Black
12 Panther dismissal, you know, getting ready for
13 depositions, investigations, settlement negotiations,
14 throughout the fall. So I had a very good time
15 working on other matters.

16 MR. BLACKWOOD: Other than the Ike Brown
17 case and the Black Panther case, all your other cases
18 dealt with protecting minority rights. Is that
19 correct?

20 MR. ADAMS: That's correct. I brought
21 cases to protect Hispanic voters, language-minority
22 voters. I brought cases in United States v.
23 Georgetown County, which is a school board down
24 therethat the county is almost 40 percent African
25 American and no school board members were getting

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1 elected. We sued Georgetown County.

2 I've done election coverages all over the
3 country for the benefit of African Americans.

4 United States v. Lake Park was another
5 case to benefit African Americans who were over 40
6 percent of the population of Lake Park and had never
7 elected a candidate since 1923 when the town was
8 founded. And we brought that case and settled that
9 case also.

10 MR. BLACKWOOD: During this time
11 initially, Loretta King and Steve Rosenbaum are
12 serving in acting positions. Correct? I mean as
13 acting --

14 MR. ADAMS: Under the Vacancy Reform Act,
15 they were serving in acting positions.

16 MR. BLACKWOOD: At what point did somebody
17 actually step into it, a political appointee step in
18 full-time step into the position of supervisor?

19 MR. ADAMS: I don't know exactly when.

20 MR. BLACKWOOD: Roughly when?

21 MR. ADAMS: Fall.

22 MR. BLACKWOOD: And who became that? Took
23 that position?

24 MR. ADAMS: It was Assistant Attorney
25 General Perez, I think, was confirmed in the fall. So

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1 that would have replaced Loretta King.

2 MR. BLACKWOOD: Okay. How about Steve
3 Rosenbaum?

4 MR. ADAMS: That's harder for me to pick.
5 I mean, maybe July, August, September, October a new
6 DAAG was appointed, Julie Fernandes.

7 MR. BLACKWOOD: Okay. And DAAG is what?

8 MR. ADAMS: Deputy Assistant Attorney
9 General.

10 MR. BLACKWOOD: So she serves under Perez.

11 MR. ADAMS: That's correct.

12 MR. BLACKWOOD: On January 4, 2010, there
13 was a going-away party for Christopher Coates,
14 correct?

15 MR. ADAMS: That's correct.

16 MR. BLACKWOOD: Were you there?

17 MR. ADAMS: I was.

18 MR. BLACKWOOD: Who else was there? I
19 mean, by that, any supervisors?

20 MR. ADAMS: Yes. Assistant Attorney
21 General Perez was there and DAAG Fernandes was also in
22 attendance. I should note, though, that before Coates
23 -- and I'm sure you're going to ask about his going-
24 away speech -- before he got to his going-away speech
25 Assistant Attorney General Perez had to catch a plane.

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1 So he left the room. But it tells you that Mr.
2 Coates was about to deliver the speech in front of
3 both of those individuals.

4 MR. BLACKWOOD: Well, I do have some
5 questions about his speech. My understanding is that
6 he talked about the two voting rights cases that were
7 brought by the Department involving black defendants
8 and he indicated that he had been criticized by those
9 within the Department. And he had been, correct?

10 MR. ADAMS: I have a long list here that
11 I'd like to get to about this very matter of many,
12 many matters where there was hostility expressed
13 toward a race-neutral enforcement of law. But you're
14 summarizing one of them.

15 MR. BLACKWOOD: Okay. Then we'll get to
16 that in just a second. So the public can follow
17 along, he did mention two specific cases involving
18 cases in which the defendant was black and the victims
19 were white, first the Black Panther case and then
20 what's called the Ike Brown case in Noxubee,
21 Mississippi.

22 To that, let me read an excerpt of
23 something that was released as allegedly a paraphrase
24 of Mr. Coates' statement on his going-away party and
25 ask if you can confirm whether it was said or not.

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1 "Selective enforcement of the law including the Voting
2 Rights Act on the basis of race is just not fair and
3 does not achieve justice. I have had many discussions
4 concerning these cases. And one of my discussions
5 concerning the Ike Brown case, I had a lawyer say he
6 was opposed to our filing such suits. When I asked
7 why, he said that only when he could go to
8 Mississippi, perhaps 50 years from now, and find no
9 disparities between the socioeconomic levels of black
10 and white residents might he support such a suit. But
11 until that day, he did not think that we should be
12 filing voting rights cases against blacks or on behalf
13 of white voters." Did you hear that statement?

14 MR. ADAMS: Yes, I did. And there's more.

15 MR. BLACKWOOD: Well, in your experience
16 at the Department, have you had similar statements
17 from -- have you heard similar statements from
18 attorneys about a reluctance to pursue voting rights
19 cases in which the defendants are black or the victims
20 are white?

21 MR. ADAMS: Over and over and over again.

22 MR. BLACKWOOD: I sense that you -- Well,
23 since you just mentioned a list, why don't you tell us
24 about it?

25 MR. ADAMS: Okay. Mr. Coates was told

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1 that particular instance on or around when they were
2 doing coverage in Noxubee in 2003. If Mr. Coates were
3 here, he could tell you about this firsthand. But it
4 was conveyed to me by Mr. Coates.

5 In the 45 years since the Voting Rights
6 Act was passed in 1965, the Department has brought
7 hundreds and I believe hundreds of cases to protect
8 African Americans, language, minorities and so forth.

9 There are only two cases that the Department has
10 brought to protect white voters and have African-
11 American defendants. One was the New Black Panther
12 case and one was U.S. v. Ike Brown. Those two cases
13 provide the illustrations that I'm going to go through
14 to make sure that all of these particular instances
15 are out in the record and as to why I came to the
16 conclusion in the my article that this is open and
17 pervasive.

18 For example, and this is one of many, an
19 attorney told Mr. Coates after the U.S. v. Ike Brown
20 case was filed. He came to Mr. Coates and attorneys,
21 people, refused to work on the case. They literally
22 said, "I'm not going to work on that case." I refuse
23 to work on that case.

24 MR. BLACKWOOD: How can that happen? And
25 as a supervisor he had to accept that?

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1 MR. ADAMS: This is how the Civil Rights
2 division is. Listen. The Housing section won't even
3 have an office picnic because the word "picnic" is
4 viewed offensive. Okay. This is the Civil Rights
5 division. Anybody who's been there can tell you this,
6 and anyone who's there now knows this is the truth.
7 You just work around it. You work around it.

8 So, anyhow, this person comes to Mr.
9 Coates and he says, "I'm not going to work on the case
10 because I didn't join the Voting section to sue black
11 people." So this happened right after the case was
12 filed. People refused to work on the matter.

13 One of the most compelling examples of
14 this hostility, and I'll get to more conversations in
15 a second, is how the Department refuses to enforce
16 Section 5 of the Voting Rights Act on behalf of white
17 victims. Section 5 is the preclearance provision.
18 It's sort of technical. I understand. But it's what
19 allows the Department to block implementation of
20 voting changes, a very important part of the Voting
21 Rights Act of 1965.

22 But I will guarantee you, in 45 years of
23 this law's existence, not only has there never been an
24 objection on behalf of a white victim, but there
25 hasn't even been the analysis. They don't analyze

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1 this. It isn't done. There's hostility toward even
2 opening up that can of worms.

3 And I'd like to submit for the record this
4 submission. It just came in. This is from Noxubee
5 County, Mississippi, the place where Ike Brown was
6 found to have discriminated against the rights of
7 white voters in 2007. This submission is asking the
8 Department to approve Mr. Brown's right to block
9 voters from voting. That's what this submission is,
10 based on their ideology whether they've supported
11 Republicans.

12 Now the Federal Court in Mississippi found
13 that that particular behavior was indicative of racial
14 intent, an illegal racial intent, and found in favor
15 of the United States. Well, right now, we'll know by
16 July 14th of this year whether or not what I'm saying
17 is accurate about the Department, because this
18 submission should be objected to. The Department
19 should take the ruling in the U.S. v. Brown case and
20 lodge an objection to this.

21 But I'll bet you that's not what's going
22 to happen. And everyone's going to be able to see
23 that they're not going to object to something they
24 should be objecting to.

25 They have a couple of options. They could

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1 preclear it. That would be an embarrassment because
2 the Federal Court already found that it violated the
3 law. They could ask for more information under the
4 statute, but that's a delaying tactic that would only
5 give them until September 14th to decide.

6 They could do what's called a no
7 determination letter, which is essentially a copout
8 saying "Well, the Federal Court stripped you of power
9 to run the election" which they did because he was so
10 bad. "So you can't make this submission right now
11 until you're back in charge." He's still going to
12 have these rules in place in Mississippi after he's
13 back in charge. So the no determination letter would
14 be a copout.

15 Another copout would be a Section 2 case
16 or an offensive attack in Federal District Court
17 against Ike Brown for this submission. That would be
18 to go to the judge with all those higher standards of
19 proof of preponderance of the evidence and a Federal
20 judge. And all those other risks that are involved
21 with going to court in a Section 2 matter, if that
22 Department chooses that, it will be more evidence they
23 are unwilling to lodge an objection under Section 5 to
24 this submission simply because it's white victims.

25 Now how do I know that they're not going

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1 to do this? Because I've talked to the victims in the
2 last week. I've called the people in Noxubee,
3 Mississippi and I've said to them, "Has the Department
4 been calling you like they always do when a Section 5
5 submission comes in, the minorities in the area?"
6 "No, we haven't heard a word." "You're kidding me,
7 right?" They haven't called about this submission
8 which targets them because the Department doesn't want
9 to use Section 5 to protect white voters.

10 And we will know by July 14th whether or
11 not they have lodged an objection to this particular
12 submission. My guess is they'll either say no
13 determination or they'll try to go to Federal District
14 Court, which of course both are copouts because of the
15 risk involved in Federal Court, the higher standards.

16 Mississippi has a whole bunch of loyalty
17 oath litigation that also complicates the issue that I
18 won't discuss here. But it's a loyalty oath and it's
19 a racially-based loyalty oath that the Department
20 could object to tomorrow but won't.

21 MR. BOLEN: Can we submit that?

22 MR. BLACKWOOD: Yes. For the record,
23 Chair?

24 CHAIRPERSON REYNOLDS: It's accepted.

25 MR. BOLEN: Thank you.

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1 MR. BLACKWOOD: Are there any more items on
2 the list that you --

3 MR. ADAMS: Oh yes. There's plenty.

4 MR. BLACKWOOD: This is the time.

5 MR. ADAMS: Okay. At one meeting with the
6 chiefs of the Civil Rights Division, including the
7 Chief of the Criminal Section, Mark Kappelhoff, and
8 other various leaders of the division, Mr. Kappelhoff
9 made a statement where many people were present that
10 -- it talked about the U.S. v. Ike Brown case, and he
11 said, "That's the case that has gotten us into so many
12 problems with civil rights groups."

13 Mr. Coates complained to the Acting
14 Assistant Attorney General Grace Chung Becker, and
15 said that that's a totally inappropriate statement.
16 It is my understanding -- and if Mr. Coates were here
17 to testify, to comply with the subpoena, he would tell
18 you that Mr. Kappelhoff was told that in no uncertain
19 terms should we be criticizing cases that the
20 Department has decided to bring, and, in fact, in this
21 case won.

22 But it shows you that, not only are people
23 in the Department hostile to the case but, for reasons
24 I can't even begin to explain, so is the civil rights
25 community. It is a very short-sighted view.

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1 Now, there's more. In 2003, when the
2 Department first started monitoring the behavior in
3 Mississippi -- in U.S. v. Ike Brown we do election
4 coverage -- a deputy named Robert Kengle, who is the
5 Voting Section Deputy, told Mr. Coates while they were
6 going down traveling, I think at the airport or near
7 it, he said, "Can you believe we are being sent down
8 to Mississippi to help a bunch of white people?"

9 Again, Mr. Coates, if he were allowed to
10 comply with the subpoena, would tell you this and tell
11 you more. Other people told me in the section when I
12 was assigned to the case that -- they came and visited
13 me, and they echoed the statements that you made
14 earlier that, until blacks and whites achieved
15 economic parity in Mississippi, we had no business
16 bringing this case. This obviously was rather
17 discouraging, to hear that, you know, people didn't
18 want to pursue a case that you were on.

19 There's more, and it goes to the
20 J memoranda process in the U.S. v. Ike Brown case, and
21 this is very, very important to understand, because
22 there's other witnesses to this, too.

23 Mr. Coates prepared, in 2003, a
24 J memoranda -- a memorandum about the Noxubee case.
25 He included an extensive discussion as to why a civil

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1 case should be brought against Ike Brown in
2 Mississippi and why it was very good to bring a civil
3 case.

4 The Chief of the Voting Section at that
5 time was a man named Joe Rich. Joe Rich forwarded a
6 recommendation to closely monitor the situation, not
7 sue, closely monitor, and omitted all of the
8 discussion that Mr. Coates made about why a civil
9 lawsuit was the best course of action. He also kept
10 Mr. Coates' name on the recommendation. And, if
11 you'll recall, we talked about how that is a violation
12 of how you do things.

13 The front office found out about this
14 surreptitious removal of the recommendation and
15 exploded on Mr. Rich. Mr. Rich will not be able to
16 deny under oath that he was scolded for this behavior
17 and admitted that he did it. The recommendation was
18 then repackaged and resubmitted with Mr. Coates'
19 original recommendation for civil litigation included,
20 and the case was approved. But this is another
21 example of the hostility from the very inception of
22 the U.S. v. Ike Brown case that was pervasive and
23 open.

24 An employee who worked on the case of
25 United States/Brown -- versus Ike Brown, worked very

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1 hard and very dedicated, and he is a minority. He was
2 relentlessly harassed by Voting Section staff for his
3 willingness as a minority to work on the case of
4 United States v. Ike Brown.

5 Nobody will be able to deny under oath
6 that this occurred, and Mr. Coates, if he were allowed
7 to comply with his subpoena, would describe the
8 harassment of this employee that resulted in an
9 investigation, an employment investigation, of the
10 individuals involved, and I believe, although I am not
11 sure, a reprimand of the individuals involved. There
12 will be written documents about this incident of
13 racial harassment of an employee -- a dedicated
14 department employee who is working on this case.

15 Others assigned to the case were harassed
16 in other ways, such as being badgered and baited about
17 their evangelical religious views or their political
18 beliefs. In these instances, the victimized employee
19 was openly assumed to espouse various political
20 positions hostile to civil rights, simply because he
21 worked on this case.

22 In one instance I had in the presence of
23 other employees, I had to report to Mr. Coates that
24 such harassment was being directed at me, too. There
25 was an aggressive campaign in the media to discredit

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1 the case of United States v. Ike Brown, often quoting
2 former Voting Section attorneys.

3 There was outrage that was pervasive that
4 the laws would be used against the original
5 beneficiaries of the civil rights laws. Some people
6 said, "We don't have the resources to do this. We
7 should be spending our money elsewhere." And that was
8 how they would cloak some of these arguments.

9 Another deputy in the section said in the
10 presence of Mr. Coates, "I know that Ike Brown is
11 crooked, and everybody knows that, but the resources
12 of the division should not be used in this way."

13 To deny that there was open hostility in
14 the Voting Section in regards to the U.S. v. Ike Brown
15 case, and towards the staff who brought the case, to
16 me is the same as denying that we are all sitting here
17 in this room today.

18 There was nothing more plain to me and
19 others working on the case, but we persisted and we
20 won. If you had the time to bring every single person
21 who served in the section before this Commission, and
22 if they testified truthfully, little doubt would
23 remain whether or not open hostility exists towards
24 race-neutral and equal enforcement of the voting laws,
25 particularly in the case of United States v. Ike

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1 Brown. But it won't even take the whole section; just
2 let Mr. Coates testify.

3 MR. BLACKWOOD: Could I ask you, was there
4 ever a rationale given to you that you heard that
5 explained what the opposition to race-neutral
6 enforcement of the law was?

7 MR. ADAMS: There was many rationales, and
8 I discussed this in my Pajamas Media piece. There is
9 a couple. Let me just highlight one I didn't get to
10 yet.

11 I had a visit once from an attorney who
12 said, "You know what? There has never been official
13 discrimination against white people in Mississippi,"
14 which is of course true. There is no question about
15 that. But that doesn't mean you don't enforce the law
16 equally.

17 And I was told that it's -- essentially it
18 was called Senate Factor One. Voting attorneys will
19 recognize the argument that, in the absence of
20 official discrimination, you shouldn't be pursuing
21 these cases. And, of course, this is incredibly
22 offensive to me, and I just persisted. But, you know,
23 they have their arguments, and that's how it goes.

24 MR. BLACKWOOD: Are there any other items
25 on your list?

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1 MR. ADAMS: Yes, there are. On the day
2 that the Black Panther case -- or, excuse me, the day
3 after the election -- it would be November 5, 2008 --
4 I heard discussions in the hallways throughout the
5 Voting Section, or actually in the Housing Section --
6 I'm on the far frontier.

7 The Housing and Voting, believe it or not,
8 are together, on the same floor. I'm on the edge,
9 though, and I could hear discussions about what a joke
10 it was. I heard things such as, "No big deal, the
11 Black Panthers." Or it was a media-generated event,
12 which of course if you remember back to the '60s that
13 is what the old SEGs used to say whenever The New York
14 Times was in town. This was just the media that was
15 causing all of this trouble. Fox News.

16 The irony is, of course, that Housing is
17 where Rosenbaum was. These were his employees. And,
18 you know, I had visits saying there's lots of issues
19 with that case. I reported all of these comments to
20 Mr. Coates and to Robert Popper. And if they were
21 allowed to testify, they would -- they once again
22 would tell the truth about what was happening inside
23 the section.

24 I was shocked that there was skepticism
25 about the Black Panther case, and it deeply troubled

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1 the people on the team. So what we did in an effort
2 to let our colleagues know about how bad these guys
3 were was something that this Commission did.

4 We got the National Geographic video where
5 the Black Panthers are calling for the murder of white
6 babies in their cribs, which I understand you showed
7 here, and calling for the murders of white people, to
8 show the section. We thought, my goodness gracious,
9 fair-minded people will soften their hearts -- will
10 soften their hearts after they see these things.

11 I was not there the day the video played,
12 but I'm told it did not exactly attract a large crowd.

13 COMMISSIONER GAZIANO: Could I interrupt
14 just to let the record reflect that the individual on
15 the New Black Panther tape who was urging
16 AfricanAmericans to kill white babies was one of the
17 defendants.

18 MR. BLACKWOOD: King Samir Shabazz.

19 MR. ADAMS: That's correct. He was the
20 defendant urging -- and Jerry Jackson was right there
21 with him at this particular event when he said it.

22 It became perfectly clear to me that not
23 only was there open hostility toward equal enforcement
24 in a colorblind way of the voting rights laws, but
25 instructions were given in this regard.

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1 I was told by Voting Section management
2 that cases are not going to be brought against black
3 defendants for the benefit of white victims, that if
4 somebody wanted to bring these cases it was up to the
5 U.S. Attorney, but the Civil Rights Division wasn't
6 going to be bringing it. If Mr. Coates were allowed
7 to testify and tell the truth, then you would hear
8 that these instructions were given.

9 MR. BLACKWOOD: That is extremely
10 important -- these instructions. Were you there when
11 they were given?

12 MR. ADAMS: I was -- I was present at one
13 instance when the statement was made, and Mr. Coates
14 gave me a recollection of a second time that
15 instructions were given in a management situation.

16 MR. BLACKWOOD: Okay. The first time,
17 when you were present, who made the statement?

18 MR. ADAMS: Okay. Two things. The
19 statement was that we were in the business of doing
20 traditional civil rights work, and, of course,
21 everybody knows what that means, and helping
22 minorities -- helping -- litigating on their behalf.

23 That statement was made by Julie
24 Fernandes, who is the DAAG. The statement that Mr.
25 Coates -- that was conveyed to me about the U.S.

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1 Attorney would have to do these cases, because we
2 weren't going to do them, was also the same
3 individual, Julie Fernandes, as told to me.

4 MR. BLACKWOOD: Okay. Any other comments?

5 MR. ADAMS: That's all.

6 MR. BLACKWOOD: You mentioned Ms.
7 Fernandes. There is a press report also that, in
8 front of the entire Voting Section, all of the career
9 staff, she explicitly told them that this
10 administration would not be enforcing Section 8 of the
11 National Voter Registration Act. Were you there, and
12 did --

13 MR. ADAMS: I was there --

14 MR. BLACKWOOD: -- she say that?

15 MR. ADAMS: I was there for that, and it
16 -- I can tell you more about that.

17 MR. BLACKWOOD: Would you please? And
18 also explain what Section 8 of the --

19 MR. ADAMS: Okay.

20 MR. BLACKWOOD: -- NVRA is.

21 MR. ADAMS: Motor Voter -- everybody knows
22 Motor Voter -- has a number of provisions. One, for
23 example, Section 7 is that welfare offices have to
24 give out voter application forms. That's Section 7.

25 Section 8 is a general obligation to do

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1 list maintenance. In other words, no dead people can
2 be on the voter rolls, no duplicates, people who have
3 moved away. They have to be taken off the rolls.
4 Okay? So they kind of work hand in hand. You want to
5 have everybody registered to vote, but you don't want
6 to have ineligible people registered to vote. It's a
7 partnership.

8 Section 8 is the ineligible part, and a
9 meeting of the entire Voting Section was assembled to
10 discuss NVRA 8. This occurred in November of 2009.

11 Deputy Assistant Attorney General Julie
12 Fernandes, when asked about Section 8, said, "We have
13 no interest in enforcing this provision of the law.
14 It has nothing to do with increasing turnout, and we
15 are just not going to do it."

16 Everybody in the Voting Section heard her
17 say this. Mr. Coates heard her say it. If he were
18 allowed to comply with the subpoena, he would testify
19 to the exact same thing.

20 MR. BLACKWOOD: And you heard it as well,
21 though.

22 MR. ADAMS: Absolutely. I was shocked.
23 It was lawlessness.

24 MR. BLACKWOOD: Are there any other
25 similar type instructions that you can --

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1 MR. ADAMS: No.

2 MR. BLACKWOOD: -- tell us about? There
3 is one argument that you mentioned that was raised
4 about resources, and very quickly I will read you part
5 of what purportedly was what Mr. Coates said at his
6 going-away party and ask if you can confirm that this
7 was his statement.

8 "Some who criticized the two cases" -- and
9 that's Ike Brown and the Black Panthers -- "about
10 which I speak claim that they are not opposed to
11 protecting the rights of white voters, but question
12 using the resources of the Voting Section in that
13 manner. I question the validity of that criticism.

14 "Given the number of cases that the Voting
15 Rights -- the Voting Section has filed during the past
16 40 years on behalf of racial minorities, I do not
17 understand why a mere two cases on behalf of white
18 voters would have raised the ire of most of the
19 critics of the Ike Brown and New Black Panther Party
20 cases to the level that has been observed.

21 "Those critics are not motivated primarily
22 by resource concerns, but, rather, in my opinion, by a
23 strongly held but erroneous view that the work of the
24 Civil Rights Division and its enforcement of the VRA
25 should be limited to protecting racial, ethnic, and

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1 language minority voters.

2 "The resource issue is a red herring
3 raised by those who want to continue to enforce the
4 Voting Rights Act in a racially-biased fashion, and to
5 turn a blind eye whenever incidents arise that
6 indicate that minority persons have acted improperly
7 in voting matters."

8 First, did he say something along these
9 lines?

10 MR. ADAMS: Yes, he did, in front of the
11 whole section and in front of Deputy Assistant
12 Attorney General Julie Fernandes, and he thought that
13 Tom Perez was also going to be there for that message.

14 MR. BLACKWOOD: What was the reaction to
15 these statements?

16 MR. ADAMS: What was my reaction?

17 MR. BLACKWOOD: No. What was the
18 reaction? Or, first, your reaction?

19 MR. ADAMS: Well, of course, I have lived
20 that for the last five years. So it was --

21 MR. BLACKWOOD: You feel he was accurate.

22 MR. ADAMS: There's no question about it.

23 I mean, as I said, that's as plain as the fact that
24 we are all sitting in this room. I have lived it. I
25 know that's the truth. And, if he were here to

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1 testify, he would tell you that's the truth.

2 MR. BLACKWOOD: Was there any comment that
3 you picked up as far as the rest of the section, what
4 their reaction was?

5 MR. ADAMS: It was very uncomfortable for
6 a lot of people because, when you have the courage to
7 call people out for lawlessness, they don't like to
8 hear it.

9 MR. BLACKWOOD: After the Commission began
10 its investigation, were you asked to help produce the
11 evidence and review what had occurred?

12 MR. ADAMS: I'm not going to answer that
13 question. I'm sorry. That -- I mean, that gets into
14 -- that gets into them judging what the extent of
15 their privilege was, which arguably is an internal
16 deliberation on a privilege matter that I'm not going
17 to answer.

18 MR. BLACKWOOD: Okay. I'm not asking
19 about the substance. I'm just asking, were you part
20 of it?

21 MR. ADAMS: But deployment of resources is
22 part of it, and I'm just not going to answer that
23 question.

24 MR. BOLEN: And I'm objecting officially
25 for that purpose.

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1 MR. BLACKWOOD: Okay. You have indicated
2 publicly, though, that you met with Mr. Perez before
3 he testified before the Commission, is that correct?

4 MR. ADAMS: That is correct.

5 MR. BLACKWOOD: Tell us about that,
6 please.

7 MR. ADAMS: I held out hope. I think Tom
8 Perez is a good man, I really do. We might disagree
9 on how to get certain things done. We might have
10 different views. But I have always sensed that he is
11 a good person. I can't say that for everybody I have
12 met in this, but with Tom Perez I can.

13 And I held out hope that a good person,
14 like I thought he was, and still do, would have
15 changed their mind if only we had an opportunity to
16 warn him that the testimony he might give would be
17 inaccurate. I have not said that he testified
18 falsely. I have not said that he lied. I think that
19 he believes in some measure what he is saying.

20 But Mr. Coates and I and Popper went and
21 met with him the day before he testified here for
22 about an hour, and we laid out all of our arguments
23 and begged him not to testify inaccurately about the
24 case.

25 MR. BLACKWOOD: Just so it's clear -- and

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1 I believe you have issued a statement recently, in the
2 last day or so -- you are just saying that he is
3 inaccurate. Is that correct?

4 MR. ADAMS: Yes, I have never accused him
5 of lying. Those are -- those are inaccurate news
6 reports. I have accused him of testifying
7 inaccurately, because I really believe he is a good
8 man. I really believe that, if anybody can clean this
9 mess up, who would be acceptable to this
10 administration, he is the guy to do it.

11 MR. BLACKWOOD: Now, you said Mr. Coates
12 was there as well. Was he brought back specifically
13 to meet with --

14 MR. ADAMS: No.

15 MR. BLACKWOOD: -- Mr. Perez?

16 MR. ADAMS: He called in by phone.

17 MR. BLACKWOOD: Okay. Why did you resign?

18 MR. ADAMS: Well, as I said I believe in
19 one of my articles, I was placed -- and as I said in
20 the opening, I was placed in a position where there
21 was a clear federal law on point that required
22 cooperation with the lawful subpoena of this
23 Commission, where I was being instructed, I believe
24 illegally, to dodge the subpoena.

25 Also, the testimony that was given to this

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1 Commission, I continue to believe, was inaccurate by
2 Mr. Perez, and I resigned.

3 MR. BLACKWOOD: Did you resign as a direct
4 result of his testimony?

5 MR. ADAMS: If he had not testified the
6 way he did, there is some chance I would not have
7 resigned.

8 MR. BLACKWOOD: There are press reports,
9 basically leaks, about you saying that you are
10 "disgruntled" to your conservative activists. Can you
11 address those?

12 MR. ADAMS: Well, I was just promoted two
13 weeks before I resigned, so I am certainly not
14 disgruntled.

15 Let me take up the second point. My
16 personal views about things never had anything to do
17 with what I did at the Voting Section. You mentioned
18 being conservative. I think that's pretty simplistic
19 and juvenile for people to say that.

20 For example, did the fact that I wanted my
21 taxes lowered have anything to do with what I did in
22 the Voting Section? Of course not. Did the fact that
23 I agree with the Supreme Court in Lawrence v. Texas
24 when it struck down restrictions on sodomy laws, when
25 it allowed gay people to live in freedom, the fact

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1 that I agreed with that, did that affect my work?
2 Never.

3 But there is one personal belief that
4 affected my work, and that was my deep and abiding
5 respect of the 14th and 15th Amendments. There are no
6 amendments to the Constitution that were gotten with
7 such cost.

8 I mean, think about this. Two percent of
9 the American population died to get those amendments,
10 to ensure racial equality. That would be the same as
11 Cleveland, Indianapolis, and Denver today just
12 vanishing in some struggle. So we got racial equality
13 enshrined as the Constitutional principle at such
14 enormous cost in this country.

15 And so it affected me profoundly. That
16 was a personal belief that every single day when I
17 came to work meant a great deal to me. And so all
18 those other things didn't, but this one did.

19 MR. BLACKWOOD: Now, one of the things
20 that we were told -- by that I mean the Commission --
21 as far back as September 2009, that the Department
22 couldn't cooperate in our investigation, because the
23 matter was being investigated by the Department -- or
24 by the Department's Office of Professional
25 Responsibility.

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1 MR. BOLEN: I'm sorry. I'm going to
2 object to any questions in reference to the Office of
3 Professional Responsibility.

4 MR. BLACKWOOD: My only --

5 MR. BOLEN: This is an ongoing
6 investigation.

7 MR. BLACKWOOD: My only question is: were
8 you ever interviewed?

9 MR. ADAMS: I'm not going to answer that.

10 MR. BLACKWOOD: I believe there was a
11 press report where you indicated that you were only
12 interviewed a week before you resigned?

13 MR. ADAMS: I never said anything like
14 that.

15 MR. BLACKWOOD: Okay. One of the matters
16 that has been raised in the press about the
17 Commission, about this investigation, is that other
18 cases were not pursued, and specifically a matter
19 involving, in 2006, an incident in Pima, Arizona.
20 Were you ever involved in a case involving an incident
21 in Pima, Arizona, with regard to armed individuals
22 challenging witnesses -- I mean, challenging voters?

23 MR. ADAMS: I had no involvement with
24 that.

25 MR. BLACKWOOD: I have no further

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1 questions.

2 CHAIRPERSON REYNOLDS: Okay. Thank you.

3 At this point, we will have questions from
4 each of the Commissioners. As I said earlier, we will
5 have two rounds. Each Commissioner will have five
6 minutes. Ordinarily, I would start off the
7 questioning, but I am going to swap positions with
8 Commissioner Gaziano. So, Commissioner Gaziano?

9 COMMISSIONER GAZIANO: Thank you, Mr.
10 Chairman, and thank you very much --

11 CHAIRPERSON REYNOLDS: Now, before you
12 start -- okay. I just wanted to make sure that we had
13 someone on the clock. I will add -- I will add some
14 time for my interruption.

15 COMMISSIONER GAZIANO: Thank you very much
16 also, Mr. Adams. And if another round permits, I
17 would like to explain further just how grateful I am
18 that you are trying to thread this very difficult
19 needle that you have between maybe Scylla and
20 Charybdis, your legal obligation to come forward and
21 comply with our subpoena, and what I think are the
22 bogus but still threatening claims that the Department
23 may have if you stray.

24 And I would like to explain that to the
25 public and, again, why I think that is still very

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1 courageous that you are able to do so. But I need to
2 drill down on some of these matters you have already
3 set forth.

4 First, with regard to -- let me just --
5 you have probably read Perez's testimony and my
6 questioning of him. But just for the record, let me
7 very briefly go through a few of the questions I asked
8 him.

9 I mentioned news reports about the
10 pervasive culture that we read within the division
11 that many senior lawyers, supervising attorneys, and
12 others, believed that civil rights law should not be
13 enforced in a race-neutral manner, and should never be
14 enforced against blacks or other national minorities.

15 And I asked him whether, when he came into
16 the division, since he was in charge of the transition
17 for the division, that he was certainly aware of these
18 -- for the entire Department he was in charge of the
19 transition -- what steps he took to investigate those
20 -- that culture of the division he was inheriting, and
21 he refused to say, which I -- that he did any
22 investigation, which I -- except to say that he didn't
23 believe anyone in his division had those views. So I
24 took that to be a denial that he did any
25 investigation.

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1 I asked him about other press reports at
2 the time the New Black -- our investigation began and
3 members of Congress, whether he -- that The Washington
4 Times, for example, said the motive for dismissal was
5 this caustic view that the civil rights laws should
6 never be enforced against blacks and other minorities.

7 I asked him whether he took any steps to
8 investigate that. He did not. I asked him about
9 Coates' statement. I said, "Coates, your Voting
10 Section Chief, resigned and gave a statement that he
11 thought that was an improper -- did you ever talk to
12 Coates?" He denied he did that.

13 And then I asked him what he would do if
14 others in his division had such views. And so it is
15 particularly important to me to ask about these Julie
16 Fernandes statements, because Julie Fernandes -- is it
17 his principal deputy, his most senior deputy, or is
18 she just one of his deputies?

19 MR. ADAMS: I don't know the answer to
20 that. She -- you could look on the website. She is
21 the deputy over Voting, so that's all that mattered to
22 me.

23 COMMISSIONER GAZIANO: Okay. This
24 statement that Coates told you about where she
25 essentially gave an instruction, as I understand your

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1 testimony, and I have heard it from one other source,
2 Julie Fernandes, the Deputy Assistant Attorney General
3 under the Obama administration, said that the Voting
4 Section will never or will not, at least while she is
5 there, bring any more cases against blacks or other
6 national minorities. Is that essentially what you
7 heard?

8 MR. ADAMS: Well, it is. It is what I
9 heard. But bear in mind what I talked about in the
10 U.S. v. Ike Brown Section 5 submission where, even if
11 they did bring a case in the next couple of weeks, it
12 would be inadequate given the power they have to
13 object to that racially discriminatory submission as
14 it stands right out of Washington. They don't need to
15 go to Jackson to do it.

16 COMMISSIONER GAZIANO: I understand. I am
17 going -- at some point in our investigation, I am
18 going to not only re-urge that we try to press the
19 Department to allow us to hear from Chris Coates. I
20 am going to ask that we seek a subpoena for Julie
21 Fernandes as well.

22 But it -- based on what you've heard about
23 that incident, she supposedly said, "Well, it may be
24 brought by U.S. Attorneys, but not by the Civil Rights
25 Division."

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1 MR. ADAMS: Yes.

2 COMMISSIONER GAZIANO: Is that -- I mean,
3 that is pretty shocking to me. Do U.S. Attorneys have
4 the expertise to bring voter intimidation or other --

5 MR. ADAMS: I mean, voter intimidation is
6 so simple they could probably do that. But Section 2
7 cases, absolutely not. It is one of the most complex
8 areas of law, bar none, maybe antitrust, but either
9 that or Section 2.

10 COMMISSIONER GAZIANO: Yes. Even if Obama
11 administration U.S. Attorneys are going to bring this,
12 it still -- it is still troubling to me that Julie
13 Fernandes would issue this edict. Who else was
14 present at the meeting besides Coates?

15 MR. ADAMS: You would have to ask Coates.

16 CHAIRPERSON REYNOLDS: Okay. Last
17 question, Commissioner Gaziano. You can follow up
18 during the second round.

19 Commissioner Kirsanow.

20 COMMISSIONER KIRSANOW: Thank you, Mr.
21 Chairman, and thank you, Mr. Adams. Your testimony is
22 easily, I would think, the most extraordinary I have
23 heard in the nine years I have been on this
24 Commission, and I would suspect that, in the 50-plus
25 years of the existence of this Commission, it ranks

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1 way up there.

2 We have gotten considerable resistance
3 from the Department of Justice regarding our requests
4 for information. The same resistance was experienced
5 by Congressman Smith and Congressman Wolf. And, but
6 for your resignation, I suspect that we wouldn't have
7 even gotten close to the testimony, or the evidence
8 adduced in your testimony, today.

9 I've just got some summary questions to
10 ask. Most of them I think are susceptible of yes or
11 no answers. To the extent they implicate any
12 privileges, let me know.

13 Based on your testimony, to what extent
14 can Americans rest assured that the Voting Rights
15 Section or the Civil Rights Division will extend equal
16 protection or equal treatment to all voters in terms
17 of their prosecution of the Voting Rights Act?

18 MR. ADAMS: Well, to what extent is the
19 big mystery. Let's hope that they object to the U.S.
20 v. Ike Brown -- the Ike Brown submission next week.
21 They probably won't, because they don't believe
22 Section 5 applies to white voters, if they are
23 victimized.

24 Let's hope they don't just try to sue and
25 cop out and stop what he is trying to do. Let's hope

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1 they object.

2 We will know more about the answer to your
3 question after July 14th. If they do anything other
4 than object, clearly they will be announcing for
5 everyone to hear what they think about your question.

6 COMMISSIONER KIRSANOW: As you sit here
7 today, do you feel confident that Americans can be
8 confident that they will be extended equal protection
9 or equal treatment by the section?

10 MR. ADAMS: If the Department objects to
11 the Ike Brown submission, I will begin to change my
12 mind about their attitude. If they do anything other
13 than object, I will not change my mind.

14 COMMISSIONER KIRSANOW: Taking the obverse
15 of the New Black Panther Party case, if a member of
16 the Ku Klux Klan or the National White People's Party
17 or the Nazi Party, Aryan Nations, was stationed
18 outside a polling place with full respective regalia
19 -- Klan outfit, Nazi Party outfit, carrying a baton,
20 shouting racial epithets, and making threats -- would
21 you consider that to be something that is an 11(b)
22 violation?

23 MR. ADAMS: Okay. I don't want to err by
24 not hearing one of your facts. But, as I understand
25 your question, it was the Klan out in front of a

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1 polling place, "in front" I assume meaning at the
2 entrance, shouting racial epithets. Did they have a
3 weapon in your fact pattern? I'm sorry.

4 COMMISSIONER KIRSANOW: Baton similar to
5 that carried by the --

6 MR. ADAMS: There's absolutely no question
7 about that. I mean, to brandish a weapon, which a
8 nightstick is, the Department on many cases involving
9 criminal matters viewed a nightstick as a deadly
10 weapon. There is case law in that regard.

11 To have a deadly weapon like a nightstick
12 in front of a polling place in Klan -- I mean,
13 everyone here knows the answer to that question. You
14 don't even need to ask it. It is just reality.

15 COMMISSIONER KIRSANOW: Right. I'm going
16 to ask you a series of questions that I think may be
17 susceptible of inaccurate, false, incorrect, however
18 you want to respond. I understand it is your position
19 that no one in this particular case has lied -- that
20 is, had an intent to deceive or mislead.

21 But, based on some of the testimony we
22 have heard thus far prior to your testimony, I would
23 like to ask you the following set of questions. Did
24 career attorneys, rather than administration political
25 appointees, make the decision to dismiss the New Black

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1 Panther case?

2 MR. ADAMS: Oh, I see where you are -- in
3 my mind, and I think in the minds of anyone who fairly
4 reads the Vacancy Reform Act with credibility,
5 political appointees made the decision.

6 COMMISSIONER KIRSANOW: Okay. Was the
7 totality of law and facts such that it dictated
8 dismissal in this case?

9 MR. ADAMS: That's one I won't answer.

10 COMMISSIONER KIRSANOW: Okay. Is this a
11 case that would subject DOJ attorneys to Section --
12 I'm sorry, Rule 11 sanctions?

13 MR. ADAMS: I -- that is one of the most
14 outlandish things I have heard throughout this whole
15 affair, that we were in violation of Rule 11. And it
16 is personally offensive, because it is not true.

17 COMMISSIONER KIRSANOW: Is it accurate or
18 inaccurate to say that this case could not meet the
19 allegedly high standard required under Section 11(b)?

20 MR. ADAMS: Look, someone could file this
21 case tomorrow. One of these victims could go out and
22 file this. It would be an enormous embarrassment to
23 the Department if that happens, and I hope it doesn't
24 happen, because I hope the Department refiles this
25 case.

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1 They would win this case if a private
2 plaintiff brought it. I believe that they would
3 ultimately win this case, only because the Panthers
4 won't show up again, or they won't -- as I understand
5 it, they weren't even cooperative here. And so,
6 assuming they even show up on the merits, they are
7 going to have a very difficult time losing this case
8 from the plaintiff's perspective.

9 COMMISSIONER KIRSANOW: Is it common or
10 unusual for DOJ to dismiss a case that it's
11 essentially already prevailed upon on default?

12 MR. ADAMS: Chris Coates is someone who
13 you should talk to, because his institutional
14 experience goes back further than mine, and you have
15 plenty of other former DOJ people.

16 I think Mr. Katsas testified -- I may be
17 wrong -- that this is unprecedented.

18 COMMISSIONER KIRSANOW: Thank you, Mr.
19 Chairman.

20 CHAIRPERSON REYNOLDS: Thank you.
21 Commissioner Taylor.

22 COMMISSIONER TAYLOR: Thank you, Mr.
23 Chairman.

24 Mr. Adams, I wanted to talk to you about
25 this culture issue within the division, and also about

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1 the mechanics of the default order or default
2 judgment. But before I ask you those questions, it
3 struck me as -- "unfortunate" is too soft a term --
4 that you were placed in this position where you were
5 forced to resign. You know, you receive a subpoena,
6 you want to comply. I mean, in your own words, why
7 did you feel compelled to resign?

8 MR. ADAMS: Well, the law still governs
9 this country, and there is a federal law that says
10 that you all have the power to issue the subpoenas,
11 and that federal agencies must comply, and I
12 personally received a subpoena. And I have learned
13 since I was in law school that, when you are
14 subpoenaed, you have to comply, or you go through the
15 judicial process to extinguish the subpoena, which my
16 attorney begged the Department to do. "Please file a
17 motion to quash this subpoena. We will not oppose it.
18 We will be happy as a lark if that happens."

19 There are some comical blogs that said
20 that I was fighting to testify. That is not true.

21 COMMISSIONER TAYLOR: Were you told that
22 they would not enforce the subpoena?

23 MR. ADAMS: Oh, yes. Oh, yeah. That was
24 the reason that I need not comply, because they had no
25 intention of enforcing it.

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1 COMMISSIONER TAYLOR: Let me turn to this
2 culture question. You talked about this culture being
3 open, pervasive, bordering on a policy in terms of the
4 lack of neutral application of the law. And I
5 understand this pertains to white victims. I
6 understand this pertains to not prosecuting blacks
7 that violate the law and seek to prevent others from
8 voting or intimidate others.

9 Did you hear a discussion of the refusal
10 to protect black victims in this regard? Because one
11 of the overlooked facts --

12 MR. ADAMS: Yes.

13 COMMISSIONER TAYLOR: -- pertains to a
14 poll-watcher --

15 MR. ADAMS: Yes.

16 COMMISSIONER TAYLOR: -- who was African
17 American. And we had testimony from Chris Hill, who
18 is a lawyer there onsite in Philadelphia, and he
19 talked about seeing the Black Panthers walking in to
20 find the Republican poll-watcher, and finding an older
21 African American cowered in the corner, who told that
22 there would be hell to pay if he stepped outside.

23 Those same folks who refuse to protect
24 white victims, those same folks who refuse to
25 prosecute blacks, do they also refuse to protect black

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1 victims in that context?

2 MR. ADAMS: Yes. This goes -- this also
3 goes to the U.S. v. Ike Brown case. In Noxubee, we
4 had black victims there, individuals who got visits
5 from notaries who cast their ballots for them. They
6 denied them the right to vote as part of this illegal
7 scheme to harvest votes.

8 We had a witness at trial in Noxubee say
9 that he -- she was harassed by the defendant, and she
10 said, "Don't you dare come around here telling me how
11 to vote here in Mississippi, how I ought to be
12 voting." This was a black lady. You know, "How dare
13 you, in this place, come and intimidate me into this."

14 There were black victims over and over and
15 over again in these cases. That is something that is
16 lost on the civil rights groups who oppose these
17 cases. It's tragic, because it's -- the people they
18 purportedly protect are being harmed and losing their
19 right to vote.

20 COMMISSIONER TAYLOR: Let me talk to you,
21 if I could for a moment, my last few minutes, about
22 the mechanics. We have our timeline here, and you all
23 filed your complaint, they failed to respond, and our
24 timeline indicates that a default order was entered.
25 Now, that is not a default judgment. It's an order of

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1 default. Correct?

2 MR. ADAMS: That's right. That's right.

3 COMMISSIONER TAYLOR: It is important that
4 folks understand this difference, because a default
5 judgment can require some type of proffer or
6 discussion in open court.

7 And, going back to the Rule 11 question,
8 as an officer of the court, you are required to be
9 truthful and honest and forthright to the court. Even
10 in the context of an adversarial proceeding, even in
11 an instance where the other side does not appear, you
12 are still required to be truthful and honest in order
13 to have a default judgment in those cases entered.

14 Were you prepared if the Judge had said to
15 you, "Mr. Adams" -- you were a member of the trial
16 team, I assume. Were you prepared to present evidence
17 to the Judge to support your request?

18 MR. ADAMS: I think the answer is obvious,
19 but I don't want to give it. I will tell you that any
20 plaintiff who brings this case will not have a very
21 difficult time in a similar posture to present
22 evidence.

23 COMMISSIONER TAYLOR: Well, let me ask you
24 the question another way, because you signed the
25 initial complaint, as did Grace Chung Becker, as did

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1 Mr. Coates, and Mr. Popper's name is on it as well.
2 The allegations in the complaint, they are what they
3 are. Had the court said to you, "Provide evidence to
4 support the allegations in the complaint you filed,"
5 could you have done that?

6 MR. ADAMS: Yes. Let me backtrack. I
7 wasn't saying I wasn't going to answer the last
8 question because I didn't --

9 COMMISSIONER TAYLOR: Okay.

10 MR. ADAMS: -- know the answer. I was
11 saying because I am afraid that it could tread on
12 deliberative process.

13 I assure you, based on my experience with
14 the attorneys involved who are the best in the
15 business, the best -- Chris Coates is the best, Popper
16 is brilliant, he is like a professor. I hope he comes
17 here sometime. There is no doubt what we would have
18 done if we had proceeded. We're good attorneys, and
19 you prepare.

20 CHAIRPERSON REYNOLDS: Thank you.
21 Commissioner Heriot?

22 COMMISSIONER HERIOT: Well, first, I want
23 to say that I agree with Commissioner Kirsanow that
24 what you have been testifying to is quite
25 extraordinary, and I think by way of --

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1 CHAIRPERSON REYNOLDS: Excuse me.
2 Commissioner Heriot, do you have your mic on?

3 COMMISSIONER HERIOT: Do I? I'm also
4 going to resist the temptation to ask you about what
5 the Housing Section has against picnics.

6 (Laughter.)

7 But Commissioner Taylor started on a road
8 that I would like to at least touch on. I'm not sure
9 whether this is going to be a question that you can
10 answer or not. But, as Commissioner Taylor has been
11 saying, this case went into default, and it is
12 certainly true that courts do not always -- do not
13 always simply enter a judgment upon default. They
14 require some proof.

15 But Mr. Perez told Congress, I believe,
16 that -- that -- he put it in such a way that it made
17 it sound like a default was actually an obstacle.
18 Just for the record here, if you can tell us, it's a
19 good thing, isn't it, for plaintiffs when the
20 defendant goes into default, when the defendant fails
21 to appear?

22 MR. ADAMS: It's a beautiful thing.

23 COMMISSIONER HERIOT: It usually makes
24 your job much, much easier, does it not?

25 MR. ADAMS: The only thing that makes it

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1 easier than having a default is when there is actually
2 video.

3 (Laughter.)

4 COMMISSIONER HERIOT: Gosh, was there
5 video in this case?

6 MR. ADAMS: Yeah, there was that, too.

7 COMMISSIONER HERIOT: Yes, yes. I heard
8 about that, too. Well, let's look -- let me go into
9 some of the nuts and bolts here, and that is Mr.
10 Jackson. Mr. Jackson, I am told, was actually a poll-
11 watcher himself, right? Certified, I guess, by the
12 Democratic Party?

13 MR. ADAMS: Mr. Jackson was indeed -- he
14 is not only a poll-watcher, he is a Democratic Party
15 elected official in the city of Philadelphia, the Tall
16 Black Panther. He is an Executive Committeeman in
17 that particular precinct. He wasn't on the ballot
18 that day, I should note, though.

19 COMMISSIONER HERIOT: Okay. Okay. The
20 police, I believe, when they came and told the -- Mr.
21 Shabazz, the one with the billy club, that he had to
22 vacate the premises, they let Mr. Jackson stay. Does
23 the fact that Mr. Jackson was a poll-watcher have any
24 bearing on his liability?

25 MR. ADAMS: No. Thank heavens, no. I

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1 mean, otherwise, you would appoint as poll-watchers
2 the biggest and baddest thugs you have and give them
3 credentials to roam about the community, nor does the
4 fact that the police let him stay have anything to do
5 with it.

6 The Federal Government has never taken the
7 position, and hopefully never will, that local law
8 enforcement officials can opine on matters of federal
9 law. We have entirely different laws that we enforce.

10 COMMISSIONER HERIOT: Okay.

11 MR. ADAMS: And the Philadelphia police
12 don't enforce federal voting right statutes.

13 COMMISSIONER HERIOT: So you don't have to
14 defer to the Philadelphia police.

15 MR. ADAMS: Of course not.

16 COMMISSIONER HERIOT: Okay. Just want
17 that for the record.

18 MR. ADAMS: Yeah.

19 COMMISSIONER HERIOT: And I would think,
20 if anything, the fact that Mr. Jackson was a poll-
21 watcher might even raise the standard of care we would
22 expect from him, wouldn't it?

23 MR. ADAMS: Well, you know what? I don't
24 want to add or subtract elements from the statute. It
25 was so clear -- you know, the statute is what it is,

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1 and I don't think we need to add requirements. That
2 is just my personal view.

3 COMMISSIONER HERIOT: Well, you think that
4 he gets training, and, therefore, at least he knows
5 things. It makes it more difficult for him to say, "I
6 didn't understand this."

7 MR. ADAMS: Fair enough.

8 COMMISSIONER HERIOT: Okay. What about
9 the -- I'm skipping around here, because my colleagues
10 have already asked you a number of the questions that
11 I wanted to ask you. But one issue that interested me
12 was the ultimate injunction that was -- well, first,
13 the injunction that was asked for, and then the rather
14 severe reduction in that injunction. What was
15 originally asked for?

16 MR. ADAMS: Well, if you read the
17 complaint, I believe it asks for an injunction against
18 all of the parties. I don't know whether it says
19 "nationwide" in the complaint. I can't remember. But
20 it clearly asks for an injunction against all the
21 parties.

22 COMMISSIONER HERIOT: And what was in fact
23 obtained?

24 MR. ADAMS: Well, the -- what was
25 obtained, as I recall, was an injunction against King

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1 Samir --

2 COMMISSIONER HERIOT: Only.

3 MR. ADAMS: -- only to not have a weapon a
4 certain distance, and I think it's through -- I think
5 it's 100 feet. And it expires in 2012.

6 COMMISSIONER HERIOT: And if I'm --

7 MR. ADAMS: And it's for Philadelphia.

8 COMMISSIONER HERIOT: Not for the suburbs,
9 right?

10 MR. ADAMS: That's correct.

11 COMMISSIONER HERIOT: So it would be
12 perfectly legal for him to take a weapon to the polls
13 in the suburbs?

14 MR. ADAMS: Well, my position is it's not
15 perfectly legal for him to do this anywhere, so, I
16 mean, that just would have to be another case.

17 COMMISSIONER HERIOT: Okay. Within the
18 scope of the injunction.

19 MR. ADAMS: That's correct.

20 COMMISSIONER HERIOT: Okay. I was told
21 that --

22 CHAIRPERSON REYNOLDS: Last question.

23 COMMISSIONER HERIOT: Okay. I was told
24 that someone at the Department of Justice has recently
25 alleged that it was the trial team that wanted to

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1 shrink the injunction down to that tiny little "can't
2 show up in the city of Philadelphia with a weapon."
3 Any truth to that?

4 MR. ADAMS: I would hope that Mr. Coates
5 has the opportunity to answer that question. I know
6 the truth.

7 COMMISSIONER HERIOT: Okay.

8 CHAIRPERSON REYNOLDS: Okay. I just have
9 a few questions for you. My colleagues and the
10 General Counsel have done a good job of teasing out
11 the information that we need.

12 You mentioned that there was a black
13 attorney at DOJ who was willing to work on voting
14 rights cases, and instances involving black
15 defendants. And you also indicated that this
16 individual was harassed. Do you believe that his
17 willingness to work on these types of cases adversely
18 -- will adversely affect his career advancement at the
19 Department of Justice?

20 MR. ADAMS: Just to be clear, I didn't
21 testify he was an attorney. I testified he worked on
22 the cases. There's a difference. Whether or not it
23 will affect his advancement I can only speculate, and
24 I suspect after the attention that has now been given
25 to this outrageous behavior directed toward him, it

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1 will not impair his advancement opportunities, as I
2 have confidence that good people will not allow it to
3 interfere.

4 CHAIRPERSON REYNOLDS: Thank you. Also,
5 you testified as to an exchange where profanity was
6 used where there was a tossing of paper. Could you
7 elaborate on that?

8 MR. ADAMS: Well, this is something, of
9 course, that Mr. Coates would be the best person to
10 elaborate fully in front of the Commission about. But
11 it was some time during one of these discussions where
12 he was outraged about the lack of good faith and the
13 lack of due diligence, the duplicity, that was going
14 on, and he used the profanity and threw the materials
15 at the individual who had professed to have not read
16 them.

17 CHAIRPERSON REYNOLDS: Okay. So he has
18 essentially gone to his superior --

19 MR. ADAMS: That's correct. It's his
20 superiors who he does this to.

21 CHAIRPERSON REYNOLDS: Okay. So he goes
22 to his superior. He learns during this exchange that
23 an important decision is being made, and in this case
24 it is the decision to withdraw charges against three
25 of the four defendants, and during this meeting he

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1 learns that this individual had not read the J memo.

2 MR. ADAMS: That is correct.

3 CHAIRPERSON REYNOLDS: Thank you.

4 The remainder of my time, Commissioner
5 Gaziano?

6 COMMISSIONER GAZIANO: Okay. Let me go
7 back to -- I will follow up on that. I have a few
8 other questions about that, but let me go back to the
9 two Julie Fernandes statements. I know they are not
10 -- they are only symptomatic of the culture that you
11 have spoken of, but I want to try to nail down the
12 time.

13 With regard to the instruction that
14 Fernandes gave to the management of the Voting Section
15 that no cases will be brought in the, you know, Obama
16 administration while she is there against blacks or
17 other minorities, about what time period was that
18 statement made?

19 MR. ADAMS: I would have to say some time
20 between September of '09 and December of '09.
21 Precisely when it was, I can't tell you.

22 COMMISSIONER GAZIANO: So that is after
23 Congressmen Wolf and Lamar Smith began to investigate
24 this Black Panther suit, after we opened our
25 investigation, which I can tell you was June 16th was

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1 our first letter to the Department. So it was some
2 months after that that Julie Fernandes made this
3 statement.

4 MR. ADAMS: I don't even think she worked
5 there in June of '09.

6 COMMISSIONER GAZIANO: Okay. And when was
7 the other statement that you mentioned that you were
8 present for where she said, "We are going to only
9 handle traditional civil rights"?

10 MR. ADAMS: It would have been in the same
11 general time period.

12 COMMISSIONER GAZIANO: Okay.

13 MR. ADAMS: She was doing brown bag
14 lunches. That's when all of these outrageous
15 statements were made.

16 COMMISSIONER GAZIANO: Okay.

17 MR. ADAMS: Well, not all, but these
18 particular ones.

19 COMMISSIONER GAZIANO: And the other motor
20 voter statement --

21 MR. ADAMS: November 30, 2009.

22 COMMISSIONER GAZIANO: November 30th.

23 MR. ADAMS: I'm pretty sure that is
24 accurate.

25 COMMISSIONER GAZIANO: Okay. And let me

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1 now go back to the incident where Christopher Coates
2 threw the J memo. Was Perez aware of that incident
3 when he testified before us?

4 MR. ADAMS: I have no idea.

5 COMMISSIONER GAZIANO: One of my --

6 MR. ADAMS: Wait.

7 COMMISSIONER GAZIANO: -- sources said --

8 MR. ADAMS: Wait, wait, wait.

9 COMMISSIONER GAZIANO: -- that during your
10 meeting with him --

11 MR. ADAMS: Yeah.

12 COMMISSIONER GAZIANO: -- the day before
13 the hearing, Chris Coates related that story to him.

14 MR. ADAMS: Chris Coates related a lot
15 during that meeting. Whether or not he related that
16 he threw the J memo, I cannot recall.

17 COMMISSIONER GAZIANO: Did he relate to
18 Assistant Attorney General Perez that Rosenbaum had
19 not read the J memo?

20 MR. ADAMS: Again, I think he did, but I
21 just don't remember for sure.

22 COMMISSIONER GAZIANO: Okay. What else
23 did you relate to Perez that -- in one of your
24 articles you say that you told Perez that, if he
25 testified that the facts and law did not support the

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1 claim, that would be inaccurate.

2 MR. ADAMS: Correct.

3 COMMISSIONER GAZIANO: And he did keep
4 repeating that line to us. I want to know what his
5 knowledge base was at the time he testified, because
6 it certainly seems to me, if he was aware of all of
7 the facts that you are telling us, that he gave very
8 incomplete testimony at best, and maybe misleading
9 testimony. That is for us to decide. I'm not asking
10 you to characterize that.

11 But I just want to know, what was the
12 nature of the information you provided -- you, Coates,
13 Popper, provided to Perez the day before he testified?

14 CHAIRPERSON REYNOLDS: Last question.

15 MR. ADAMS: I would characterize it as a
16 comprehensive review of the merits of the case.

17 CHAIRPERSON REYNOLDS: Okay. This
18 concludes the first round. We start off a second,
19 and, Commissioner Gaziano, you are in the lead-off
20 position.

21 COMMISSIONER GAZIANO: Okay. Well, thank
22 you. I think I get an extra, but I'll -- but I'll
23 yield to other Commissioners first.

24 Let me just go back to these other
25 statements regarding the culture at the time. Do you

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1 know if anyone, after Coates' statement -- it was
2 January, early January 2010, that he made the
3 statement at his farewell reception regarding this
4 culture that the General Counsel read a portion of, do
5 you know if there was any investigation by anyone in
6 the division of whether there was any truth to Chris
7 Coates' statement?

8 MR. ADAMS: I was never asked. Whether or
9 not there was an investigation broadly, I can't
10 answer.

11 COMMISSIONER GAZIANO: Okay. Who else do
12 you think we should subpoena to learn the facts of
13 this case?

14 MR. ADAMS: Listen, there is a whole lot
15 of attorneys who have left the Department over the
16 last couple of years that know this is the truth.

17 COMMISSIONER GAZIANO: But who -- let's
18 start with who is there now.

19 MR. ADAMS: Okay.

20 COMMISSIONER GAZIANO: What people -- what
21 people from Holder, Perrelli, and in the division --

22 MR. ADAMS: Well, I --

23 COMMISSIONER GAZIANO: -- who should we --
24 who would give us valuable information?

25 MR. ADAMS: I don't know. I mean, I

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1 haven't had broad discussions with people. You all
2 are going to have to figure out how to do this
3 investigation. I can't help you with your
4 investigation other than to comply with your subpoena
5 and answer questions truthfully.

6 COMMISSIONER GAZIANO: And you have been
7 very helpful, but let me just -- let me mention a few.
8 Popper -- do you think that we should -- that Popper
9 would be able to give valuable testimony?

10 MR. ADAMS: If Bob is -- I haven't turned
11 around for a while. If Bob is sitting behind me, I'll
12 say no, because he will club me in the back of the
13 head. But if he isn't, there is no doubt that Bob
14 knows about this case. There is no question that Bob
15 knows about this case.

16 COMMISSIONER GAZIANO: Okay. Former
17 Associate Attorney General -- that's the number three
18 post in the Department -- Greg Katsas was just talking
19 about the normal procedures for this kind of a case,
20 and he testified that it was -- it would be a very
21 remarkable matter. It would actually make news to
22 dismiss a case, especially one that you had -- that
23 was on default.

24 He said that decision could not possibly
25 be made at the division level, even if there was a

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1 confirmed head, that that kind of decision would have
2 to be made at the Associate Attorney General level or
3 higher. Do you have any reason to know whether that
4 is accurate or not?

5 MR. ADAMS: Very little, but some. On
6 some cases, I briefed the associate in my time at
7 Justice, not this particular associate but a previous
8 associate, on matters involving very important
9 matters, you know, ones that people need to know about
10 before something happens.

11 So it would not surprise me that, on
12 something like this, a similar briefing would occur,
13 but I have no personal knowledge of anything that
14 deals with briefing. We were just doing our job. I
15 mean, we were just line attorneys collecting evidence,
16 making phone calls, writing pleadings. So all of
17 these other issues are not my issues.

18 COMMISSIONER GAZIANO: Sure. But you did,
19 I think, answer, and I want to make sure I got it
20 right, that, in your knowledge, the Department has
21 never refused to pursue a default judgment.

22 MR. ADAMS: Well, in my knowledge, and if
23 Coates was here his knowledge goes back further, so --

24 COMMISSIONER GAZIANO: Okay. And I'm just
25 trying to get your general knowledge whether that

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1 supports former Associate Attorney General Katsas that
2 it is unlikely that political acting officials, like
3 King and Rosenbaum, would have been able to make the
4 final call in the Department to dismiss the suit.

5 MR. ADAMS: My understanding is that
6 former Associate or Acting Associate and former
7 Assistant Attorney General Katsas gave testimony that
8 was consistent with your conclusion.

9 COMMISSIONER GAZIANO: Well, let me --
10 since you did -- you have briefed the Associate
11 before. Their interrogatory answers from the
12 Department say that Perrelli, the current Associate
13 Attorney General, was briefed about the case and the
14 potential dismissal. It also said the Attorney
15 General was made generally aware. In your experience
16 in the Department, does the Attorney General and
17 Associate Attorney General have the authority to
18 express an opinion?

19 MR. ADAMS: I would hope so.

20 COMMISSIONER GAZIANO: If they are being
21 briefed on a matter, can they ask for more information
22 if they want more information?

23 MR. ADAMS: I have been given a request
24 for more information from one of those offices you
25 named.

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1 COMMISSIONER GAZIANO: Okay. And those
2 offices are generally briefed about a matter, so that
3 they can take contrary action to the proposed -- they
4 can say, "Yes, your proposed action is okay," "No, I
5 don't want you to do that," they have the authority to
6 do that within the Department, don't they?

7 MR. ADAMS: I assume they do. But, again,
8 I'm a line attorney. I --

9 CHAIRPERSON REYNOLDS: Last question.

10 COMMISSIONER GAZIANO: That's fine. I'll
11 yield. Thank you.

12 CHAIRPERSON REYNOLDS: Commissioner
13 Kirsanow.

14 COMMISSIONER KIRSANOW: Thank you, Mr.
15 Chairman.

16 Mr. Adams, long-time civil rights attorney
17 Bartle Bull, who is a witness in this case, expressed
18 the opinion that this was the worst case of voter
19 intimidation he has seen in over 40 years. Do you
20 assess that -- do you concur with that assessment?

21 MR. ADAMS: Well, I haven't been around as
22 long as Bartle Bull has. He was in Mississippi in the
23 late '60s. He worked on Charles Evers' governor's
24 campaign. He was Jimmy Carter's campaign director.
25 He was Robert F. Kennedy's. He got a medal from the

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1 Lawyers Committee for Civil Rights recently for his
2 work.

3 He has been around a lot longer than me.
4 So I cannot corroborate his wisdom, because he has
5 just seen more than I have. Nor would I disagree with
6 it.

7 COMMISSIONER KIRSANOW: Vice Chair -- the
8 Vice Chair, who is not here today, has a piece on
9 National Review Online today, in which she makes light
10 of the fact that there were only two Panthers involved
11 in this case and describing this case as very small
12 potatoes. Does the number of potential defendants
13 have any bearing on whether or not 11(b) charges
14 should be brought by the DOJ?

15 MR. ADAMS: It could have one defendant.
16 It doesn't matter. If you break the law, you break
17 the law. You know, if I might for a moment, the
18 absent Commissioner is a friend of mine. And she
19 wrote a book, which I highly recommend, called Voting
20 Rights and Wrongs. I suggest that this Commission
21 introduce portions of it into the record, because it
22 is -- it corroborates much of what I am saying.

23 She has a whole section on page 124 called
24 "A Lawless Civil Rights Division." She has
25 descriptions how, on page 130, that the Civil Rights

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1 Division, from '93 to 2000, was forced to pay over \$4
2 million in attorneys fees and costs awarded against
3 DOJ for filing frivolous and unwarranted
4 discrimination cases in 10 lawsuits.

5 There is a whole lot more in her book that
6 corroborates what I'm saying today, not specific
7 facts, but the general culture. And, basically, from
8 page 113 to 145, Commissioner Thernstrom, who is a
9 friend, speaks about what I'm speaking about.

10 COMMISSIONER KIRSANOW: The Vice Chair
11 also makes mention of the fact that these actions were
12 allegedly performed in majority-black precincts.
13 Should that have any bearing on whether or not 11(b)
14 charges should be brought?

15 MR. ADAMS: Well, the relevance to whether
16 they were performed in majority-black precincts shows
17 up in a couple of different places. One, you won't
18 want to be that 10 percent, in the minority, in that
19 particular precinct with a Black Panther there. And
20 that is exactly what it is, is 10 percent white in
21 that precinct, according to my best estimates. It is
22 probably plus or minus three.

23 So, yes, it has some relevance, but it
24 shouldn't drive the question. The fact that it's a
25 majority-black precinct in Philadelphia is a

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1 preposterous way to oppose going forward in this case.

2 It is saying, you know, the numbers are too slim.

3 You are only a few people, so you don't deserve

4 federal protection.

5 COMMISSIONER KIRSANOW: The salient

6 timeframe for dismissal of this case was some time, I

7 believe, between April 29th of 2009 and May 15th.

8 April 29th, Mr. Rosenbaum expresses some doubts as to

9 whether or not this is a strong case, and then on May

10 15th the trial team was ordered to dismiss a portion

11 of the charges and reduce the scope of the injunction.

12 Are you aware of -- and I'm not asking for

13 anything that is privileged or any detail, but are you

14 aware of whether or not any facts in the case changed

15 in that timeframe?

16 MR. ADAMS: What was your first date?

17 COMMISSIONER KIRSANOW: April 29th of 2009

18 through May 15th of 2009.

19 MR. ADAMS: No. No publicly-available

20 facts about the Black Panthers, about this event,

21 changed whatsoever.

22 COMMISSIONER KIRSANOW: Did any aspect of

23 the law change? In other words, were there any

24 decisions rendered by any federal court that would

25 change the interpretation of 11(b) as applied to the

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1 facts of this case?

2 MR. ADAMS: Nothing.

3 COMMISSIONER KIRSANOW: In that two-week
4 period, are you aware of any opinion, facts, evidence
5 introduced by any individual, group, branch, section,
6 of DOJ, that would affect the outcome of this
7 particular case?

8 MR. ADAMS: Well, you are asking me about
9 possible internal deliberations, and I won't answer
10 that question.

11 COMMISSIONER KIRSANOW: Okay. Getting
12 back to the description of this particular case as
13 very small potatoes, in your experience, would the New
14 Black Panther case be considered very small potatoes?

15 MR. ADAMS: Well, certainly not when you
16 -- if somebody were to get to the bottom of when this
17 really started, was it going on during the primaries
18 or not, that would become very big potatoes. But even
19 putting that issue aside, we in this country, I
20 believe, still recognize that the ballot box is
21 sacred, that there is something exceptional about this
22 nation that values the right to vote. We have shed so
23 much blood to get here.

24 And to -- excuse me, we have shed so much
25 blood to get here, and it has to be treated with

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1 absolute sanctity. And so it doesn't matter if it is
2 one person with a stick, or five people with a gun, or
3 a bunch of people in Philadelphia, Mississippi with a
4 deputy sheriff named Cecil Price working for him.

5 We have an ironclad obligation in this
6 nation to protect the right to vote, because so many
7 people died to get us here. And so I think the
8 argument that it was only one person doesn't matter,
9 because one person is the next person, and then more.

10 And, you know, we had evidence that this wasn't
11 necessarily just isolated.

12 So the idea that you wouldn't pursue this
13 because it was only one person is what an apologist
14 does, and that is what the SEGs did in the '60s.

15 CHAIRPERSON REYNOLDS: Thank you.

16 COMMISSIONER KIRSANOW: Thank you, Mr.
17 Chair.

18 CHAIRPERSON REYNOLDS: At this time,
19 Commissioner Taylor?

20 COMMISSIONER TAYLOR: Thank you, Mr.
21 Chairman.

22 You have five years of experience in the
23 Voting Rights Section, correct?

24 MR. ADAMS: That's correct.

25 COMMISSIONER TAYLOR: During that time

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1 period, was there any other instance in which the
2 division or the department, to your knowledge, walked
3 away from a default order and did not ask the court to
4 enter a default judgment for all of the relief
5 requested in the original complaint?

6 MR. ADAMS: No. In fairness, though, this
7 doesn't happen. The mere fact that there was a
8 default was an anomaly in this case, especially when
9 one of the parties had counsel, and one of the other
10 parties was an attorney.

11 COMMISSIONER TAYLOR: I want to follow up
12 on Commissioner Kirsanow's questions in terms of the
13 law not changing during the critical time period, and
14 the underlying facts of the case not changing. Once
15 the court entered its default order on April 17th, we
16 have our memo here from Diana Flynn dated May 13th,
17 were you aware of this memo's existence during this
18 time period?

19 MR. ADAMS: During this time period,
20 generally, yes.

21 COMMISSIONER TAYLOR: You were aware of
22 it?

23 MR. ADAMS: Yes.

24 COMMISSIONER TAYLOR: Did you actually see
25 it?

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1 MR. ADAMS: Yes.

2 COMMISSIONER TAYLOR: So you were aware
3 that she said -- and this is Diana Flynn, who is in
4 the Appellate Section, sort of the second review, if
5 you will, of your work and whether or not you all
6 should proceed for a default judgment.

7 We have already brought the case and made
8 the allegations, and she says, "See the complaint.
9 And I assume that this reflects the division's policy
10 judgment that it is appropriate to seek such relief
11 after trial." She is talking about the relief
12 requested in the original complaint.

13 So the law hasn't changed, the facts have
14 not changed. The policy of the division is reflected
15 in the complaint in the relief sought. What changed?

16 MR. ADAMS: I can't answer that. I don't
17 know. I truly don't know.

18 COMMISSIONER TAYLOR: It is accurate to
19 say that the division's policy can be found in the
20 complaints it files, correct?

21 MR. ADAMS: Well --

22 COMMISSIONER TAYLOR: So it's accurate to
23 say, as I read this complaint, that that articulates
24 the Department's policy --

25 MR. ADAMS: That's a great point.

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1 COMMISSIONER TAYLOR: -- at the time.

2 MR. ADAMS: That's a great point. In
3 2001, before the inauguration, the Department filed a
4 case of the United States v. Charleston County, South
5 Carolina. It was a redistricting case alleging that
6 Charleston County had dilutive elections at large for
7 districts -- or for County Council.

8 Chris Coates actually brought that case,
9 too. That case was filed before the Bush
10 inauguration, with some concern that the Bush
11 administration would reverse course and dismiss the
12 case. Well, thankfully, the Bush administration took
13 office and was absolutely committed to going forward
14 with that case. And the Department won that case.
15 Chris Coates won that case, along with some other very
16 -- along with some other very able attorneys working
17 on the case.

18 In hindsight, the fears that the case
19 would be dismissed that were expressed by people in
20 the Reno Justice Department proved not to be true,
21 that the Bush -- the Ashcroft Justice Department did
22 not dismiss that case and fought vigorously and won
23 the case.

24 Fast forward. In this particular
25 instance, based in some part on the Charleston

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1 precedent, you have a different outcome. So --

2 COMMISSIONER TAYLOR: That's all I have,
3 Mr. Chairman.

4 CHAIRPERSON REYNOLDS: Okay. Commissioner
5 Heriot?

6 COMMISSIONER HERIOT: Okay. I guess I
7 just want to do some cleanup, since I am either the
8 last or second-to-the-last here, make sure that some
9 of the things that you have mentioned here -- that
10 we've gotten out everything.

11 You started to talk about attorneys who
12 are no longer with the Department who might
13 corroborate your view of the culture of the Voting
14 Section?

15 MR. ADAMS: That's correct.

16 COMMISSIONER HERIOT: But I don't think
17 you ever got that out.

18 MR. ADAMS: Well, I said that there are,
19 and I would be happy to provide the names to your
20 counsel. But I am certainly not going to do that
21 until I have a chance to talk to them and make sure
22 they're okay with it.

23 COMMISSIONER HERIOT: Well, then, I would
24 request that you do that.

25 MR. ADAMS: Okay.

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1 COMMISSIONER HERIOT: Then, you mentioned
2 a second ago -- and this is not the first time I think
3 -- you said we had evidence that this wasn't
4 necessarily just an isolated incident. Could you run
5 me by exactly the evidence you are talking about at
6 this point?

7 MR. ADAMS: Yes. Let me stress, evidence
8 was -- if I said "evidence" in the record, that is not
9 what I should have said. I said "indications."

10 COMMISSIONER HERIOT: You said
11 "indications" the first time.

12 MR. ADAMS: Okay.

13 COMMISSIONER HERIOT: But I think you
14 actually said "evidence" the second time, unless I
15 misheard you, but I understand what you mean. What
16 were these indications?

17 MR. ADAMS: Indications were accounts from
18 other parts of the country that this behavior may have
19 been going on prior to the general election, and may
20 have been going on in the primaries with Hillary
21 Clinton supporters as the victims.

22 COMMISSIONER HERIOT: And where did the
23 accounts come from?

24 MR. ADAMS: Okay. Publicly-available
25 information was the basis of these particular

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1 indications. I'm not saying that they --

2 COMMISSIONER HERIOT: Are you talking
3 about press reports, something on the internet?

4 MR. ADAMS: Yes. I'm not saying that they
5 carried a great deal of weight. I'm not saying that I
6 would have gone to trial on what was out there. What
7 I am saying is, is if we had time to fully investigate
8 it, we would have gotten to the bottom of it.

9 COMMISSIONER HERIOT: Do you remember
10 exactly what kind of indications you are talking
11 about, or is this sort of --

12 MR. ADAMS: Same sort of Nation of
13 Islam/New Black Panther thugs.

14 COMMISSIONER HERIOT: Through their
15 websites?

16 MR. ADAMS: No, people at the polls.

17 COMMISSIONER HERIOT: People at the polls
18 said --

19 MR. ADAMS: Correct.

20 COMMISSIONER HERIOT: Okay. People at the
21 polls saying that they had seen this?

22 MR. ADAMS: There is a group of Hillary
23 Clinton supporters -- I think they call themselves
24 Pumas. I don't know enough about it, but I -- and
25 there --

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1 COMMISSIONER HERIOT: I bet it's not
2 Cougars. That wouldn't be the --

3 (Laughter.)

4 MR. ADAMS: No. There are indications
5 that this was occurring in the primaries. Thankfully,
6 we still have a free press, I'm told, that maybe they
7 can look into this and get to the bottom of it,
8 because certainly it is not going to happen now.

9 COMMISSIONER HERIOT: Is there anything --
10 well, let me backtrack a little bit. I take it you
11 have looked at the publicly-available documents that
12 the Commission has produced so far and put into the
13 record, the testimony.

14 MR. ADAMS: I haven't.

15 COMMISSIONER HERIOT: You have not looked
16 at any of --

17 MR. ADAMS: I mean, some of them I have.
18 I mean --

19 COMMISSIONER HERIOT: You have looked at
20 some of the depositions?

21 MR. ADAMS: Yes. But, I mean, today -- I
22 looked at the Kristen Clarke deposition, because if
23 you want to talk about some problems about veracity,
24 that is where to start.

25 COMMISSIONER HERIOT: Okay. Well, let me

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1 ask that question. I want to talk about some problems
2 that have to do with veracity. What is it about the
3 Kristen Clarke deposition that causes you to say that?

4 MR. ADAMS: Yes. In that deposition, it
5 is sort of like -- and Rich will kick me if I get this
6 wrong -- is it Peter denying Jesus three times? Yes.

7 Peter denies Jesus three times. Kristen Clarke
8 denies Chris Coates six.

9 And in those e-mails that go back and
10 forth between Clarke and people inside the Department,
11 they were very angry at CC -- CC. And Clarke denies
12 in that deposition, I think six times, that she knows
13 who CC is. They used to travel together. They worked
14 with each other. It is perfectly apparent to anybody
15 who knows the reality of what was going on in the
16 Voting Section that that is not truthful testimony.

17 COMMISSIONER HERIOT: How long did she
18 work with Chris Coates?

19 MR. ADAMS: Again, you are going to have
20 to have Chris Coates here and tell him.

21 COMMISSIONER HERIOT: Is there anyone else
22 at the Department with the initials CC --

23 MR. ADAMS: Negative.

24 COMMISSIONER HERIOT: -- that you can
25 think of?

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1 MR. ADAMS: Nobody.

2 COMMISSIONER HERIOT: Okay. Anything else
3 in that deposition that caused you concern?

4 MR. ADAMS: Well, that's the one that
5 comes first to mind. I seem to remember something
6 else, but I -- oh, it may be the denial that she was
7 lobbying the Department. I mean, look, that is a
8 question of competing witnesses. What does one
9 witness say? What does Clarke say? I can't answer
10 that. You all are going to have to do that. I can't
11 do that.

12 COMMISSIONER HERIOT: Do you have any
13 personal knowledge of this?

14 MR. ADAMS: Coates does.

15 COMMISSIONER HERIOT: You do not, I take
16 it.

17 MR. ADAMS: Only what Coates told me.

18 COMMISSIONER HERIOT: Okay. Okay. What
19 did Coates tell you?

20 MR. ADAMS: That it was reported to him
21 that Kristen Clarke was talking to an attorney in the
22 Voting Section, and asking when the case was going to
23 be dismissed, well in advance of that timeline up
24 there.

25 COMMISSIONER HERIOT: Did anyone else talk

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1 to you about it?

2 MR. ADAMS: Perhaps Popper, but I don't
3 remember. Again, you need to call them up to tell
4 about it.

5 COMMISSIONER HERIOT: Okay. Any other
6 inaccuracies or questionable items that you have seen
7 in the record that we have created so far?

8 MR. ADAMS: Not that I have seen, no.

9 COMMISSIONER HERIOT: Okay.

10 MR. ADAMS: That doesn't mean I reviewed
11 the whole record. I just --

12 COMMISSIONER HERIOT: Yes, I understand
13 that. I understand. I think that's all I've got.

14 CHAIRPERSON REYNOLDS: Okay. Before I
15 start, I'd like to poll the Commissioners to see if
16 there is a need for a third round.

17 COMMISSIONER GAZIANO: I'd kind of like
18 one.

19 CHAIRPERSON REYNOLDS: Okay.

20 COMMISSIONER GAZIANO: If possible.

21 CHAIRPERSON REYNOLDS: Sure. Okay. I
22 just have a few questions for you. We have --
23 throughout our exchanges, and throughout your
24 testimony, you have mentioned Coates. It is obvious
25 that he is a very important witness. Shortly after

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1 this controversy took place, he was transferred to
2 South Carolina. He is still on the payroll at the
3 Department of Justice?

4 MR. ADAMS: Yes, sir.

5 CHAIRPERSON REYNOLDS: He is currently
6 working in South Carolina?

7 MR. ADAMS: Yes, sir.

8 CHAIRPERSON REYNOLDS: Are you aware that
9 the Commission's jurisdiction, in terms of its
10 subpoena power, does not go past 100 miles?

11 MR. ADAMS: I did not know that.

12 CHAIRPERSON REYNOLDS: Is there -- are you
13 aware of any information that would support the
14 proposition that that transfer took place in part to
15 put him beyond the reach of the Commission's subpoena
16 power?

17 MR. ADAMS: That would be a personnel
18 matter about Chris, and I would not be privy to that
19 sort of thing anyhow.

20 CHAIRPERSON REYNOLDS: Okay. Mr. Coates,
21 his -- the working environment during this
22 controversy, I imagine that things became difficult
23 for him at the Department of Justice.

24 MR. ADAMS: That's an understatement.

25 CHAIRPERSON REYNOLDS: Okay. And this

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1 atmosphere, the environment in which he worked during
2 this period, was that in part the cause for his
3 willingness to be transferred to South Carolina?

4 MR. ADAMS: Look, I don't want to speak
5 for him. He is a dear friend. He is under subpoena.
6 He can answer these questions directly to this
7 Commission.

8 CHAIRPERSON REYNOLDS: I understand.
9 Thank you.

10 Okay. Commissioner Gaziano.

11 COMMISSIONER GAZIANO: Sorry to keep you,
12 and perhaps others. You were asked by the General
13 Counsel whether you were personally involved in the
14 Pima County, Arizona suit, and you said that you were
15 not on that trial team. Am I accurate in thinking
16 that Coates would provide the best evidence of that?

17 MR. ADAMS: Coates will be aware about --
18 he will be aware of that, I am quite sure.

19 COMMISSIONER GAZIANO: There are some
20 others involved in this investigation, whose names
21 won't be mentioned, that pretend that we are not
22 interested in those other cases that have been raised.

23 But we -- this Commission has always been interested
24 in comparing the actions of the New Black Panther case
25 and any others.

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1 Perez mentioned three or four others in
2 his prepared testimony. We have heard others. There
3 is one in Mississippi in 2005; Orange County,
4 California; Grand Coteau, Louisiana, in 2006. Is it
5 fair to say that, you know, there were other -- were
6 you personally involved in any of those other cases?

7 MR. ADAMS: I was involved in none of
8 them.

9 COMMISSIONER GAZIANO: Okay.

10 MR. ADAMS: Coates, however, would be able
11 to answer questions about those cases.

12 COMMISSIONER GAZIANO: Okay. I
13 desperately want more information from the Department.
14 It is absolutely central to our original
15 investigation, and the implication that we don't want
16 to compare apples to oranges, or apples to apples, as
17 the case may be, offends me. But thank you for
18 identifying another reason for the Department to allow
19 Coates to testify again to this Commission.

20 Finally, I want to end where I said I -- I
21 kind of wanted to begin, to explain -- you are not
22 testifying to matters that are deliberative. But
23 deliberative process is a subset of executive -- the
24 President's executive privilege.

25 And as we in the Commission have explained

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1 to the Department time and time again, the Supreme
2 Court in U.S. v. Reynolds says that executive
3 privilege is not to be lightly invoked, but it must be
4 personally invoked by the President or the Department
5 head.

6 And we finally heard only the night before
7 Perez testified that it has not been invoked. And, as
8 far as I know, it hasn't been invoked to this point.
9 And yet the Department's position is that, even though
10 it has not invoked executive privilege, it can simply
11 refuse to comply with the Commission's request. Is
12 that the way it has been communicated to you, or do
13 you have some other understanding of that -- of their
14 position?

15 MR. ADAMS: My understanding of their
16 position is they have not invoked executive privilege.

17 My understanding of their position is that they have
18 interpretations of deliberative process that seem to
19 be inconsistent with previous interpretations by the
20 Office of Legal Counsel inside the Justice Department.

21 That is one of the reasons I am here today.

22 COMMISSIONER GAZIANO: Okay. Well, I
23 again just -- thank you for being in this position.
24 But I'm going to ask you one question that I asked
25 Perez, but this is as a general lawyer, as any lawyer

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1 who has just taken your -- about conflicts of
2 interest.

3 We have asked the Department to appoint a
4 special counsel. Since they have a conflict of
5 interest in enforcing subpoenas against the
6 Department, we have asked them to appoint, like you
7 did, to go to court -- we have asked for special
8 counsel to go to court, since we have a disagreement.

9 We think there is no excuse for them not
10 to follow the law unless the President invokes it.
11 They think they can do whatever they want. We have
12 asked them to appoint a special counsel to go to
13 court, and I asked Perez, and they said, "No, they
14 don't want to do so." I asked him, and I'll ask you,
15 do you know of any situation where the entity with the
16 conflict of interest gets to decide how to resolve the
17 conflict of interest?

18 MR. ADAMS: A federal district court judge
19 who has a motion for recusal in front of him. That's
20 one that comes to mind.

21 COMMISSIONER GAZIANO: Is there any non-
22 judicial official?

23 MR. ADAMS: Probably not. But, again, I
24 am not an oracle of all things of the world, so I
25 can't -- I can't answer that question conclusively.

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1 COMMISSIONER GAZIANO: But I just -- I
2 don't know if you want to comment -- note for the
3 record that we are in a similar position to you. We
4 either would have been happy to go to court with the
5 Department, or for them to comply with the law. But
6 the Department has chosen to do neither.

7 MR. ADAMS: No. Clearly, my attorneys
8 very much made it clear, contrary to, as I said, some
9 comic blogs, that I would have welcomed a motion to
10 quash the subpoena. I would have been perfectly happy
11 if that had been the outcome in regards to that
12 subpoena.

13 I would have let the court know that I
14 have no objection to the motion to quash, but that
15 never came.

16 CHAIRPERSON REYNOLDS: Thank you.
17 Commissioner Kirsanow.

18 COMMISSIONER KIRSANOW: Thank you, Mr.
19 Chairman.

20 Mr. Adams, is it -- would it be fair to
21 say that one of the objectives of the Voting Rights
22 Act, 11(b) in particular, is not simply to address any
23 particular harm or grievance of an affected
24 individual, but also to act as a deterrent? That is,
25 the Department of Justice would bring a case to make

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1 sure that this type of conduct didn't occur on a
2 repeated basis. Would that be fair?

3 MR. ADAMS: Unquestionably. You know,
4 especially given the sacred nature of what we're
5 talking about, the right to vote. No question.

6 COMMISSIONER KIRSANOW: And then, to what
7 extent, then, would the fact that we have this video
8 that has been seen by millions of people have any
9 bearing on the Department's determination to dismiss
10 this case, or to bring it in the first case, but then
11 to dismiss it after some deliberation apparently?

12 MR. ADAMS: That is one of the saddest
13 parts of this whole story is, so many young people are
14 going to see, as I put it, we abetted wrongdoers and
15 abandoned law-abiding citizens. Those messages
16 percolate throughout a culture, and it is a tragedy
17 that that occurred.

18 COMMISSIONER KIRSANOW: In 2007, Attorney
19 General Mukasey, then-Attorney General Mukasey, issued
20 a memo issuing guidelines restricting communications
21 with the White House -- with DOJ with the White House
22 in certain circumstances. Are you aware of who within
23 Justice, if anyone, would have communications with the
24 White House regarding any type of dismissal of the New
25 Black Panther case?

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1 MR. ADAMS: I have very little familiarity
2 with what are -- I call or other people call inside
3 the Department "the Mukasey memos," in regards to
4 those communications. I may have looked at them one
5 time and thought, "Well, that won't apply to me. I'm
6 not going to have those communications anyhow," so I
7 moved on to other more important things. But I don't
8 have -- I don't have a lot of familiarity with those
9 memos.

10 COMMISSIONER KIRSANOW: And just an
11 observation. You made mention of the fact that
12 whether or not the Department of Justice disputes the
13 submission that you presented into evidence would be
14 an indication as to whether or not they are engaged
15 in, or continue to engage in, equal treatment or equal
16 protection of all individuals in the United States of
17 America with respect to voting rights. Given your
18 testimony today, I would be astonished if they didn't
19 dispute it.

20 MR. ADAMS: Well, don't forget, they have
21 options on how to dispute it. I made it clear that if
22 they do anything other than object to the submission,
23 they will be televising to anybody who knows this area
24 of the law that they don't believe Section 5 applies
25 to white victims.

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1 Now, they can go and do a more
2 determination -- or, excuse me, a more information
3 letter or a no determination letter. They could even
4 go back to the federal judge with all of the inherent
5 heightened risk of doing so to try to seek a stoppage
6 of what is going on here. But they don't want Section
7 5 to be used for white victims, so it is not going to
8 happen.

9 Now, if they do it, I am going to be
10 thankful. I am going to write a thank-you note, you
11 know, "Please do this more." But it's not going to
12 happen. You can know July 14th -- look, they may go
13 file something in district court, but every lawyer
14 knows that that carries risks that sending a letter
15 saying, "We object under Section 5" doesn't. And they
16 won't do the Section 5 letter because they don't want
17 to help white victims in Noxubee County, Mississippi.

18 COMMISSIONER KIRSANOW: Thank you, Mr.
19 Adams.

20 Thank you, Mr. Chairman.

21 CHAIRPERSON REYNOLDS: Okay. Commissioner
22 Taylor.

23 COMMISSIONER TAYLOR: Just one question,
24 Mr. Chairman.

25 Mr. Adams, could you share with the

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1 Commission the response -- what I have heard described
2 as the smearing of your good name in response to your
3 willingness to speak candidly about these issues?
4 Share some of that with us, if you would.

5 MR. ADAMS: Well, you know, I don't want
6 to necessarily get in too much of a fistfight, but it
7 is curious how, you know, various things have been
8 said, whether it is that I am a conservative, which I
9 guess is somehow disqualifying to tell the truth, or
10 axe to grind.

11 Listen, I loved my job. It was a
12 wonderful gig. I was at the top of the federal pay
13 scale. I couldn't go any higher. I got promoted two
14 weeks earlier before I resigned. It is intellectually
15 enriching to do this work.

16 For somebody to smear, as opposed to argue
17 the merits, I guess when that is all you have that's
18 what you have to do. So --

19 CHAIRPERSON REYNOLDS: Okay. Commissioner
20 Heriot?

21 COMMISSIONER HERIOT: Oh, I've got the
22 world's easiest question for you.

23 MR. ADAMS: Okay.

24 COMMISSIONER HERIOT: You had mentioned
25 the brown bag lunches.

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1 MR. ADAMS: Yes.

2 COMMISSIONER HERIOT: Could you just
3 describe what those are?

4 MR. ADAMS: Yes. The brown bag lunches
5 were a phenomenon in the Voting Section where Julie
6 Fernandes or others would come to the section,
7 assembled section in the conference room, and talk
8 about the law, what their priorities were. We would
9 all -- you know, people would bring lunch, and these
10 would go on inside the Voting Section.

11 And we would have a topic. One week it
12 was NVRA, the next week it is Section 2, the next week
13 it is Section 5. And so that's what the brown bag
14 lunches were.

15 COMMISSIONER HERIOT: So these were not
16 casual -- somebody happens just to say something.

17 MR. ADAMS: Oh, no. No, no. These were
18 policy discussions that you could bring lunch to.

19 CHAIRPERSON REYNOLDS: Okay. I don't have
20 any questions during this round.

21 MR. ADAMS: I have a check that you all
22 gave me for a witness fee that I don't want to cash.
23 Can I give it back to you?

24 CHAIRPERSON REYNOLDS: Okay. That's --

25 (Laughter.)

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1 We'll take care of that afterwards.

2 MR. ADAMS: Okay.

3 CHAIRPERSON REYNOLDS: And I --

4 MR. ADAMS: I just want it to be on the
5 record that I didn't accept any money for this
6 testimony.

7 CHAIRPERSON REYNOLDS: Okay. Yes, we will
8 accept that --

9 COMMISSIONER HERIOT: Put on the record
10 how much that is, so it doesn't sound like we are
11 paying you a large --

12 MR. ADAMS: \$40.

13 CHAIRPERSON REYNOLDS: \$40, okay. I would
14 like to thank you for testifying today. I think that
15 your testimony today was powerful and will help us
16 shape our report. But this concludes our hearing
17 today.

18 **III. ADJOURN**

19 CHAIRPERSON REYNOLDS: We are adjourned
20 sine die. We will hold the record open for additional
21 evidence pursuant to 45 CFR Section 702.8.
22 Individuals who wish to submit items for consideration
23 to be included in the record may send them to the
24 General Counsel of the Commission, which is located
25 624 9th Street, N.W., Washington, D.C. The zip is

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1 20425.

2 Thank you very much.

3 (Whereupon, at 11:49 a.m., the proceedings in the
4 foregoing matter were adjourned.)

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HEARING ON
THE DEPARTMENT OF JUSTICE'S ACTIONS
RELATED TO THE NEW BLACK PANTHER PARTY
LITIGATION AND ITS ENFORCEMENT OF SECTION 11(b)
OF THE VOTING RIGHTS ACT

+ + + + +

FRIDAY, MAY 14, 2010

+ + + + +

The Commission convened in Room 540 at 624
Ninth Street, Northwest, Washington, D.C. at 9:30
a.m., GERALD A. REYNOLDS, Chairman, presiding.
PRESENT:

GERALD A. REYNOLDS, Chairman
ABIGAIL THERNSTROM, Vice Chairman
TODD F. GAZIANO, Commissioner
GAIL L. HERIOT, Commissioner
PETER N. KIRSANOW, Commissioner
ARLAN D. MELENDEZ, Commissioner (via telephone)
MICHAEL YAKI, Commissioner

MARTIN DANNENFELSER, Staff Director

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WITNESS:

THOMAS PEREZ, Assistant Attorney General,
U.S. Department of Justice,
Civil Rights Division

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel, OGC
TERESA BROOKS
MARGARET BUTLER
CHRISTOPHER BYRNES, Director, RPCU
DEMITRIA DEAS
LILLIAN DUNLAP
PAMELA A. DUNSTON, Chief, ASCD
LATRICE FOSHEE
HANNAH GEYER, Legal Intern
ALFREDA GREENE
TINALOUISE MARTIN, Director, OM
EMMA MONROIG, Solicitor
LENORE OSTROWSKY
EILEEN RUDERT
VANESSA WILLIAMSON
AUDREY WRIGHT

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P-R-O-C-E-E-D-I-N-G-S

(9:33 a.m.)

I. INTRODUCTION BY CHAIR

CHAIRPERSON REYNOLDS: This hearing of the U.S. Commission on Civil Rights will come to order. Our purpose today is to collect facts and information regarding the Department of Justice's actions related to the New Black Panther Party litigation and its enforcement of Section 11(b) of the Voting Rights Act.

The Commission began its investigation of this matter almost a year ago, in June of 2009, and held the first hearing on this matter on April 23rd, 2010. During this hearing, the Commission heard testimony from various fact witnesses, who testified, who witnessed the Election Day incident as well as Representative Frank Wolf and former DOJ official Gregory Katsas.

Today's testimony by Assistant Attorney General for the Civil Rights Division, Thomas Perez, is a continuation of that hearing.

By now, the facts of this case should be well-known. On November 4th, 2008, two members of the New Black Panther Party appeared at a polling station in Philadelphia.

Video evidence and eyewitness testimony

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1 show that these two members standing athwart the
2 entrance of the polling place dressed in paramilitary
3 uniforms with black combat boots.

4 One of them brandished a nightstick. They
5 hurled racial epithets at whites and blacks alike,
6 taunting poll watchers and poll observers, who were
7 there to aid voters and, according to evidence adduced
8 during our hearing last month, caused some voters who
9 sought to cast their votes that day to turn and leave
10 the polling place, rather than have to contend with
11 them.

12 A black poll worker who happened to be
13 working for the Republican Party was called a race
14 traitor and promised that there would be hell to pay
15 if he emerged from the polling place, according to
16 eyewitness statements. He was so alarmed by the
17 Panthers' presence that he would not leave the polling
18 place until they left.

19 Initially this assault upon the sanctity
20 of the polling place was aggressively pursued by the
21 Justice Department in 2008 under Section 11(b) of the
22 Voting Rights Act, which prohibits any person, whether
23 or not acting under color of state law from
24 intimidating, threatening, coercing, or attempting to
25 intimidate, threaten, or coerce any person from voting

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1 or attempting to vote or from aiding a voter.

2 The Department's lawsuit sought to
3 permanently enjoin any similar future conduct by four
4 defendants: Minister King Samir Shabazz; Jerry
5 Jackson; -- these are the two gentlemen who were at
6 the polling place on the day in question -- and the
7 New Black Panther Party Chairman, Malik Zulu Shabazz;
8 and the organization itself.

9 None of the defendants contested the
10 charges. And all that remained for the Department to
11 do was to seek an entry of default judgment and an
12 injunction to stop future acts of intimidation.

13 But on the eve of the date which the court
14 set for the Department's request for default judgment,
15 the trial attorneys that had vigorously pursued the
16 case were instructed, instead, to request a
17 continuance by then Acting Assistant Attorney General
18 for Civil Rights Loretta King.

19 In the days that followed and despite the
20 robust justification memo it had prepared at the
21 inception of the case to support its request to file
22 suit, it appears the experienced line career attorneys
23 responsible for the case were put under intense
24 pressure to justify the lawsuit against the Panthers
25 and required to prepare a defense of its proposed

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1 injunction, as press reports and evidence submitted
2 into the record by Representative Wolf during last
3 month's hearing demonstrate.

4 Ms. King then sought a review of the
5 matter by the Division's Appellate Section, which was
6 also entered into evidence by Representative Wolf.
7 That review states that the Department can make a
8 reasonable argument in favor of default relief against
9 all defendants and probably should, given the unusual
10 procedural situation. It was a view shared by a total
11 of at least six career attorneys intimately familiar
12 with the details of the case, including two who opined
13 from the Appellate Section. One of the appellate
14 attorneys went so far as to characterize the
15 injunctive relief against King Samir Shabazz and Jerry
16 Jackson as very limited and acknowledged that such a
17 limited injunction would not accomplish very much.

18 Nevertheless, the Department dropped its
19 claims against three of the defendants: the
20 organization, the New Black Panther Party; its
21 Chairman, Malik Shabazz; and also, curiously enough,
22 Jerry Jackson, who was one of the individuals from the
23 organization who was at the polling place acting in
24 concert with the gentleman who wielded the nightstick.

25 As to King Samir Shabazz, the Department

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1 reduced the injunctive relief it sought against him.
2 Whereas, the original complaint sought an unlimited
3 injunction prohibiting acts of intimidation anywhere
4 in the United States, the final relief sought by the
5 Department was limited solely to the City of
6 Philadelphia and was only to last through November of
7 2012.

8 Careful analysis of the Department's
9 action in this case falls squarely within this
10 Commission's special statutory mandate to assess the
11 enforcement of the Voting Rights Act. That Act
12 resulted in large part from the Commission's earliest
13 work in the '50s.

14 This assessment comes at a time when both
15 the President and senior DOJ officials have announced
16 the Department is prosecuting civil rights violations
17 again and that it is back open for business.

18 Mr. Perez has stated that it is the job of
19 the Civil Rights Division to enforce all civil rights
20 laws and has noted, "Civil rights enforcement is not
21 like the buffet line at the cafeteria. You can't pick
22 and choose which laws you like and which ones you
23 don't."

24 He has pledged to enforce those laws in a
25 fair and independent fashion using all the tools at

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1 the Department's disposal. "We are not simply open
2 for business," Mr. Perez has said. "We are doing
3 business in a new, different, and better way."

4 In testimony before the House Judiciary
5 Subcommittee on the Constitution in December of 2009,
6 Mr. Perez identified the voting rights of all
7 Americans as being at the core of equal opportunity
8 and equal justice. Robust enforcement of civil rights
9 laws of the dispensation of equal justice, regardless
10 of the color of the victim or offender, are at the
11 heart of the New Black Panther Party case.

12 A dismissal of this case is critical
13 because of the broader message it conveys. The
14 American people expect the Department of Justice to
15 vigorously enforce the nation's civil rights laws.
16 Doing so requires it to exercise its discretion to
17 send a strong message to hate groups across America
18 that the kind of behavior that occurred at the polling
19 place in Philadelphia on Election Day will not be
20 tolerated.

21 Rather than exercise its discretion to
22 deter this behavior in the future, it declined to
23 follow the collective wisdom of career attorneys from
24 several components of the Department, weakened the
25 remedy it sought, and reduced the number of defendants

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1 it sought a remedy against just to one individual,
2 despite evidence that, at a minimum, he acted in close
3 coordination with his colleague Mr. Jackson.

4 A policy of non-prosecution when the facts
5 are so clear is likely to lead to disrespect for the
6 law and the department that is charged with enforcing
7 it.

8 Mr. Perez has said that the nation needs a
9 civil rights division because it is the moral compass
10 of our nation, it serves a guiding light as we
11 navigate new paths on the road to equal justice.

12 Well, if the civil rights division is the
13 nation's moral compass, the Commission on Civil Rights
14 is its conscience. And it is our duty to ensure that
15 the moral compass is pointing due north.

16 Before we hear testimony from Mr. Perez,
17 each Commissioner has been given a minute in which to
18 make an opening statement if he or she wishes. If a
19 Commissioner would prefer to reserve his or her time
20 for a closing statement, they are free to do so. We
21 will adhere firmly to this time limit.

22 Vice Chair Thernstrom, please proceed.

23 COMMISSIONER YAKI: Point of information
24 on the voting rights.

25 CHAIRPERSON REYNOLDS: Yes?

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1 COMMISSIONER YAKI: I just have a question
2 about a statement made in the Chairman's opening
3 remarks. You talked about the --

4 CHAIRPERSON REYNOLDS: Commissioner Yaki,
5 we are under tight time constraints.

6 COMMISSIONER YAKI: I know. I understand.
7 But I think this is important because --

8 CHAIRPERSON REYNOLDS: It may be important
9 --

10 COMMISSIONER YAKI: -- it goes to the
11 rules of the game here, which is you talked about the
12 so-called terrified poll worker at the facility --

13 CHAIRPERSON REYNOLDS: Mr. Yaki?
14 Commissioner Yaki?

15 COMMISSIONER YAKI: -- when there has been
16 direct evidence --

17 CHAIRPERSON REYNOLDS: Commissioner Yaki,
18 we will not be doing this now. Vice Chair Thernstrom,
19 please continue.

20 COMMISSIONER YAKI: I am asking for
21 clarification, Mr. Chair. You made a statement.

22 CHAIRPERSON REYNOLDS: Vice Chair
23 Thernstrom?

24 COMMISSIONER YAKI: It was not based on
25 any direct evidence --

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1 CHAIRPERSON REYNOLDS: Please proceed.

2 COMMISSIONER YAKI: -- by anyone here. It
3 is hearsay testimony. The only thing --

4 CHAIRPERSON REYNOLDS: Commissioner Yaki,
5 now is not the time to try to run out the clock.

6 COMMISSIONER YAKI: I am not trying to run
7 out the clock. I am simply saying that there has been
8 no direct testimony --

9 CHAIRPERSON REYNOLDS: Commissioner Yaki?
10 Commissioner Yaki, you are wasting valuable time. And
11 you know it.

12 COMMISSIONER YAKI: And I think that your
13 ten-minute statement when we only get one minute is a
14 way to put facts into evidence which do not exist.

15 CHAIRPERSON REYNOLDS: Commissioner Yaki?

16 COMMISSIONER YAKI: I just want to make
17 that point.

18 CHAIRPERSON REYNOLDS: Commissioner Yaki?

19 COMMISSIONER YAKI: That's all I have to
20 say.

21 CHAIRPERSON REYNOLDS: Commissioner Yaki,
22 if this happens again, it will come out of your time.

23 COMMISSIONER YAKI: Oh, you can do
24 whatever you want, Mr. Chair.

25 CHAIRPERSON REYNOLDS: Vice Chair

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1 Thernstrom, please?

2 COMMISSIONER YAKI: You seem to be doing
3 it quite --

4 VICE CHAIR THERNSTROM: I was interested
5 in this. I'm just going to reserve my time for later.

6 CHAIRPERSON REYNOLDS: Okay. Next up,
7 Commissioner Gaziano?

8 COMMISSIONER GAZIANO: Actually, I think
9 wouldn't it be Commissioner Kirsanow?

10 CHAIRPERSON REYNOLDS: We are reversing
11 the order.

12 COMMISSIONER GAZIANO: I will reserve my
13 time as well.

14 CHAIRPERSON REYNOLDS: Okay. Commissioner
15 Yaki?

16 COMMISSIONER YAKI: I reserve my time.

17 CHAIRPERSON REYNOLDS: Commissioner
18 Melendez, are you on the phone?

19 COMMISSIONER MELENDEZ: Yes. I just
20 wanted to thank Mr. Perez for being here, and that is
21 about it.

22 CHAIRPERSON REYNOLDS: Okay. Commissioner
23 Heriot?

24 COMMISSIONER HERIOT: I'll reserve my time
25 for afterwards.

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1 CHAIRPERSON REYNOLDS: Okay. I will do
2 the same. At this time we would like to welcome --
3 oh, I'm sorry.

4 COMMISSIONER KIRSANOW: I reserve my time
5 also.

6 CHAIRPERSON REYNOLDS: Okay. We would
7 like to welcome the Assistant Attorney General for the
8 Civil Rights Division, Mr. Thomas Perez. After I
9 introduce Mr. Perez, the General Counsel will begin
10 questioning the witness. And then the floor will be
11 open to Commissioners for questions.

12 Commissioners will have five minutes to
13 ask each of their questions of the witness. And we
14 will again proceed in order of seniority, the only
15 difference being that we have swapped out Commissioner
16 Gaziano for Commissioner Kirsanow. At that point we
17 will engage in another five rounds of questioning if
18 time permits.

19 Mr. Perez, please raise your right hand.
20 Do you swear and affirm that the information you are
21 about to provide is true and accurate, to the best of
22 your knowledge and belief?

23 ASST. ATTY. GEN. PEREZ: Yes, I do.

24 CHAIRPERSON REYNOLDS: Thank you, sir.
25 Given the limited time here today, we ask that you

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1 adhere strictly to the five-minute time limit for your
2 testimony.

3 II. TESTIMONY OF ASSISTANT ATTORNEY GENERAL

4 THOMAS PEREZ, U.S. DEPARTMENT OF JUSTICE,

5 CIVIL RIGHTS DIVISION

6 ASST. ATTY. GEN. PEREZ: Okay. Good
7 morning, Chairman Reynolds and members of the
8 Commission. Thank you for the opportunity to testify
9 here today.

10 The Civil Rights Division remains
11 committed to upholding the civil and constitutional
12 rights of all individuals, particularly those who are
13 the most vulnerable members of our society.

14 I am pleased to be here today to discuss
15 one of the cornerstones of the Division's work: our
16 enforcement of federal laws to protect voting rights.
17 Protection of the right to vote is one of the
18 Department's top priorities, and we want to be as
19 responsive as possible to the Commission's request for
20 information about our law enforcement activities in
21 this area.

22 To that end, the Department has responded
23 to interrogatories and document requests it has
24 received and has provided more than 4,000 pages of
25 documents relating to our enforcement of Section 11(b)

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1 of the Voting Rights Act and specifically with respect
2 to the Department's litigation in the New Black
3 Panther Party matter.

4 Those documents include declarations
5 received by the Department from witnesses in the
6 litigation as well as detailed information collected
7 by the FBI regarding the events that gave rise to that
8 case.

9 As noted in the written responses to the
10 Commission's inquiry, we have endeavored to be
11 responsive to the Commission's request while at the
12 same time protecting against disclosures which would
13 undermine well-established and longstanding
14 confidentiality interests that are integral to the
15 discharge of our law enforcement responsibilities,
16 particularly those relating to litigation decisions.

17 At the outset, let me emphasize with
18 respect to Section 11(b) decisions that these are hard
19 cases. Very few such cases have been brought. In
20 fact, we can find records of only three cases filed by
21 the government under Section 11(b) since its
22 inception.

23 The standards for proof are high. And, as
24 in every case, the question to be addressed is whether
25 the evidence is sufficient to sustain the burden of

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1 proof. And on that question, reasonable minds can
2 differ and can look at the same set of facts but draw
3 different conclusions regarding whether the burden of
4 proof has been met. Let me give you a few examples to
5 illustrate that point.

6 In the most recent case under 11(b) to go
7 to trial, United States versus Brown, the court found
8 that the publication in the newspaper by a county
9 political party chairman of a list of voters to be
10 challenged if they attempted to vote in the party
11 primary did not amount to intimidation, threat, or
12 coercion under 11(b).

13 In another case, in Arizona, the complaint
14 was received by a national civil rights organization
15 regarding events in Pima, Arizona in the 2006 election
16 when three well-known anti-immigrant advocates
17 affiliated with the Minutemen, one of whom was
18 carrying a gun, allegedly intimidated Latino voters at
19 a polling place by approaching several persons,
20 filming them, and advocating and printing voting
21 materials in Spanish.

22 In that instance, the Department declined
23 to bring any action for alleged voter intimidation,
24 notwithstanding the requests of the complaining
25 parties.

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1 In 2005, the Division received allegations
2 that armed Mississippi State investigators intimidated
3 elderly minority voters during an investigation of
4 possible voter fraud in municipal elections by
5 visiting them in their home, asking them who they
6 voted for, in spite of state law protections that
7 explicitly forbid such inquiries.

8 Here again, the Division front office
9 leadership declined to bring a voter intimidation case
10 in this matter. This is the matter referenced in a
11 recent GAO report that examined a number of cases
12 brought by certain sections of the Civil Rights
13 Division during the Bush administration.

14 Moving to the matter at hand, the events
15 occurred on November 4th, 2008. The Department became
16 aware of these events on Election Day and decided to
17 conduct further inquiry.

18 After reviewing the matter, the Civil
19 Rights Division determined that the facts did not
20 constitute a prosecutable violation of the criminal
21 statutes. The Department did, however, file a civil
22 action on January 7th, 2009, seeking injunctive and
23 declaratory relief under 11(b) against four
24 defendants.

25 The complaint alleged that the defendants

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1 violated Section 11(b) because they attempted to
2 engage in and engaged in both voter intimidation and
3 intimidation of individuals aiding voters.

4 Although none of the defendants responded
5 to the complaint, the Department had a continuing
6 legal and ethical obligation to ensure that any relief
7 sought was consistent with the law and supported by
8 the evidence.

9 Based on the careful review of the
10 evidence, the Department concluded that the evidence
11 collected supported the allegations in the complaint
12 against Minister King Samir Shabazz. The Department,
13 therefore, obtained an injunction against defendant
14 King Samir Shabazz, prohibiting him from displaying a
15 weapon within 100 feet of an open polling place on any
16 Election Day in the City of Philadelphia or from
17 otherwise violating Section 11(b).

18 The Department considers this injunction
19 to be tailored appropriately to the scope of the
20 violation and the constitutional requirements and will
21 fully enforce the injunction's terms.

22 Section 11(b) does not authorize any other
23 kinds of relief, such as criminal penalties, monetary
24 damages, or civil penalties.

25 The Department concluded that the

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1 allegations in the complaint against Jerry Jackson,
2 the other defendant present at the polling place, as
3 well as the allegations against the national New Black
4 Panther Party and its leader, Malik Zulu Shabazz, did
5 not have sufficient evidentiary support.

6 The Department reviewed the totality of
7 the evidence in the applicable law in reaching these
8 decisions.

9 CHAIRPERSON REYNOLDS: Thank you, Mr.
10 Perez.

11 At this time, we will hear from the
12 General Counsel. Mr. Blackwood?

13 MR. BLACKWOOD: Thank you. Thank you for
14 coming, Mr. Perez.

15 If I could, if you could put up slide
16 number 2? As I understand your testimony today, the
17 main reason that the course of the litigation changed
18 is that there was another review of evidence. There
19 was, of course, a review of evidence beforehand in
20 determining to file the lawsuit, correct?

21 ASST. ATTY. GEN. PEREZ: Yes, there was a
22 review between November 4th and January 7th.

23 MR. BLACKWOOD: Okay. And at the time
24 that the suit got filed, the J memo shows that four
25 attorneys had signed off: Spencer Fisher, Christian

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1 Adams, Robert Popper, Christopher Coates, four line
2 attorneys. There were four attorneys, two of them,
3 one the Chief, the other the Deputy Chief of the
4 Voting Section.

5 Were there new facts learned between the
6 time of January 7th and May 1st?

7 ASST. ATTY. GEN. PEREZ: The Department
8 has a continuing obligation in any litigation to
9 ensure that the facts that are put forth to support,
10 in this case a default judgment are, in fact, the
11 facts that can support that judgment.

12 MR. BLACKWOOD: Sure.

13 ASST. ATTY. GEN. PEREZ: And so that duty
14 falls with not simply the line attorneys in the
15 section but people up the chain. And in this case,
16 that part is no different than any other case, where
17 you have that continuing legal and ethical obligation
18 to review the facts and apply the facts to the law as
19 you have them.

20 MR. BLACKWOOD: Right. No question.
21 Every attorney has that ongoing obligation.

22 ASST. ATTY. GEN. PEREZ: And every
23 supervisor has the obligation to review the work of
24 the front-line people who are doing it.

25 MR. BLACKWOOD: Right. But --

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1 ASST. ATTY. GEN. PEREZ: That is standard
2 procedure in the Department.

3 MR. BLACKWOOD: No question. But the
4 question I do have is the one I posed to you, which
5 is, was any new evidence learned from the time that
6 the suit was filed on January 7th and the time that a
7 continuance was asked on May 1st?

8 ASST. ATTY. GEN. PEREZ: There was a
9 continuing review of the evidence by people in the
10 front office.

11 MR. BLACKWOOD: But no new evidence?

12 ASST. ATTY. GEN. PEREZ: Well, there was a
13 continuing review of the evidence.

14 MR. BLACKWOOD: Okay. Among that, though,
15 was also a review by the Appellate Section, which
16 occurred on -- what was it? -- May 12th and May 13th
17 by Diana Flynn and Marie McElderry. That review and
18 the memorandum resulting indicated no concern of the
19 kind that you mentioned.

20 If I can see slide 4, please? Ms. Flynn
21 in the memo that she prepared -- and this was just
22 before May 15th, which is the day the default was due
23 or the decision had to be made -- she indicated, "We
24 can make a reasonable argument in favor of default
25 relief against all defendants and probably should

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1 given the unusual procedural situation."

2 Who overruled Ms. Flynn's opinion?

3 ASST. ATTY. GEN. PEREZ: The judgment in
4 this case to proceed in the way that was chosen was
5 made by Steve Rosenbaum and ultimately by Loretta King
6 based on a review of the totality of the
7 circumstances.

8 As it related to the national party, the
9 determination was made -- as you know, there is no
10 vicarious liability when incidents occur. The New
11 Black Panther Party stated that they were going to
12 have 300 poll watchers across America. We are unaware
13 of any incident that occurred anywhere besides
14 Philadelphia.

15 So the evidence in that particular context
16 demonstrated or suggested that if there was indeed a
17 national conspiracy to intimidate voters, that there
18 would have been, it stands to reason, activity
19 elsewhere.

20 So as it related to the national party and
21 the national president -- and, again, the evidence
22 showed that shortly after the election, the national
23 party disavowed the activities and actions of the two
24 people acting locally. And so that judgment was made
25 not to seek that -- the evidence did not support the

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1 actions against the national party and the national
2 chairman.

3 MR. BLACKWOOD: Right. But I'm asking --

4 ASST. ATTY. GEN. PEREZ: And then once you
5 have that happening, you are in a situation where you
6 can no longer because of the narrow tailoring
7 requirements for the injunctive relief --

8 MR. BLACKWOOD: But you are not answering
9 my question.

10 ASST. ATTY. GEN. PEREZ: -- you have -- I
11 actually am, sir, because you are asking the question
12 of why did we make the decision that we made?

13 MR. BLACKWOOD: No, no, no. That's not
14 what I asked. I said, who or why did someone overrule
15 or --

16 ASST. ATTY. GEN. PEREZ: And I'm
17 explaining.

18 MR. BLACKWOOD: -- Ms. Flynn's
19 determination?

20 ASST. ATTY. GEN. PEREZ: Because they took
21 a look at the evidence and --

22 MR. BLACKWOOD: And didn't Ms. Flynn also
23 take a look at the evidence?

24 ASST. ATTY. GEN. PEREZ: And that's --
25 and, Mr. Blackwood, I have worked at the Department

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1 under Republican and Democratic leadership. And I
2 have been involved in many, many cases where you look
3 at evidence. And reasonable people of good faith can
4 take a look at evidence and draw different conclusions
5 from the evidence. This is a case about career people
6 disagreeing with career people. That happens very
7 often.

8 I have had many cases when I was a
9 prosecutor where I looked at a set of facts, and I
10 concluded that we should go in one direction. My
11 supervisors reviewed it. And they had much more
12 experience than I did. And they concluded that we
13 should go in a different direction.

14 That kind of robust interaction is part of
15 the daily fabric of the Department of Justice. And
16 that's precisely what happened in this case.

17 MR. BLACKWOOD: Well, just so we're all
18 clear, though, when you say "career people overruled
19 career people," in this particular case, if we could
20 see slide 3? There was a total of six career
21 attorneys that said the matter should proceed.

22 Now, that's fine. Mr. Rosenbaum and Ms.
23 King came to a different conclusion. But it is, I
24 would think you would agree, slightly unusual that in
25 a case where it's in a default posture, literally the

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1 other side has conceded liability. And the only
2 question is, what is the relief or the remedy?

3 In that circumstance, the six career
4 attorneys were overruled by two others.

5 ASST. ATTY. GEN. PEREZ: We have a
6 continuing duty, whether it's in a default posture,
7 whether it's a pro se defendant, whether it's the
8 biggest white shoe law firm in town representing the
9 defendant, our obligation stays the same, which is
10 that we continue to have a legal and ethical
11 obligation to ensure that we can present evidence that
12 there is sufficient evidence to sustain the elements
13 of the particular charge.

14 In this case, the conclusion was made
15 that, as to the defendant who had the nightstick, that
16 there was indeed sufficient evidence to sustain the
17 charge. And so the default judgment was sought and
18 obtained as it related to him.

19 MR. BLACKWOOD: Okay. If I could --

20 ASST. ATTY. GEN. PEREZ: And as it related
21 to the other defendants in the case, Ms. King and Mr.
22 Rosenbaum concluded that the evidence did not support
23 that. And that was the decision that they made.

24 MR. BLACKWOOD: Okay. This goes back to
25 my original question, though. Of the eight career

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1 attorneys looking at it, the six I mentioned and then
2 Ms. King and Mr. Rosenbaum, they're all looking at the
3 same evidence, correct? I mean, there's no new
4 additional evidence that was collected after January
5 7?

6 ASST. ATTY. GEN. PEREZ: Correct. People
7 can look at the same set of facts, --

8 MR. BLACKWOOD: Of course.

9 ASST. ATTY. GEN. PEREZ: -- just as in the
10 other cases I've provided. People can look at, you
11 know, Minutemen brandishing a weapon at a polling
12 place in Arizona during an election and conclude that
13 that sounds intimidating.

14 MR. BLACKWOOD: Okay.

15 ASST. ATTY. GEN. PEREZ: The Division
16 concluded that it didn't meet the high bar of Section
17 11(b).

18 MR. BLACKWOOD: Okay.

19 ASST. ATTY. GEN. PEREZ: And so that is --
20 again, you know, reasonable people can look at the
21 same set of facts and reach different conclusions.
22 Career people can disagree with career people. And
23 that's precisely what happened in this case.

24 CHAIRPERSON REYNOLDS: Okay. Vice Chair
25 Thernstrom?

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1 VICE CHAIR THERNSTROM: Thank you very
2 much for appearing.

3 ASST. ATTY. GEN. PEREZ: Good morning.

4 VICE CHAIR THERNSTROM: I am interested in
5 three things you have talked about. One, I didn't
6 know that there had been -- and I am extremely
7 interested. You had first thought that there was a
8 threat of a national conspiracy, as it were, 300
9 incidents, 300 poll workers, whatever the description
10 was.

11 It's one of the arguments I have been
12 making from the beginning here at the Commission, that
13 this was a one-off. And, therefore, I would have been
14 very interested in having a briefing, but I didn't
15 think it merited a statutory report.

16 And I just wanted to say that to me, that
17 is an extremely important fact, that you had expected,
18 you know, something on a much larger scale and it
19 didn't occur.

20 I am interested in answers to two
21 questions. One, you have talked about the
22 confidentiality interests of the Department. And I
23 wondered if you would spell those out. I am concerned
24 about those, whether it's a Republican administration
25 or a Democratic administration.

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1 And, two, I wondered if you would spell
2 out -- you had said the standard for the burden of
3 proof in 11(b) cases is very high. And I would like
4 you to spell out what that standard is.

5 I might mention that I am the only person
6 on this Commission who is not an attorney but a
7 political scientist. But I have written two --

8 ASST. ATTY. GEN. PEREZ: You play one on
9 TV, though.

10 VICE CHAIR THERNSTROM: I have written two
11 books on the Voting Rights Act. In neither one did I
12 talk about 11(b) because it has been such a minor
13 provision.

14 ASST. ATTY. GEN. PEREZ: Sure. You ask
15 some very good questions, and let me attempt to
16 address them. The confidentiality interests in not
17 disclosing internal deliberations have been a
18 time-honored interest throughout Republican and
19 Democratic administrations.

20 We have many cases in many different areas
21 that we investigate in the Department of Justice. And
22 the goal that I have, whether it's voting, whether
23 it's criminal, whether it's education, is to foster a
24 robust dialogue.

25 And one way that is a critical way to

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1 foster that robust dialogue is for people on the front
2 lines to appreciate that they can offer me or
3 whomever, Republican or Democrat, is the Assistant
4 Attorney General, that honest and candid advice, not
5 having to constantly wonder whether, if I express this
6 opinion today, will it show up in a PowerPoint
7 presentation tomorrow.

8 And this has been a tradition that has
9 been throughout Republican and Democratic
10 administrations. I recall vividly when I was a career
11 attorney under John Dunne. The Republicans --

12 VICE CHAIR THERNSTROM: I know him well.

13 ASST. ATTY. GEN. PEREZ: And he's a man of
14 great integrity, --

15 VICE CHAIR THERNSTROM: Right.

16 ASST. ATTY. GEN. PEREZ: -- for whom I
17 have great respect. This is an interest that has been
18 expressed and put in practice.

19 We also have great respect for the role of
20 Congress, the role of this Commission. I'm here today
21 because I have great respect for the institution of
22 the Civil Rights Commission and the role that it has
23 played in a host of issues. And that is why we
24 provided over 4,000 pages of documents, including
25 interviews, et cetera.

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1 And when we have this back and forth with
2 Congress, we do very similar things. And our
3 interest, again, is ensuring that those
4 confidentiality interests in our internal
5 deliberations are indeed protected while
6 simultaneously balancing the work that you
7 appropriately have and Congress appropriately has.
8 And we, I think, have historically been able to work
9 those out. And that is why as the head of the
10 Division, I come here today to talk about the matter.

11 11(b), you're correct. If you look at a
12 pie chart under Republican or Democratic
13 administrations, it's been an infinitesimally small
14 part of the enforcement since 1965.

15 We could only find three cases that the
16 Department brought. One was the Harvey Gantt or Jesse
17 Helms case, which resulted in a settlement. And the
18 other two contested cases were not sustained at trial.
19 One was long ago, and one was more recent.

20 And I outlined those other cases, where
21 there are facts that, arguably, demonstrate
22 intimidation, where again the case wasn't even pursued
23 to begin with.

24 And so the courts have set a high bar.
25 That is the hand we're dealt. And I think that is a

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1 big part of the reason why we proceed as such.

2 CHAIRPERSON REYNOLDS: Thank you, Mr.
3 Perez.

4 Commissioner Gaziano?

5 COMMISSIONER GAZIANO: And I have seven
6 minutes, yielded time from -- two from you and --

7 CHAIRPERSON REYNOLDS: Yes. I'm yielding
8 two of my precious minutes to Commissioner Gaziano.

9 COMMISSIONER YAKI: We are going out of
10 seniority? That's basically what is going on now?

11 CHAIRPERSON REYNOLDS: Yes. I announced
12 at the beginning that --

13 COMMISSIONER GAZIANO: Pete is yielding to
14 me, and I will yield to Pete.

15 COMMISSIONER YAKI: Okay.

16 COMMISSIONER GAZIANO: Good morning.

17 ASST. ATTY. GEN. PEREZ: Good morning,
18 sir.

19 COMMISSIONER GAZIANO: I want to begin
20 with a few very simple and general propositions. I
21 don't know if I'll ever drill down apart from these
22 hypotheticals, but please just help me with these
23 propositions.

24 Do you agree that the voting rights laws
25 should always be enforced in a race-neutral manner?

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1 ASST. ATTY. GEN. PEREZ: Yes, sir.

2 COMMISSIONER GAZIANO: I certainly hope
3 so. And I am glad to hear that that is the
4 Department's position.

5 So let me imagine a different
6 administration. It would be a problem for the Civil
7 Rights Division if any political appointee or
8 supervising attorney expressed the view that the
9 voting rights laws should never be enforced against
10 blacks or other racial minorities?

11 ASST. ATTY. GEN. PEREZ: I don't agree
12 with that viewpoint.

13 COMMISSIONER GAZIANO: It would be a
14 problem for the Division, too, wouldn't it? I'm glad
15 you don't agree with it, but it would be a problem for
16 the --

17 ASST. ATTY. GEN. PEREZ: That is not our
18 practice. We look at facts and the law.

19 COMMISSIONER GAZIANO: Hypothetical,
20 another administration. Would you agree it would be a
21 problem if a senior supervising attorney or other
22 political appointee expressed that view in the
23 Division?

24 ASST. ATTY. GEN. PEREZ: Yes, sir.

25 COMMISSIONER GAZIANO: Okay. If that

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1 person who held that view that we both disagree with
2 was in a position to decide which cases to bring or
3 maintain or continue, wouldn't it potentially taint
4 their decision with regard to cases where blacks or
5 other racial minorities were the defendants?

6 ASST. ATTY. GEN. PEREZ: Fortunately, sir,
7 we can continue to have hypothetical conversations.
8 The good news is that in the Division that we work in
9 is the division --

10 COMMISSIONER GAZIANO: Hold on.

11 ASST. ATTY. GEN. PEREZ: If I could
12 finish, sir?

13 COMMISSIONER GAZIANO: I really -- since
14 your time is so limited with us, since you have
15 expressed your limited time -- you know, these are
16 just hypotheticals. This is another administration.
17 I just want to know what the official policy would be.

18 ASST. ATTY. GEN. PEREZ: I would prefer to
19 speak with -- I can speak to the policies and
20 practices of the Obama administration under the
21 leadership of Eric Holder. The Obama administration
22 under the leadership of Eric Holder will enforce the
23 laws, applying the facts to the laws, and we will
24 follow the facts where the facts take us.

25 COMMISSIONER GAZIANO: So what is the --

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1 ASST. ATTY. GEN. PEREZ: The leadership
2 will so reflect.

3 COMMISSIONER GAZIANO: -- answer to my
4 question, which is, would it taint their decisions
5 about whether to bring or maintain a lawsuit against
6 black defendants if they believe the civil rights laws
7 should never --

8 ASST. ATTY. GEN. PEREZ: We don't have
9 people that are of that ilk, sir. So I guess it's a
10 --

11 COMMISSIONER GAZIANO: I hope not.

12 ASST. ATTY. GEN. PEREZ: -- moot question.
13 And the people who have been involved since January
14 20th in decision-making roles in the Civil Rights
15 Division have been people for whom I have great
16 respect.

17 So we can have hypothetical conversations
18 about other administrations, but I thought the focus
19 here of this hearing today was to talk about the
20 decision in the New Black Panther Party case. I'm
21 prepared to talk about the decision in the New Black
22 Panther Party case.

23 COMMISSIONER GAZIANO: Would you be
24 surprised? Would you be surprised, then, if one of
25 your senior political appointees or a supervising

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1 attorney expressed such a view?

2 ASST. ATTY. GEN. PEREZ: I'm quite
3 confident, because I know the folks that work with me
4 quite well, that they have been people who have
5 applied the law, have called balls and strikes as they
6 have seen them, and have done so to the best of their
7 abilities.

8 COMMISSIONER GAZIANO: That isn't an
9 answer to my question. Would it surprise you if
10 someone who was a supervising attorney or another
11 political appointee in your Division expressed such a
12 view?

13 ASST. ATTY. GEN. PEREZ: That's --

14 COMMISSIONER GAZIANO: So it's not your
15 policy. I mean, it would surprise me.

16 ASST. ATTY. GEN. PEREZ: Well, sir, I'm
17 here to answer questions about the New Black Panther
18 Party case. We can continue to have a dialogue about
19 hypothetical people who are not in positions of
20 leadership in the Obama Civil Rights Division if that
21 is the back and forth that you would like to have.

22 I thought I was here to talk about the New
23 Black Panther Party case.

24 COMMISSIONER GAZIANO: I think we are.

25 ASST. ATTY. GEN. PEREZ: Okay. So I'm

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1 happy to answer --

2 COMMISSIONER GAZIANO: Let me ask you.

3 ASST. ATTY. GEN. PEREZ: -- questions
4 about the New Black Panther Party case.

5 COMMISSIONER GAZIANO: If someone came to
6 you and said that someone -- someone in your Division,
7 I should say, came to you and said, "A supervising
8 attorney" or "a political appointee" made the
9 statement that the voting rights laws should never be
10 enforced against blacks or other racial minorities,
11 you would investigate that report, wouldn't you?

12 ASST. ATTY. GEN. PEREZ: I would take a
13 look at the person who made the statement. I would
14 take a look at the statement. And we would have a
15 conversation about it.

16 COMMISSIONER GAZIANO: You would want to
17 interview the people who were supposedly present when
18 that statement was made, wouldn't you?

19 ASST. ATTY. GEN. PEREZ: Yes, sir.

20 COMMISSIONER GAZIANO: And if you believed
21 that statement was made, if you heard it, let's say,
22 you would refute it, wouldn't you?

23 ASST. ATTY. GEN. PEREZ: I would talk to
24 all the people involved and figure out what the
25 context of the statement is. And we would move

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1 forward from there.

2 COMMISSIONER GAZIANO: But wouldn't you
3 want to clarify to all of the people who may have
4 heard it that that is not the policy of the Department
5 and that you would not tolerate that kind of a policy?

6 ASST. ATTY. GEN. PEREZ: Yes, sir.

7 COMMISSIONER GAZIANO: Okay. You helped
8 the Obama transition team for your Division, didn't
9 you?

10 ASST. ATTY. GEN. PEREZ: Yes, I did, not
11 just the Division, the Department.

12 COMMISSIONER GAZIANO: Right, but
13 especially for -- you probably had special interest in
14 -- I don't know how long the clearance process is, but
15 about the same month your nomination was put forward
16 to head the Division, there was a press report with
17 specific instances, examples of people in your
18 Division, not all of whom are still there, who held
19 the view that the voting rights laws should never be
20 enforced against blacks and other racial minorities.

21 Did you take a --

22 ASST. ATTY. GEN. PEREZ: Sir, if you have
23 questions about people who work in the Division, I am
24 happy to have those questions submitted to the
25 Division. And we will take a look at any questions

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1 that you might have.

2 I thought that the subject matter of this
3 hearing was what we did in the New Black Panther Party
4 case. I'm having difficulty understanding --

5 COMMISSIONER GAZIANO: The problem --

6 ASST. ATTY. GEN. PEREZ: -- the nexus.
7 And if --

8 COMMISSIONER GAZIANO: The problem is you
9 are not allowing us to talk to the people we have
10 subpoenaed, the people who might have such evidence.

11 ASST. ATTY. GEN. PEREZ: Well, sir, again
12 --

13 COMMISSIONER GAZIANO: This is very
14 helpful to me, though. You're clarifying for your
15 Division. You're, I hope, correcting the perception
16 that the press reports indicate that the civil rights
17 laws should not be applied to race. So to me this is
18 very valuable testimony.

19 ASST. ATTY. GEN. PEREZ: Well, I'm glad
20 that you think it is valuable.

21 COMMISSIONER GAZIANO: I hope that
22 everyone in your Division is made aware of that.

23 And I will yield my time at this time for
24 the next round.

25 CHAIRPERSON REYNOLDS: Commissioner Yaki?

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1 COMMISSIONER YAKI: Thank you very much,
2 Assistant Attorney General, for being here today. I
3 just want to follow up on some lines that my prior
4 commissioner was talking about. That has to do with
5 the deliberate process privilege and how important
6 that is.

7 Would you agree that, in terms of the
8 prosecutorial decision-making process, especially that
9 the deliberate process privilege -- there is a
10 long-term interest in maintaining the integrity of the
11 prosecutorial decision-making process and that's part
12 of why the deliberate process privilege exists?

13 ASST. ATTY. GEN. PEREZ: Again I want to
14 be very precise about what I have said --

15 COMMISSIONER YAKI: Sure.

16 ASST. ATTY. GEN. PEREZ: -- because I have
17 said that there has been a longstanding -- again, by
18 "longstanding," I am referring to it has been a
19 longstanding interest asserted in Republican and
20 Democratic administrations -- a longstanding
21 confidentiality interest in not disclosing internal
22 deliberations. And it is precisely grounded out of
23 the fact that when you are prosecuting cases, you need
24 to have -- and when I refer to "prosecuting," I am
25 referring to civil and criminal cases.

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1 If you're that front-line attorney -- and
2 I was that front-line attorney because I started in
3 the Division as a summer clerk. Then I was an honors
4 hire. Then I was a first-line supervisor. And then I
5 was the Deputy AAG. And now I have the privilege of
6 being the AAG.

7 And, regardless of where I was in that
8 decision-making process, the currency of good
9 decision-making is having the capacity to investigate
10 the facts, have conversations with your supervisors,
11 disagree, agree, sometimes disagree vociferously, but
12 then come to a conclusion, recognizing that we have a
13 chain of command, we have career people who call balls
14 and strikes.

15 And that confidentiality interest has been
16 an interest that has been well-established, --

17 COMMISSIONER YAKI: Sure.

18 ASST. ATTY. GEN. PEREZ: --
19 well-respected. And that's why we turned over over
20 4,000 pages of documents. We continue to resist, not
21 only here but elsewhere, when people want to talk to
22 line attorneys and ask them, "Why did you do this?
23 Why did you do that? Show me this about your memo."

24 That is an interest I have seen Republican
25 administrations assert with the same vigor as

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1 Democratic administrations. And I think it is a good
2 confidentiality --

3 COMMISSIONER YAKI: So you would agree
4 with this one Attorney General who said, "Employees of
5 the Department of Justice would likely be reluctant to
6 express candidly their views and recommendations on
7 controversial and sensitive matters if those views
8 could be exposed to public scrutiny"?

9 ASST. ATTY. GEN. PEREZ: I think that is a
10 fair statement.

11 COMMISSIONER YAKI: Well, I would tend to
12 agree. And it is ironic that that came from Edwin
13 Meese.

14 I would just like to say that I have one
15 follow-up on the two instances that you did note that
16 were declined by the Department of Justice. But I
17 think that the Pima, Arizona case, where I think the
18 facts as alleged were that people who were noted
19 anti-immigrant activists were openly carrying weapons
20 -- I think they had maybe even hand-made badges or
21 something like that and were videotaping and following
22 Latino voters in Tucson, Arizona. That was one in
23 2006.

24 And then you talked about the Mississippi
25 investigation, where I think people were visiting

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1 elderly people in their homes and people who said they
2 were officials of the government.

3 And one of the points that I have made in
4 this investigation is that this is not really an
5 investigation. This is really just someone's decision
6 to retry the New Black Panther Party case because we
7 have not, despite my many attempts to bring up Pima,
8 Arizona, Mississippi, Philadelphia 2003 mayor's race,
9 the misleading voter rights thing in Orange County in
10 2004, and other instances during the previous
11 administration, we have not really seen any attempt to
12 understand what goes into this, what goes into an
13 11(b) decision to prosecute or not to prosecute.

14 Was there anything in the records with
15 regard to why in 2006 and 2007 those two specific
16 incidents, which somehow did make it up to the Justice
17 Department versus these other ones, which apparently
18 maybe died at the U.S. Attorney level, as to why those
19 were not prosecuted?

20 ASST. ATTY. GEN. PEREZ: I think the
21 political leadership of the prior administration's
22 Civil Rights Division would be in the best position to
23 explain why they chose to decline prosecution --

24 COMMISSIONER YAKI: There were no notes.
25 There were no records.

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1 ASST. ATTY. GEN. PEREZ: -- in the Pima
2 case and in the Mississippi case. And, again, I
3 illustrate these to simply make the point that you can
4 look at a set of facts. And people of good faith can
5 draw different conclusions --

6 CHAIRPERSON REYNOLDS: Thank you.

7 ASST. ATTY. GEN. PEREZ: -- from sets of
8 facts.

9 COMMISSIONER YAKI: Okay. Thank you.

10 CHAIRPERSON REYNOLDS: Commissioner
11 Melendez?

12 COMMISSIONER MELENDEZ: I'll yield my time
13 to Mr. Yaki.

14 COMMISSIONER YAKI: I'll carry it over.
15 I'll take it over to the next round.

16 CHAIRPERSON REYNOLDS: Okay. Commissioner
17 Heriot?

18 COMMISSIONER HERIOT: Thank you.

19 ASST. ATTY. GEN. PEREZ: Good morning.

20 COMMISSIONER HERIOT: Thank you for being
21 here. Good morning.

22 ASST. ATTY. GEN. PEREZ: My pleasure.

23 COMMISSIONER HERIOT: I have got just a
24 few questions. And they mainly focus on a statement
25 that you made before the House Subcommittee.

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1 Just preliminary to this, let me ask you
2 some questions about 11(b), like under 11(b), how many
3 persons must be intimidated or threatened or coerced,
4 since all three of those are in the statute, in order
5 to state a cause of action?

6 ASST. ATTY. GEN. PEREZ: There's no number
7 specified.

8 COMMISSIONER HERIOT: And nobody actually
9 has to be intimidated at all. It just has to be an
10 attempt, right?

11 ASST. ATTY. GEN. PEREZ: There is an
12 attempt provision in the statute. That is correct.

13 COMMISSIONER HERIOT: And it covers not
14 just intimidating or threatening or coercing voters
15 but persons who are aiding and assisting voters?

16 ASST. ATTY. GEN. PEREZ: That's correct.

17 COMMISSIONER HERIOT: And that would
18 include election judges?

19 ASST. ATTY. GEN. PEREZ: That would
20 include election observers, anybody in the process who
21 is aiding voters?

22 COMMISSIONER HERIOT: For instance,
23 like Bartle Bull?

24 ASST. ATTY. GEN. PEREZ: In theory.

25 COMMISSIONER HERIOT: Yes, in theory.

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1 Okay. And no weapon is required?

2 ASST. ATTY. GEN. PEREZ: That's correct,
3 although, again, there are cases that have been
4 declined where weapons were there. There are cases,
5 such as this, where we sought an injunction against
6 the person.

7 COMMISSIONER HERIOT: Okay. On your
8 testimony -- this is the testimony before the House
9 Subcommittee on the Constitution, Civil Rights, and
10 Civil Liberties --

11 ASST. ATTY. GEN. PEREZ: Yes.

12 COMMISSIONER HERIOT: -- December 3rd.
13 I'm sure you remember it. And you got some questions
14 about the New Black Panther Party case. And I was
15 particularly interested in your statement about rule
16 11. Let me just quote you here.

17 You said, "In the Third Circuit, the law
18 is that if you're going to seek a default judgment,
19 you need to be able to represent to the court there is
20 a rule, rule 11, that requires you to be able to
21 represent to the court that the charges you are
22 putting forth are charges that are supported by the
23 facts and evidence."

24 I take it you're referring to rule 11 of
25 the Federal Rules of Civil Procedure?

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1 ASST. ATTY. GEN. PEREZ: It's actually
2 local rules in the District Court of Philadelphia, as
3 I understand, or Pennsylvania, as well as the law of
4 the circuit, which says that, even in a default
5 judgment context, the -- in order to establish
6 liability and, therefore, get the judgment, you have
7 to demonstrate that you can establish all of the
8 elements of the offense. So rule 11 is part of it but
9 not all of it.

10 COMMISSIONER HERIOT: So you are talking
11 about rule 11 of the Federal Rules of Civil Procedure?

12 ASST. ATTY. GEN. PEREZ: But one of many.
13 Again, as I understand it, there is a local rule in
14 Pennsylvania pertaining to default judgments and then
15 the law of the Third Circuit, as I understand it. So
16 that it's not simply rule 11 that is what guides this.

17 There is a number of principles which
18 stand for the proposition that, even when you're
19 seeking a default judgment, you need to establish --

20 COMMISSIONER HERIOT: Let's get to rule 11
21 first here. And we'll go on to the rest.

22 ASST. ATTY. GEN. PEREZ: Well, I'm happy
23 to stick to rule 11, but I can tell you the analysis
24 that was made by the Division --

25 COMMISSIONER HERIOT: Yes. Let's take it

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1 --

2 ASST. ATTY. GEN. PEREZ: -- was -- well,
3 again --

4 COMMISSIONER HERIOT: -- one at a time.
5 Start with rule 11.

6 ASST. ATTY. GEN. PEREZ: The analysis that
7 the decision --

8 COMMISSIONER HERIOT: And we're talking
9 about a rule --

10 ASST. ATTY. GEN. PEREZ: -- conducted was
11 guided --

12 COMMISSIONER HERIOT: Come on. No.

13 ASST. ATTY. GEN. PEREZ: If I could
14 finish?

15 COMMISSIONER HERIOT: No, no.

16 ASST. ATTY. GEN. PEREZ: The analysis --

17 COMMISSIONER HERIOT: I'm asking the
18 questions.

19 ASST. ATTY. GEN. PEREZ: Okay. Well, if I
20 could finish answering? You have asked a question on
21 rule 11.

22 COMMISSIONER HERIOT: No. What I asked
23 you is, are you talking about Federal Rules of Civil
24 Procedure rule 11?

25 ASST. ATTY. GEN. PEREZ: And my answer was

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1 --

2 COMMISSIONER HERIOT: You were talking
3 about more than one. And I want to talk about rule 11
4 first.

5 ASST. ATTY. GEN. PEREZ: You would like to
6 talk about rule 11. I am happy to talk about rule 11.

7 COMMISSIONER HERIOT: Okay. Are you
8 making the point that this case was frivolous in its
9 filing?

10 ASST. ATTY. GEN. PEREZ: No, I'm not.

11 COMMISSIONER HERIOT: Are you making the
12 case that it's frivolous in any way?

13 ASST. ATTY. GEN. PEREZ: No.

14 COMMISSIONER HERIOT: Okay. So you're
15 making the point simply that the accusations must be
16 backed with evidence?

17 ASST. ATTY. GEN. PEREZ: Must be able --
18 whether the defendant is pro se, whether the defendant
19 doesn't show up, or whether the defendant is
20 represented by the biggest firm in town, we have to be
21 able to demonstrate to the court in order to obtain a
22 judgment that we have established the elements of the
23 offense and in this case, 11(b) with the high bar that
24 I have articulated and the courts have articulated, we
25 must prove that in this case. That's what we had to

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1 show.

2 COMMISSIONER HERIOT: Well, of course,
3 that's true. Any lawyer would know that's true.
4 That's always true in any case.

5 ASST. ATTY. GEN. PEREZ: Well, no.

6 COMMISSIONER HERIOT: What's special about
7 this one?

8 ASST. ATTY. GEN. PEREZ: Well, actually,
9 there have been a number of people who have made the
10 claim that this is -- nobody showed up. You can just
11 go into the court and get whatever you want. And the
12 point --

13 COMMISSIONER HERIOT: Wait a minute.
14 Nobody is --

15 ASST. ATTY. GEN. PEREZ: Well, with all
16 due respect, I --

17 COMMISSIONER HERIOT: I am a remedies
18 teacher. This is what I do for a living. I teach
19 remedies. If a student came to me and wrote on an
20 exam that, because there was a default here, that
21 there was some problem or some difficulty in getting
22 the judgment, I would flunk them.

23 This is not a tough case here. Of course,
24 the Third Circuit wants more than simply attorneys who
25 have won by default to do more than just waltz into

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1 court and say, "We were assigned this."

2 CHAIRPERSON REYNOLDS: Commissioner
3 Heriot?

4 COMMISSIONER HERIOT: Yes?

5 CHAIRPERSON REYNOLDS: We are going to
6 have to follow up with your line of questioning on the
7 second round.

8 Commissioner Kirsanow?

9 COMMISSIONER KIRSANOW: Good morning, Mr.
10 Perez.

11 ASST. ATTY. GEN. PEREZ: Good morning,
12 sir.

13 COMMISSIONER KIRSANOW: Thank you for
14 coming, sir. Do you agree with Commissioner Vice
15 Chair Thernstrom that 11(b) is a minor provision?

16 ASST. ATTY. GEN. PEREZ: Well, I don't
17 think there is any minor provision of the Voting
18 Rights Act, but I think that what was implicit in her
19 statement was not that it was minor but that, when you
20 look at the panoply of provisions under the Voting
21 Rights Act that have been enforced over the course of
22 years, there is a relative paucity of cases under
23 section 11(b).

24 COMMISSIONER KIRSANOW: Right.

25 VICE CHAIR THERNSTROM: Precisely. Thank

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1 you.

2 COMMISSIONER KIRSANOW: Voter intimidation
3 is not unimportant, in other words?

4 ASST. ATTY. GEN. PEREZ: I completely
5 agree. And we prosecuted a case from election night
6 in New York City where people violently assaulted
7 folks outside of New York City because they had --
8 because President Obama had been elected.

9 COMMISSIONER KIRSANOW: April 28th of
10 2009, the Department informed the defendants of the
11 case that it was prepared to file for default judgment
12 by May 1. However, on May 1, the Department filed for
13 an extension of 15 days, instead of going forward.

14 What happened between April 28th and May 1
15 to cause the Department to reconsider its position in
16 this matter?

17 ASST. ATTY. GEN. PEREZ: That we
18 frequently have done so in a number of cases in the
19 last few weeks. You are analyzing the evidence and
20 figuring out if the evidence supports the charges.

21 And the Assistant, Acting Assistant
22 Attorney General concluded that she needed more time
23 to make that judgment. So she asked for two more
24 weeks and got it from the court.

25 COMMISSIONER KIRSANOW: What, to your

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1 knowledge, triggered that? Was there any intervening
2 circumstance, fact, or piece of evidence that was
3 adduced that would cause the Department after this
4 case had been postured in a fashion so that it was
5 poised for default judgment to reverse its position or
6 at least reconsider its position? What
7 instrumentality, what intervening circumstance,
8 occurred?

9 ASST. ATTY. GEN. PEREZ: The Acting
10 Assistant Attorney General wanted to make sure that
11 she had a complete understanding of the facts and
12 circumstances of the case.

13 And I'll note parenthetically this wasn't
14 the only case she was working on. She was running a
15 fairly robust division. And so she concluded that she
16 needed an extra two weeks in order to make a judgment
17 that would be a judgment on the merits wherein she had
18 considered all of the evidence in the record.

19 COMMISSIONER KIRSANOW: Wasn't the
20 evidence considered beforehand?

21 ASST. ATTY. GEN. PEREZ: The evidence was
22 always being considered throughout but, as of May 1st,
23 the judgment was made that I still need some time to
24 weigh the evidence and make an appropriate judgment.

25 COMMISSIONER KIRSANOW: And I suppose she

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1 then solicited the opinion of the six line attorneys,
2 career attorneys, who were heavily involved in the
3 case, correct?

4 ASST. ATTY. GEN. PEREZ: There was a
5 robust internal debate during the course of this and
6 throughout.

7 COMMISSIONER KIRSANOW: Okay. So I take
8 that to be a yes?

9 ASST. ATTY. GEN. PEREZ: Again, whenever
10 you have decision-making in any case, you have
11 interaction between the front office and the people
12 who were involved.

13 COMMISSIONER KIRSANOW: So you have six
14 career attorneys heavily invested in the case, all of
15 whom were sought out? And, in fact, my understanding
16 is their opinion was sought out not once but twice.
17 They provided memos indicating that their position
18 remained firm that default judgment should be pursued.
19 And, yet, something happened.

20 That's what I think we are trying to
21 figure out. What intervening circumstance? Given the
22 fact that the momentum throughout had been to go
23 forward with this case, what was the trigger?

24 ASST. ATTY. GEN. PEREZ: Well, I have
25 great respect for all of the attorneys who were

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1 involved in this case. And I have certainly had cases
2 where I, as the front-line attorney in the case,
3 wanted to go one way and, at the end of the
4 investigation, the people above me in the career ranks
5 of the chain concluded that, based on their
6 experience, they wanted to go another way.

7 As I have said a number of times, people
8 of good faith can look at the same set of facts and
9 draw different conclusions, whether it's Pima County,
10 whether it's Mississippi, whether it's the New Black
11 Panther Party case.

12 COMMISSIONER KIRSANOW: Yes.

13 ASST. ATTY. GEN. PEREZ: And, again, two
14 people with 60 years of experience, both of whom had
15 worked in the Voting Section -- so they weren't new to
16 voting rights issues. They were working -- they knew
17 -- they were conversant with the issues, conversant
18 with the case.

19 And they made the judgment on the merits
20 that we should proceed with the default judgment
21 against the gentleman who was -- who had the stick and
22 that the evidence didn't sustain the case against the
23 national party or the head of the national party for
24 the reasons that we have discussed.

25 COMMISSIONER KIRSANOW: If the evidence

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1 was such that it was even not nearly an equipoise but
2 it was a close case -- in fact, you've got six line
3 attorneys who were fairly adamant that there was
4 enough to pursue here. If there was concern that
5 default was not the appropriate --

6 CHAIRPERSON REYNOLDS: I'm sorry.
7 Commissioner Kirsanow, we will have to follow --

8 COMMISSIONER KIRSANOW: Thank you, Mr.
9 Chairman.

10 CHAIRPERSON REYNOLDS: -- up next round.
11 Vice Chair Thernstrom?

12 VICE CHAIR THERNSTROM: Thank you very
13 much, Mr. Chairman.

14 First let me make a statement to clarify
15 something. I have not asserted that this incident was
16 frivolous, but it would have made a difference to me
17 in terms of making it our statutory report if there
18 was a national conspiracy, if New Black Panther Party
19 members were showing up all over the place, if there
20 was anything remotely equivalent to racist whites in
21 the Jim Crow south stopping voters from being able to
22 cast their ballots. And that analogy has been made by
23 some members of this Commission. And I simply object
24 to it. So I never have called it "frivolous," but.

25 Now, do you think that there has been a

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1 difference between Republican and Democratic
2 administrations in the concern about the
3 confidentiality of attorney work product? That's
4 question number one.

5 And, two, with respect to 11(b), are there
6 guidelines upon which the Department relies in
7 enforcing that provision?

8 ASST. ATTY. GEN. PEREZ: As it relates to
9 your first question, this confidentiality interest in
10 not disclosing internal deliberations has been an
11 interest that has been put forth and put into play in
12 Republican and Democratic administrations alike with
13 an equal amount of vigor because there is a
14 recognition of the institutional interest at the
15 Department of Justice in assuring that we have a
16 robust internal decision-making process.

17 And so I saw it because I was a career
18 person. I was hired by the elder Bush administration.
19 And I saw the assertion of that interest then. I saw
20 the assertion of that interest under President
21 Clinton. I see the assertion of that interest now.

22 I think it is a good interest. I think it
23 is a critical part of what enables us to do our job.
24 And I respect the job that you have here. And I
25 respect the job that people in Congress have. And

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1 that is why I am here today. And that is why we have
2 taken so much time to do that.

3 In response to your second question
4 regarding 11(b), there is a paucity of case law and a
5 paucity of cases that have been brought under this.
6 And intimidation has been -- there are jury
7 instructions that define intimidation in other
8 contexts. And those contexts have been instructive to
9 the work that we do here.

10 And what those jury instructions in other
11 contexts highlight is that it is indeed a high bar.
12 And also it's very fact-intensive. And that is why it
13 is difficult to -- it's fact-intensive. And it is
14 simply difficult to prove.

15 VICE CHAIR THERNSTROM: Well, there are no
16 internal guidelines, but there are cases --

17 ASST. ATTY. GEN. PEREZ: We have cases.

18 VICE CHAIR THERNSTROM: -- is the bottom
19 line?

20 ASST. ATTY. GEN. PEREZ: We also have,
21 again -- you know, we have guidance that is informed
22 by our enforcement of similar statutes that --

23 VICE CHAIR THERNSTROM: Right. Okay.

24 ASST. ATTY. GEN. PEREZ: -- proscribe
25 coercion, intimidation, --

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1 VICE CHAIR THERNSTROM: Right.

2 ASST. ATTY. GEN. PEREZ: -- and attempts
3 at those issues.

4 VICE CHAIR THERNSTROM: Mr. Chairman?

5 CHAIRPERSON REYNOLDS: Okay. Commissioner
6 Gaziano?

7 COMMISSIONER GAZIANO: How am I for time?

8 CHAIRPERSON REYNOLDS: The full five
9 minutes.

10 COMMISSIONER GAZIANO: Earlier, in January
11 of this year when the outgoing, then outgoing, Voting
12 Chief, Chris Coates, was leaving, there was a farewell
13 party, farewell reception, in your Division.

14 I know you attended early. And you, as I
15 understand, may have left before he gave some very
16 well-publicized farewell remarks. A summary of those
17 remarks was published by, written up and published by
18 -- of the remarks.

19 And he implies that he believes the New
20 Black Panther case was dismissed because there are
21 some in the Department who don't think the Voting
22 Rights Act should apply evenhandedly across races. I
23 am glad that you have said that you disagree with
24 that.

25 I haven't talked to Chris Coates because

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1 you won't let me. The Department won't let me. So I
2 don't know what the basis of his belief is in that
3 regard.

4 But what did you do, if anything, to
5 investigate whether there was any basis for his view?

6 ASST. ATTY. GEN. PEREZ: Again, I reviewed
7 the facts and circumstances of this case. I have --

8 COMMISSIONER GAZIANO: Let me -- I didn't
9 ask my question --

10 ASST. ATTY. GEN. PEREZ: Well, no because
11 --

12 COMMISSIONER GAZIANO: No. I didn't ask
13 my question very well. Did you do anything
14 specifically after Chris Coates' statement in January
15 to see if his impression that the decision was
16 motivated, in part or at least in part, by a
17 race-based view of civil rights enforcement -- did you
18 do anything to investigate whether there was a basis
19 for his claims?

20 ASST. ATTY. GEN. PEREZ: I have reviewed
21 the totality of the evidence in this matter because I
22 wanted to make the --

23 COMMISSIONER GAZIANO: So you did nothing
24 other than that?

25 ASST. ATTY. GEN. PEREZ: Sir, I did not

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1 finish.

2 COMMISSIONER GAZIANO: You did nothing --
3 you are not answering my questions.

4 ASST. ATTY. GEN. PEREZ: You are not
5 giving me a chance to answer your questions, sir.

6 COMMISSIONER GAZIANO: Okay.

7 ASST. ATTY. GEN. PEREZ: And if you want
8 to keep interrupting, that is obviously your
9 prerogative.

10 COMMISSIONER GAZIANO: Because you have
11 said you have such a limited time with us today, I
12 really would ask you -- well, let me move on since you
13 won't answer that question.

14 When the Department won, the appeal was
15 affirmed for its victory in the Noxubee case, that was
16 in this administration, early in this -- between your
17 work on the transition and your nomination. And there
18 was a press report at that time that described how
19 difficult a victory it was for the Division, even
20 though the Fifth Circuit had great praise for the
21 attorney.

22 And that press report said that the then
23 Acting Chief of the Voting Section, Joe Rich, Kristen
24 Clark, whom we have deposed and has refused to answer
25 questions that she should refuse, and others in the

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1 Division opposed the filing of the Noxubee suit in
2 significant part because the defendants were black.

3 Did you do anything to investigate whether
4 that kind of culture existed in your Division?

5 ASST. ATTY. GEN. PEREZ: I am completely
6 comfortable with the decision that was made by the
7 Acting Assistant Attorney General, Loretta King, and
8 by Steve Rosenbaum. I am absolutely --

9 COMMISSIONER GAZIANO: That is not my
10 question.

11 ASST. ATTY. GEN. PEREZ: But, sir, if you
12 --

13 COMMISSIONER GAZIANO: Did you do anything
14 --

15 ASST. ATTY. GEN. PEREZ: Actually,
16 implicit in your question is the assertion that
17 somehow Loretta King and/or Steve Rosenbaum, who were
18 the decision-makers in this case, acted out of some
19 sort of animus and --

20 COMMISSIONER GAZIANO: One final question.

21 ASST. ATTY. GEN. PEREZ: I'm simply here
22 to say categorically that they made a decision on the
23 merits. Reasonable people can differ. People can
24 differ vociferously.

25 COMMISSIONER GAZIANO: This is --

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1 ASST. ATTY. GEN. PEREZ: And that is not
2 the first --

3 COMMISSIONER GAZIANO: There is one
4 strange --

5 ASST. ATTY. GEN. PEREZ: -- or the last
6 time that that will be the case here.

7 COMMISSIONER GAZIANO: There is one
8 strange --

9 ASST. ATTY. GEN. PEREZ: I want to make
10 sure that the record is clear that --

11 COMMISSIONER GAZIANO: Well, let me
12 reclaim my time. There is one strange fact about the
13 Noxubee victory. The career people who were in
14 charge, which was Loretta King and Rosenbaum, did
15 nothing to see that a press release that normally
16 accompanies that victory was put on your website.
17 Now, there could be other reasons.

18 Let me ask my final question. If we
19 uncovered strong evidence that a current supervising
20 attorney or political appointee senior in your
21 Division made statements that this administration will
22 never bring a voting rights case or, to this effect,
23 will never bring a voting rights case against blacks
24 or other minorities, I hope that you will seriously
25 investigate. And I hope you agree that it would be

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1 highly relevant to this investigation and that we
2 should have access to the witnesses to such a
3 statement.

4 ASST. ATTY. GEN. PEREZ: If you have such
5 a statement, bring such a statement to our attention.

6 COMMISSIONER GAZIANO: I hope to uncover,
7 bring such a statement.

8 CHAIRPERSON REYNOLDS: Commissioner
9 Gaziano, do you yield my five minutes back to me?

10 COMMISSIONER GAZIANO: Yes.

11 CHAIRPERSON REYNOLDS: Okay. Commissioner
12 Yaki?

13 COMMISSIONER YAKI: Yes.

14 CHAIRPERSON REYNOLDS: And, Commissioner
15 Yaki, you have ten minutes.

16 COMMISSIONER YAKI: I'm probably going to
17 use a little bit and carry it over to my next round --

18 CHAIRPERSON REYNOLDS: Okay.

19 COMMISSIONER YAKI: -- or however long it
20 takes for you to answer it.

21 I am a little bit confused by Commissioner
22 Gaziano's last remark because it seems to imply that
23 if any senior official, political or whatever, goes
24 off on a toot, that somehow it constitutes whatever
25 hearsay, however, whatever context it is, it somehow

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1 constitutes probative evidence of something going on.
2 And that to me is very interesting.

3 I want to focus more, really, on what the
4 Department is doing. 11(b) is voter intimidation, but
5 that is really a subset in some ways of the broader
6 issue of voter disenfranchisement, wouldn't you say?

7 ASST. ATTY. GEN. PEREZ: Yes.

8 COMMISSIONER YAKI: I am curious. And
9 since we have you here, I am going to use my
10 prerogative of this time to ask you to talk about the
11 Department's other efforts with regard to voter
12 disenfranchisement at this current time because,
13 again, there seems to be some sort of imputation,
14 however implicit or explicit, that somehow you guys
15 are falling down on the job, despite the public
16 standings.

17 And I would like to see what you have to
18 say with regard to the greater issue of voter
19 disenfranchisement and what the DOJ is doing right
20 now.

21 ASST. ATTY. GEN. PEREZ: Well, voter
22 intimidation and voter disenfranchisement, there are a
23 number of laws on the books that deal with that. And
24 our efforts as a Department to address those issues
25 are a joint venture between the Civil Rights Division

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1 and the Criminal Division.

2 And there are a host of laws on the books.
3 And we have remarkable interaction with the Criminal
4 Division so that we ensure that we are communicating
5 and putting the full force and weight behind us.

6 Also, there are a number of laws that we
7 have been very involved with recently involving
8 ensuring the right to vote for people in the military.
9 That has been a very important focus of Congress. And
10 we have been working hard to investigate that.

11 I mentioned the incident that occurred on
12 election night 2008 where a group of people who --
13 racists who took issue with the fact that we had just
14 elected an African-American President and proceeded to
15 assault, brutally assault, the victims. That's U.S.
16 versus Nicoletti, a case that we brought under 18 U.S.
17 Code section 245, which addresses force or threats of
18 force that interfere or attempt to interfere with a
19 person's exercise of a federally protected right. We
20 brought that case as well. And that was I think, you
21 know, a very good and appropriate prosecution in that
22 case.

23 Obviously we have a broad-ranging program
24 under the motor voter law to ensure access to the
25 ballot. And we have vigorous enforcement in that

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1 area. Section 12, by the way, of MVRA also is an
2 intimidation provision.

3 So, in short, there are a host of laws on
4 the books that we work in collaboration with the
5 Criminal Division on to ensure that there is fair and
6 equal access to the ballot.

7 COMMISSIONER YAKI: How about voter
8 purges? What is the Department doing with regard to
9 that issue? I know that was a big issue in the 2008
10 election with regard to various states. Is there any
11 ongoing --

12 ASST. ATTY. GEN. PEREZ: We're actually in
13 the process right now, and we hope to have it in the
14 very near future. We're preparing guidance on all of
15 the sections of motor voter because, in my outreach to
16 Secretaries of State and other state election
17 officials, I have been learning that it would be
18 useful for us to prepare guidance so that there are
19 understandings of Section 4; Section 6; Section 7;
20 Section 8, which is the purging provision that you are
21 referring to.

22 We want to have guidance across the board
23 so that people, that entities understand what the
24 statute sets out and what the road map for compliance
25 is because there is -- there are right ways and wrong

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1 ways to enforce Section 4, to implement Section 7, to
2 implement Section 8. And we want to make sure that
3 everybody has the proper road map so that we can
4 ensure access to the ballot and we can ensure that we
5 prevent fraud.

6 Sometimes there's this tendency to say
7 that you can only do one or the other. I think we can
8 and should and must do both.

9 COMMISSIONER YAKI: And what is the
10 Department doing with regard to -- one of the problems
11 in the 2008 election was that differing, or sporadic
12 or, how should I say, inconsistent enforcement or
13 interpretation of voter ID laws in various states? Is
14 the Justice Department doing anything to try and
15 create some sort of guidance for those states that
16 haven't prevented it and how they should do it without
17 violating the law, et cetera?

18 ASST. ATTY. GEN. PEREZ: Well, a number of
19 those voter ID issues have been dealt with in
20 connection with section 5 submissions.

21 COMMISSIONER YAKI: Okay.

22 ASST. ATTY. GEN. PEREZ: And so we will
23 continue to address that. There was a submission, for
24 instance, from Arizona that was pre-cleared a couple
25 of years ago.

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1 And so as those issues come up and as
2 covered entities enact laws in that area, again, that
3 is their prerogative to do so as long as it doesn't
4 violate the retrogression provisions of the -- of
5 Section 5 of the Voting Rights Act.

6 So we continue to deal with that in
7 connection primarily but not exclusively with our
8 Section 5 work.

9 COMMISSIONER YAKI: Okay. Thank you.

10 I reserve the balance of my time.

11 CHAIRPERSON REYNOLDS: Which is four
12 minutes.

13 Commissioner Heriot?

14 COMMISSIONER HERIOT: Let's get back to
15 default judgments and rule 11. I take it that you
16 would agree that it is a violation of an attorney's
17 professional responsibility to file a cause of action
18 against a defendant without grounds, right?

19 ASST. ATTY. GEN. PEREZ: Correct.

20 COMMISSIONER HERIOT: Tell me what was
21 missing from the Department's evidence against Jerry
22 Jackson.

23 ASST. ATTY. GEN. PEREZ: Well, again,
24 looking at the totality of the evidence, including the
25 actions and responses of the police officer who

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1 responded to the scene. He was the first responder.
2 He interviewed Mr. Jackson, determined that he was
3 indeed a poll watcher who was authorized to do that
4 work --

5 COMMISSIONER HERIOT: You're not saying a
6 poll watcher is exempt from --

7 ASST. ATTY. GEN. PEREZ: No. The fact
8 that --

9 COMMISSIONER HERIOT: -- Section 11(b),
10 are you?

11 ASST. ATTY. GEN. PEREZ: If I could
12 finish?

13 COMMISSIONER HERIOT: You're not saying
14 that, are you?

15 ASST. ATTY. GEN. PEREZ: No, I'm not
16 saying that, ma'am.

17 COMMISSIONER HERIOT: Okay.

18 ASST. ATTY. GEN. PEREZ: But what he did
19 determine, based on talking to a number of witnesses,
20 including Mr. Jackson, including Mr. Shabazz, he
21 instructed Mr. Shabazz to leave. He talked to other
22 people at the scene. And he made a judgment that --
23 and in his judgment -- and he was the first responder
24 at the scene -- that Mr. Jackson was entitled to stay.

25 And there was no local action taken. They

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1 concluded that the activities did not rise to the
2 level of intimidation. And that was certainly a fact
3 that was a fact of relevance that Ms. King and --

4 COMMISSIONER HERIOT: But all of that, of
5 course, would have been taken into consideration at
6 the time a lawsuit was filed. So the Department did
7 make the decision to file the lawsuit. You're not
8 talking about new evidence there.

9 So are you saying that the attorneys that
10 decided that the other witnesses were more credible,
11 for instance, the witnesses who testified before the
12 Commission, who said that Mr. Jackson was acting in
13 concert with Mr. Shabazz, that he was moving to
14 prevent members, to prevent people from entering the
15 polls, who were entitled to do that?

16 That was all decided. What is new about
17 it? Well, the police officer was not charged with
18 enforcing civil rights laws, federal civil rights
19 laws. What is new there?

20 ASST. ATTY. GEN. PEREZ: As I said,
21 Commissioner, people of good faith and great
22 experience can look at the same set of facts and draw
23 different conclusions about the weight of the evidence
24 that, again, I talked about --

25 COMMISSIONER HERIOT: But you're at the

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1 default stage at this point.

2 ASST. ATTY. GEN. PEREZ: Well, again, as
3 you and I, I think, agreed before, if you were in a
4 default stage, that does not mean that you no longer
5 have an obligation, legal and ethical, to demonstrate
6 to the court that the weight of the evidence -- you
7 can establish the violation.

8 COMMISSIONER HERIOT: Of course not.
9 That's routine.

10 ASST. ATTY. GEN. PEREZ: Yes.

11 COMMISSIONER HERIOT: You had all sorts of
12 evidence here. You had the affidavits. This was on
13 video. This was not a tough one. The police officer
14 didn't see what was on the video. He hadn't spoken to
15 the same witnesses. At this point the case was worked
16 up. There was plenty of evidence. It was going to be
17 a slam dunk.

18 I guess Mr. Jackson -- I just don't see
19 what the possible reason would be.

20 ASST. ATTY. GEN. PEREZ: Well, again,
21 people can look at factual circumstances and draw
22 different conclusions. And that is precisely what
23 happened in this case. That is apparently what
24 happened in some of the other cases I have described.

25 This happens all of the time in the course

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1 of looking at factual circumstances, understanding
2 11(b) and the high bar that exists in that case.

3 And that was the judgment that two career
4 professionals at the leadership levels of the Civil
5 Rights Division made in connection with Mr. Jackson.

6 COMMISSIONER HERIOT: There were no
7 factual changes. I mean, everything you're saying
8 about Mr. Jackson was already known at the time the
9 lawsuit was filed. What changed was simply a
10 different administration.

11 ASST. ATTY. GEN. PEREZ: Two people,
12 Loretta King and Steve Rosenbaum, have been in the
13 Division for 30 years. They worked in the
14 administration of George W. Bush, George H. W. Bush,
15 and many other Presidents.

16 COMMISSIONER HERIOT: Different
17 capacities.

18 ASST. ATTY. GEN. PEREZ: That is correct.
19 But my point is simply the career professionals with
20 60 years of experience made the judgment. You
21 disagree with their judgment. I respect the fact that
22 you disagree with their judgment.

23 They made a judgment on the merits. These
24 are the sort of good faith robust deliberations that
25 occur time and time again.

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1 I have had any number of cases when I was
2 a front-line prosecutor where I felt strongly that the
3 facts suggested A and my supervisors took a look at it
4 and decided that --

5 COMMISSIONER HERIOT: At the default
6 stage?

7 ASST. ATTY. GEN. PEREZ: -- we were going
8 a different direction.

9 CHAIRPERSON REYNOLDS: I think that --

10 COMMISSIONER HERIOT: At the default
11 stage?

12 CHAIRPERSON REYNOLDS: Thank you.

13 Commissioner Kirsanow?

14 COMMISSIONER KIRSANOW: Thank you.

15 Mr. Perez, to your knowledge, did Mr.
16 Rosenbaum and Ms. King, for the first time, assess
17 this case in May of 2009?

18 ASST. ATTY. GEN. PEREZ: Well, I don't
19 know precisely. I mean, they were looking at it
20 throughout. But they also had a number of other
21 things going on because they were -- well, Loretta was
22 the Acting Assistant Attorney General. And Mr.
23 Rosenbaum was overseeing the work of a number of
24 sections.

25 And also I think one thing to note is when

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1 the complaint was filed, there's whatever, 30 days to
2 file an answer, whatever the time period is -- I don't
3 know precisely how or what the time frame is.

4 So this wasn't January 21st, a case that
5 would have been necessarily on anyone's immediate
6 radar screen because if it was filed the 7th or 8th or
7 9th of January, you still would have been waiting for
8 those responses.

9 COMMISSIONER KIRSANOW: How frequently is
10 either the Voting Rights Section or the Civil Rights
11 Division faced with a case that is prime for default
12 judgment?

13 ASST. ATTY. GEN. PEREZ: Default
14 judgments?

15 COMMISSIONER KIRSANOW: Yes.

16 ASST. ATTY. GEN. PEREZ: Not very
17 frequently.

18 COMMISSIONER KIRSANOW: Because it seems
19 to me that it's a little late in the game to be
20 reviewing and second-guessing the attorneys when it's
21 already in a position where you're in a position where
22 you're going to file for default judgment.

23 ASST. ATTY. GEN. PEREZ: I would actually
24 respectfully disagree with that because of the reasons
25 that we have been discussing. The Department has a

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1 continuing obligation, whether or not they don't
2 answer, whether or not they're pro se, whether or not
3 they're represented by the biggest firm in town, to
4 continue to conduct the analysis to determine whether
5 there's a sufficient evidentiary base to support the
6 charges. So I don't think it's ever late in the game
7 or too late in the game to make those judgments.

8 And I know in my work as a career
9 prosecutor, we frequently, for a host of reasons,
10 would make varying judgments at varying points in
11 cases. And that does happen.

12 COMMISSIONER KIRSANOW: Given, as you
13 indicated, that voter intimidation is not unimportant
14 and also given that you have a continuing obligation
15 to assess the case, the merits of the case, and you
16 have come to the conclusion that default was not
17 appropriate here --

18 ASST. ATTY. GEN. PEREZ: Well, could I --
19 default --

20 COMMISSIONER KIRSANOW: Seeking a default
21 judgment would not have been appropriate here. Is
22 that correct?

23 ASST. ATTY. GEN. PEREZ: Well, then, one,
24 I just want to be clear. Mr. Shabazz, the person at
25 the scene with the stick, we sought the judgment and

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1 obtained the judgment because we made the conclusion
2 that --

3 COMMISSIONER KIRSANOW: You obtained a
4 certain injunctive relief?

5 ASST. ATTY. GEN. PEREZ: Correct. I've
6 heard it referenced, including in the Chair's opening
7 statements, that we dismissed the case. And I just
8 want to make sure the record is clear about what
9 occurred in the case.

10 COMMISSIONER KIRSANOW: If there was a
11 concern about pursuing default against anyone else,
12 broader injunctive relief against one of the
13 defendants, was there any consideration given to
14 simply making a proffer, simply pursuing the case, as
15 opposed to going for default?

16 ASST. ATTY. GEN. PEREZ: They had not
17 showed up.

18 COMMISSIONER KIRSANOW: I understood that
19 they had not showed up. But you're in a position
20 where you could obtain judgment. And if you had a
21 concern about default, why not simply move forward
22 with the case, instead of simply going with default?
23 It seems to me that there's two avenues you could have
24 pursued here.

25 ASST. ATTY. GEN. PEREZ: Well, the

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1 evidence that was chosen had both -- the evidence that
2 was chosen in this case is I think a very reasonable
3 avenue, which was the avenue of choosing a default
4 judgment against Mr. Shabazz but --

5 COMMISSIONER KIRSANOW: In Pima and
6 Mississippi, did Ms. King and Mr. Rosenbaum, if you
7 know, make the decision to decline pursuing those
8 cases?

9 ASST. ATTY. GEN. PEREZ: Those cases were
10 in the prior administration. And the person that you
11 have to ask about why those cases were not pursued
12 would be the prior Assistant Attorney General for
13 Civil Rights.

14 COMMISSIONER KIRSANOW: Okay. You don't
15 know who made that decision?

16 ASST. ATTY. GEN. PEREZ: Not off the top
17 of -- I know the decisions not to proceed were
18 decisions that were, as I understand it, made by the
19 political leadership in the prior Civil Rights
20 Division.

21 COMMISSIONER KIRSANOW: Okay.

22 ASST. ATTY. GEN. PEREZ: I don't -- again,
23 I don't know who was in charge when because there was
24 a fair amount of movement.

25 COMMISSIONER KIRSANOW: Was there any

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1 political leadership involved in the decision not to
2 pursue this particular case any further than it was?

3 ASST. ATTY. GEN. PEREZ: No. The
4 decisions were made by Loretta King in consultation
5 with Steve Rosenbaum, who is the Acting Deputy
6 Assistant Attorney General.

7 COMMISSIONER KIRSANOW: In Pima and
8 Jackson, as I understand it, the facts, at least as
9 adduced by Senate investigation, were that someone had
10 firearms, were intimidating, apparently, in my
11 estimation, at least in a colloquial sense.

12 CHAIRPERSON REYNOLDS: Commissioner
13 Kirsanow, I will --

14 COMMISSIONER KIRSANOW: Thank you, Mr.
15 Chair. I will yield.

16 CHAIRPERSON REYNOLDS: Okay. I have a few
17 questions for you. I have heard you say on a number
18 of occasions that the decision was made by two senior
19 career civil servants.

20 It is curious because, to my mind,
21 ultimate decisions are made by the politicals. It is
22 the politicals who were working in the administration
23 that were elected, important decisions regarding
24 policies ordinarily made by the politicals.

25 But are you saying that, in the Obama

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1 administration, decisions within the Department of
2 Justice, or at least some decisions, can be made by
3 career civil servants?

4 It's almost as if they are separate and
5 apart from the political leadership in the Department
6 of Justice.

7 ASST. ATTY. GEN. PEREZ: There are
8 literally thousands of decisions made by the
9 Department of Justice given the breadth and depth of
10 our jurisdiction. So the notion that every decision
11 would have to come up to an Attorney General would
12 result in gridlock, among other things, but in this
13 case --

14 CHAIRPERSON REYNOLDS: Who owns the
15 decisions? Who is responsible for the decision? I
16 understand you are completely right. The career civil
17 servants -- I have worked with some great lawyers at
18 DOJ.

19 The politicals can't make every decision.
20 But in my experience, important decisions go to the
21 top. And even those that don't go to the top --

22 ASST. ATTY. GEN. PEREZ: Sure.

23 CHAIRPERSON REYNOLDS: -- the
24 responsibility and the ownership for those decisions,
25 whether they are right or wrong, rests with the

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1 political. Is that the same approach taken by the
2 Obama administration?

3 ASST. ATTY. GEN. PEREZ: Let me give you
4 how our lines of communication work because I think
5 this is responsive to your question. We meet
6 regularly with -- my direct supervisor in the Civil
7 Rights Division is the Associate Attorney General.

8 We meet on a weekly basis to communicate
9 with him what is happening in the Division. There are
10 representatives of the Deputy Attorney General and the
11 Attorney General's office in those meetings.

12 And there are coordination meetings here,
13 "Here are the significant things that are happening.
14 Here are the significant things that are going on in
15 the weeks ahead."

16 Whenever there is a decision involving a
17 case that has attracted attention, we -- when the
18 decision is made, we obviously communicate that up the
19 chain. And clearly I understand the chain of command.

20 If indeed they have an objection or a
21 concern about a decision that we are about to make, it
22 is obviously their prerogative to weigh in and to say
23 no, I don't want -- I would like to go in a different
24 direction.

25 So that happens. That happened when I was

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1 in Bush I. And that happens now. I think that's kind
2 of been the standard operating procedure in the --

3 CHAIRPERSON REYNOLDS: Do we agree that
4 the ultimate responsibility for decisions made at the
5 Department of Justice rests with the representatives
6 of the Obama administration?

7 ASST. ATTY. GEN. PEREZ: That is why I am
8 here today.

9 CHAIRPERSON REYNOLDS: Okay. Thank you.

10 COMMISSIONER GAZIANO: Mr. Chair, you
11 yielded to me earlier. Could I have my second round?

12 CHAIRPERSON REYNOLDS: Yes, but hold on.
13 Next up -- okay. You can have the remainder of my
14 time, which was approximately two minutes.

15 COMMISSIONER GAZIANO: Okay. I'm -- since
16 I have served in the Department in three
17 administrations, I am delighted that you have
18 clarified that the -- if we do nothing else, what the
19 official position is.

20 But here is my simple question. It would
21 have been much more effective if you had communicated
22 that directly to everyone in the Division. I
23 understand that there was a request that your
24 confirmation be upheld by members of the House to the
25 Senate because they weren't getting information on

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1 this case.

2 Whether that is true or not, I strongly
3 suspect you followed the press accounts of this case.
4 There were many press accounts suggesting that the New
5 Black Panther suit was dismissed because there was a
6 view that the Voting Rights Act should not be enforced
7 against black defendants.

8 Then we had -- you came into the Division.
9 You had Chris Coates in his farewell address. The
10 Chief of the Voting Section suggests that.

11 Why didn't you issue a statement to your
12 Department, "These press reports are wrong. And to
13 the extent that anyone thinks otherwise, it is not the
14 policy and it shall not be the policy of my Division
15 to not enforce the Voting Rights Act against people of
16 certain races"? Did you do that?

17 ASST. ATTY. GEN. PEREZ: I have many
18 friends in the press, Commissioner. If I have to
19 issue a press release --

20 COMMISSIONER GAZIANO: No, not the press
21 release.

22 ASST. ATTY. GEN. PEREZ: -- every time I
23 have to correct the record --

24 COMMISSIONER GAZIANO: Did you --

25 ASST. ATTY. GEN. PEREZ: -- of something

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1 in the press --

2 COMMISSIONER GAZIANO: Why didn't you
3 issue the statement --

4 ASST. ATTY. GEN. PEREZ: -- I would be
5 issuing a lot of press releases.

6 COMMISSIONER GAZIANO: -- to your
7 Department? With all of these stories, with Chris,
8 why didn't you issue a statement to your staff orally,
9 in writing, whatever form you chose? Why didn't you
10 tell your staff, "These stories are wrong. If anyone
11 has these views, I reject it. You had better not have
12 these views"? Why didn't you do that?

13 ASST. ATTY. GEN. PEREZ: Sir, I have
14 communicated from day one. My first or second day on
15 the job, I met with everybody in the Great Hall. And
16 I said, "Our job is to enforce the law, all the laws,
17 and to do so evenhandedly."

18 I then went to each and every section
19 within the first week of my job. And I reiterated
20 that our job is to enforce the laws, all of the laws,
21 and to do so evenhandedly. And I have done that.

22 CHAIRPERSON REYNOLDS: Okay. Mr. Perez,
23 my two minutes has expired. Next is Vice Chair
24 Thernstrom.

25 VICE CHAIR THERNSTROM: I would like to

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1 actually yield the amount of my time to Commissioner
2 Yaki and if there is time left over to please come
3 back to me.

4 CHAIRPERSON REYNOLDS: Yes?

5 COMMISSIONER YAKI: Thank you.

6 Mr. Assistant Attorney General, this
7 hearing is part of an evidentiary process for our
8 annual report. And our statute states that "The
9 Commission shall submit to the President and Congress
10 at least one report annually that monitors federal
11 civil rights enforcement efforts in the United
12 States." I say that because it does talk about
13 federal civil rights enforcement efforts in the United
14 States.

15 I am going to pose not a hypothetical but
16 a likely scenario to you. And I would like to get
17 your responses to it. We have here, through what you
18 have seen here today and in other hearings, evidence
19 that two individuals at a single precinct in
20 Philadelphia, a predominantly African-American
21 precinct, engaged in, at a minimum, very bad behavior
22 and, at worst, voter intimidation.

23 Certainly, in the case of Mr. Shabazz, I
24 think we all agree that carrying a nightstick and
25 acting in a threatening manner, to me, and apparently

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1 to you or to the Division as well, constituted an
2 11(b) violation.

3 Of course, what is interesting and what
4 doesn't get brought up is the fact that that was, that
5 judgment was, enforced. That judgment was taken
6 through to completion.

7 The second thing that isn't often brought
8 up is that Mr. Shabazz was gone by about 10:00 o'clock
9 in the morning. Only Mr. Jackson stayed. Shabazz was
10 asked to leave by the Philadelphia police. And that,
11 indeed, did happen.

12 Since that time -- and perhaps this goes,
13 this may have gone, into your decision-making. I
14 don't know. But there were no complaints filed by any
15 voters. There were no allegations made by the
16 so-called terrified poll worker that I referenced
17 earlier.

18 There is no direct evidence linking the
19 statement made by a witness here saying, "There is a
20 terrified poll worker," which was essentially hearsay
21 evidence, to any direct evidence by a poll worker
22 saying that they were terrified by Mr. Shabazz.

23 There has been no evidence produced that
24 this precinct had any -- there was some evidence
25 produced that maybe two or three people may have

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1 turned away from voting at that particular time but,
2 as I said, Mr. Shabazz was gone by 9:30.

3 No one knows exactly how long Mr. Jackson
4 stayed. No one knows whether those people came back
5 and voted eventually. No one has produced evidence
6 that this had any impact on the precinct vote. And,
7 in fact, I would probably surmise that the precinct
8 vote was probably substantially higher than it was in
9 previous years.

10 No one has really brought up the fact,
11 except you have here today, about how the decision --
12 about how other cases, I think more egregious
13 decisions, have been -- egregious cases of potential
14 11(b) violations have come forward and been declined
15 by the Department of Justice on at least two
16 occasions. And I know of at least three or four
17 others that were brought at least to the U.S. Attorney
18 level and never apparently saw the light of day of
19 Justice during the previous administration as well.

20 What I am trying to get at, Mr. Assistant
21 Attorney General, is that, despite your efforts here
22 today and despite the evidence that the Panthers, this
23 particular New Black Panther Party's attempts to spark
24 a 300-precinct revolt failed miserably in the hands of
25 two overly aggressive and misguided individuals and

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1 despite the fact that there have been no other
2 allegations against the Department that they have
3 failed to prosecute 11(b) violations anywhere else in
4 this country, nevertheless, the likelihood is very
5 high.

6 And I just wanted to be very frank with
7 you that this Commission -- I will not join the vote,
8 by the way, as you could probably tell -- may come out
9 with a report stating that your Department has somehow
10 failed in enforcing the civil rights laws of this
11 country with regard to voter intimidation.

12 And I would like to know, for the record,
13 what would your response be to that kind of report
14 coming forward based on this single incident at this
15 single precinct, the single charging and prosecutorial
16 decision that was made by your Department? How would
17 you feel if the U.S. Commission on Civil Rights came
18 out with a report somehow condemning the entire
19 Justice Department for its failure to enforce 11(b)?

20 ASST. ATTY. GEN. PEREZ: Well, I'm simply
21 hopeful that the Commission's reports -- and I think
22 your national annual reports are important vehicles --

23 CHAIRPERSON REYNOLDS: I apologize, Mr.
24 Perez, but it was --

25 ASST. ATTY. GEN. PEREZ: -- would be

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1 complete.

2 CHAIRPERSON REYNOLDS: Thank you. It was
3 a very long question.

4 ASST. ATTY. GEN. PEREZ: No problem.

5 COMMISSIONER YAKI: You can answer it when
6 my turn comes up next.

7 CHAIRPERSON REYNOLDS: Commissioner
8 Gaziano?

9 COMMISSIONER GAZIANO: You're yielding?

10 CHAIRPERSON REYNOLDS: No. You have five
11 minutes.

12 COMMISSIONER GAZIANO: Okay. We received
13 a letter last night from a Mr. Hunt responsive to the
14 Chairman's letter to Attorney General Holder raising
15 several questions. And one of them, you know, since I
16 was a defender of the President's executive privilege,
17 no one believes more strongly that when the President
18 and Attorney General invoke it, that it needs to be
19 respected. It doesn't mean that it is absolute, of
20 course.

21 But, as you know, as the Chairman's letter
22 to Holder indicated, the Supreme Court has been very
23 clear that the case of United States versus Reynolds,
24 executive privilege "is not to be lightly invoked."
25 There must be a formal claim of privilege lodged by

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1 the head of the Department, which has control over the
2 matter after actual personal consideration by that
3 officer. That means personal consideration by the
4 Department head or attorney.

5 Now, in that letter, the Department,
6 without any authority -- and I know the authorities in
7 this area -- without any authority because none
8 exists, said that the Department's non-executive
9 privilege confidentiality interests override the
10 statutory command Congress has instructed you to
11 comply fully with our requests.

12 And then the final sentence of that letter
13 is that, since you think you're right, the Department,
14 since the Department thinks it's right, that our
15 statute, our subpoenas are inferior to whatever
16 interests the Department has, therefore, it is
17 inappropriate to appoint the special counsel that we
18 have requested to allow a judge to determine this.

19 In what other situations does the entity,
20 in this case the Department, that has the conflict of
21 interest get to decide how that conflict is resolved?

22 ASST. ATTY. GEN. PEREZ: Sir,
23 Commissioner, one of the things that I think has to be
24 clear in the record, because I think your question
25 leaves it unclear, is that we have not invoked

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1 executive privilege.

2 COMMISSIONER GAZIANO: No. I'm glad --

3 ASST. ATTY. GEN. PEREZ: And your question
4 -- I'm sure you didn't intend to, but your question a
5 reasonable person could interpret as having implied
6 that --

7 COMMISSIONER GAZIANO: I have denied you
8 --

9 ASST. ATTY. GEN. PEREZ: -- we have
10 invoked an executive privilege.

11 COMMISSIONER GAZIANO: That's partly the
12 letter --

13 ASST. ATTY. GEN. PEREZ: We have not.

14 COMMISSIONER GAZIANO: -- and part of it
15 is curious because, in the absence of the President,
16 all the President and Attorney General need to say is
17 "I hereby invoke executive privilege after careful
18 personal review."

19 Again, the Supreme Court says it is not to
20 be lightly invoked. And then we might have a few
21 questions about whether you are willing to waive it or
22 this, that, or the other.

23 But, in the absence of the Attorney
24 General or the principal or the President invoking
25 executive privilege to deny us material, you have

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1 asserted that you are confident -- that is not the
2 exact words -- but you think your other interests,
3 other interests, confidentiality interests, override
4 our statute, override our subpoena. Okay. We have a
5 dispute about that, a legal dispute about that.

6 May I ask you, since you are the
7 Department that is supposed to enforce our subpoenas
8 in court, we have pointed out this very embarrassing
9 conflict of interest the Department has. And we have
10 asked for a special counsel who would help us go to
11 court to get a judge to determine who is right, who is
12 right.

13 Do our statutes that require you to
14 cooperate fully override your other non-executive
15 privilege or not? What other situations is the
16 Department with the conflict or the entity with the
17 conflict gets to decide the outcome of that conflict?

18 ASST. ATTY. GEN. PEREZ: The
19 confidentiality interests again, this back and forth
20 that we have had in terms of providing the 4,000 pages
21 of documents, and including FBI statements, including
22 other materials, is exactly the back and forth that we
23 do when we have the House Judiciary Committee or other
24 committees that ask us for information and ask us to
25 produce the front-line attorneys. So there's --

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1 COMMISSIONER GAZIANO: There's a
2 difference. There's a difference. They can hold you
3 in contempt. And they can go to court. Our statute
4 says that you are to enforce our subpoenas, the
5 Department is to enforce the subpoenas. That is the
6 conflict. And so we have asked for a special counsel.

7 The question is, if you are so sure about
8 your legal position, why not allow a judge to decide
9 that?

10 ASST. ATTY. GEN. PEREZ: The congressional
11 statutes do not --

12 CHAIRPERSON REYNOLDS: Okay. Okay. Long
13 question. Same deal.

14 Commissioner Yaki?

15 COMMISSIONER YAKI: I believe I had four
16 minutes reserved from --

17 CHAIRPERSON REYNOLDS: That is correct.

18 COMMISSIONER YAKI: -- as well as my five
19 minutes?

20 CHAIRPERSON REYNOLDS: That is correct.

21 COMMISSIONER YAKI: Thank you. I am going
22 to use it all right now perhaps.

23 Just to go back to the question that I had
24 raised before, getting aside from the fact that we
25 seem to be devolving into Whitewater territory all

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1 over again, if the Commission were to, based on its
2 re-prosecution of the evidence in the Black Panther
3 case, come to a conclusion that the Department of
4 Justice has been failing in its efforts to deal with
5 voter intimidation in this country, how would you
6 respond?

7 ASST. ATTY. GEN. PEREZ: Well, we have an
8 aggressive program of voter -- of law enforcement to
9 address issues of voter intimidation I described in
10 the case that we just prosecuted. I have described
11 both the guidance that we are in the process of
12 putting out to address a wide range of voter access
13 and purging and other issues. And we are working very
14 vigilantly in those areas.

15 And you have a job to do. You are going
16 to put out a report. We will look forward to
17 receiving that report. And we have had -- there are
18 times when we disagree.

19 We have a different point of view. We --
20 there's remarkable ideological diversity around this
21 table today. And that is not a news item. That is a
22 fact. And that's what makes our country great is we
23 have ideological diversity around a host of issues.

24 So I know that you have your job to do.
25 And we have our job to do. Our job is law

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1 enforcement, to apply the facts to the law to make
2 sure that we are fully and effectively enforcing those
3 laws to the best of our ability. And that is what we
4 will continue to do.

5 COMMISSIONER YAKI: But if someone were to
6 say to you the U.S. Commission on Civil Rights is
7 accusing you, accusing the Department, of dropping the
8 ball on voter intimidation, I take it you would
9 probably disagree strongly with that?

10 ASST. ATTY. GEN. PEREZ: I would disagree.

11 COMMISSIONER YAKI: It's nicely,
12 diplomatically put. I might put it a little bit
13 differently, even more strongly than that.

14 I have a very quick question. There has
15 been a lot of talk -- I am going to reserve the
16 balance of my time.

17 CHAIRPERSON REYNOLDS: Commissioner
18 Melendez?

19 COMMISSIONER MELENDEZ: I'll yield my time
20 to Commissioner Yaki if he needs it.

21 COMMISSIONER YAKI: I'll carry it over.

22 CHAIRPERSON REYNOLDS: Okay. Commissioner
23 Heriot?

24 COMMISSIONER HERIOT: I wanted to ask a
25 question about the injunction that did issue. Why was

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1 the decision made to limit it to the City of
2 Philadelphia? Why not the suburbs? It's easy enough
3 for someone like Mr. Shabazz, if he's told he can't
4 repeat this activity in the City of Philadelphia, to
5 just hop on a bus. Why just the city? Why not --

6 ASST. ATTY. GEN. PEREZ: Well, again, the
7 legal principle is the principle of no tailoring the
8 -- when you're seeking injunctive relief, the
9 injunction needs to be narrowly tailored to the -- to
10 address the underlying offense.

11 Once the national party was dismissed
12 based on insufficiency of the evidence, then the
13 national injunction was no longer in play. And so the
14 judgment was made by --

15 COMMISSIONER HERIOT: But there's narrow
16 tailoring, and then there's narrow tailoring. I mean,
17 sure, there are cases like Marshall versus Goodyear
18 that talk in the abstract about narrow tailoring. And
19 the Goodyear case, I think, is decided correctly, but
20 we are talking about such a narrow tailoring that the
21 injunction is practically naked. It's really not
22 useful to have an injunction that only applies to the
23 City of Philadelphia.

24 If someone like Mr. Shabazz is a wrongdoer
25 -- and I think you agree he is a wrongdoer -- he is

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1 not so stupid that he doesn't know how to get on a
2 bus. And at that point, he could repeat the same
3 activity and not be subject to contempt of court --

4 ASST. ATTY. GEN. PEREZ: Well, if you --

5 COMMISSIONER HERIOT: -- to the confines
6 of an injunction like this to be able to say if he
7 does it again, well, this time, you know, we can get
8 him for contempt and, you know, inflict some
9 punishment there. But narrow tailoring wouldn't say
10 you can't apply the injunction to suburban
11 Philadelphia.

12 I think, in fact, we could go much, much
13 further than that. I think if you look at the cases,
14 you will find that we are way beyond narrow tailoring.
15 You know, we are down to a naked injunction.

16 ASST. ATTY. GEN. PEREZ: I think what is
17 illustrated from our back and forth, Commissioner, is
18 that you and I and the decision-makers have some
19 profound differences of opinion on --

20 COMMISSIONER HERIOT: We disagree that it
21 would be easy for him to get on a bus and go to the
22 suburbs?

23 ASST. ATTY. GEN. PEREZ: Well, he could go
24 to New Jersey, I guess. Should we expand it to New
25 Jersey? The evidence presented was that the New Black

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1 Panther Party --

2 COMMISSIONER HERIOT: Yes. You know,
3 should --

4 ASST. ATTY. GEN. PEREZ: The evidence --

5 COMMISSIONER HERIOT: I mean, New Jersey
6 is very close to Philadelphia.

7 ASST. ATTY. GEN. PEREZ: The evidence
8 presented was that the New Black Panther Party and, in
9 particular, these two people, were involved in the
10 City of Philadelphia. That was the evidence that was
11 presented, as I understand it, to the decision-makers
12 at the time.

13 COMMISSIONER HERIOT: Well, if that had
14 happened --

15 ASST. ATTY. GEN. PEREZ: And so under the
16 principles of --

17 COMMISSIONER HERIOT: -- in 2008 and, you
18 know, it wasn't raining that day, does that mean that
19 it only should occur in, an injunction should only
20 apply, if it's not raining and it's 2008?

21 I mean, you have to do these on a
22 reasonable basis. If this conduct is repeated, under
23 what circumstances would that likely be done? Why
24 confine it in a way that becomes almost comical?

25 ASST. ATTY. GEN. PEREZ: The City of

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1 Philadelphia is pretty big. The --

2 COMMISSIONER HERIOT: Not that big. I
3 take it you have agreed he is capable of getting on a
4 bus.

5 ASST. ATTY. GEN. PEREZ: He is capable of
6 getting on a bus, but we have to be --

7 COMMISSIONER HERIOT: And it wouldn't be
8 very hard, right?

9 ASST. ATTY. GEN. PEREZ: We have to be
10 narrowly tailored in the way we enforce things. So --

11 COMMISSIONER HERIOT: Well, then, what is
12 reasonable? If you take a look at the case law on
13 narrow tailoring of injunctions, you have really gone
14 quite overboard here.

15 ASST. ATTY. GEN. PEREZ: Well, I would
16 respectfully disagree. And, once again, you know, we
17 have --

18 COMMISSIONER HERIOT: What about the
19 Nicoletti case?

20 ASST. ATTY. GEN. PEREZ: -- a difference
21 of opinion.

22 COMMISSIONER HERIOT: What injunction are
23 you requesting there?

24 ASST. ATTY. GEN. PEREZ: They're going to
25 jail. The --

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1 COMMISSIONER HERIOT: Did you bring an
2 11(b)?

3 ASST. ATTY. GEN. PEREZ: We did not
4 because we brought a criminal prosecution in that
5 case. And they are serving jail time.

6 COMMISSIONER HERIOT: Was a criminal case
7 considered in the New Black Panther Party?

8 ASST. ATTY. GEN. PEREZ: The criminal case
9 was considered by the local and the federal
10 authorities. And prosecution was declined.

11 COMMISSIONER HERIOT: Other cases under
12 11(b)? Do you have the injunctions that have been
13 stopped in those cases?

14 ASST. ATTY. GEN. PEREZ: Well, again,
15 there are only three cases that we are aware of that
16 the government has brought. Two of them were lost at
17 trial and --

18 COMMISSIONER HERIOT: Yes. But even if
19 they were lost, presumably you requested something.

20 ASST. ATTY. GEN. PEREZ: Presumably
21 something was requested, but you have to get liability
22 before you can get the injunctive relief.

23 COMMISSIONER HERIOT: Yes, but I am
24 interested in --

25 ASST. ATTY. GEN. PEREZ: And there was no

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1 liability --

2 COMMISSIONER HERIOT: -- evidently someone
3 at the Department of Justice believed these were
4 justified cases. What injunction did they request
5 there? Did they request something that applied only
6 to a particular city or did they request something
7 further, like in the Noxubee case? The 11(b) case
8 wasn't successful, but presumably there was something
9 ready to do, something to what the --

10 ASST. ATTY. GEN. PEREZ: Well, again, if
11 the --

12 COMMISSIONER HERIOT: -- injunction should
13 look like with litigation?

14 ASST. ATTY. GEN. PEREZ: Each set of facts
15 is different. In the case that was the most recent
16 case, that was a case involving an individual who put
17 an ad in a newspaper saying --

18 CHAIRPERSON REYNOLDS: Thank you. Thank
19 you, Mr. --

20 ASST. ATTY. GEN. PEREZ: -- that if the
21 following 20 people vote --

22 COMMISSIONER HERIOT: I assume you --

23 CHAIRPERSON REYNOLDS: Thank you, Mr.
24 Perez.

25 COMMISSIONER HERIOT: -- did that in one

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1 spot.

2 CHAIRPERSON REYNOLDS: Okay. Thank you,
3 Mr. Perez.

4 Commissioner Kirsanow?

5 COMMISSIONER KIRSANOW: Yes. Thank you.

6 Mr. Perez --

7 ASST. ATTY. GEN. PEREZ: Mr. Chairman, I
8 just want to make sure -- I have a commitment at
9 11:30. So I thought it was supposed to be over at
10 11:00. So I just want to make sure that the
11 Commission is aware that I need to leave in about five
12 minutes.

13 CHAIRPERSON REYNOLDS: Thank you.

14 COMMISSIONER KIRSANOW: Okay. Mr. Perez,
15 again, thank you for being here. Thank you for your
16 time.

17 The remedial memo of, I think it was, May
18 6th -- maybe it was May 9th of 2009 -- asked that the
19 preparers determine whether or not there were any
20 First Amendment implications to the conduct in which
21 Shabazz and Jackson were engaged.

22 Did the Department come to a position as
23 to whether or not their activity on Election Day of
24 2008 constitutes protected activity under the First
25 Amendment?

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1 ASST. ATTY. GEN. PEREZ: Well, again, as
2 it relates to Mr. Shabazz, the determination was made
3 that his activities constituted -- I should say Mr.
4 Shabazz, who was at the polling place because there
5 are --

6 COMMISSIONER KIRSANOW: Right.

7 ASST. ATTY. GEN. PEREZ: -- two Mr.
8 Shabazzes in this case -- that his actions constituted
9 unlawful intimidation. The judgment was made that, as
10 to Mr. Jackson, that his actions did not reach the
11 evidentiary threshold necessary to establish that
12 violation.

13 As it relates to the national party,
14 again, there is no vicarious liability so that -- and
15 the post-election statements from the national party
16 that they didn't condone the activities. Statements
17 of that nature were very relevant in the determination
18 that we could not sustain the evidentiary burden
19 against the national party.

20 COMMISSIONER KIRSANOW: Specifically with
21 respect to the First Amendment, was any of the conduct
22 that we observed on the videotape of November 4th of
23 2008 protected under the First Amendment?

24 ASST. ATTY. GEN. PEREZ: Well, again, as
25 it relates to Mr. Shabazz, the determination was made

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1 that his activities constituted --

2 COMMISSIONER KIRSANOW: Understood. Were
3 any of the activities that we observed protected?

4 ASST. ATTY. GEN. PEREZ: Is any of the --
5 well, standing at a -- if you're standing at a polling
6 place, absent other indicia of intimidation, that is
7 certainly a protected activity.

8 COMMISSIONER KIRSANOW: There were
9 allegations that there were racial slurs invoked, that
10 someone was called a race traitor, and they were
11 wearing paramilitary gear. Given the context, was any
12 of that protected under the First Amendment?

13 ASST. ATTY. GEN. PEREZ: Well, again, the
14 determination was made based on the totality of the
15 review that there was insufficient evidence as it
16 related to Mr. Jackson. As it related to the national
17 party, when they made a statement that, "We're going
18 out to 300 -- we're deploying 300 people to various
19 polling sites," that is undeniably in our judgment
20 protected speech absent another statement that says
21 something more than that.

22 COMMISSIONER KIRSANOW: Some of the
23 discrete facts that we have here are, we have two
24 individuals who belong to what has been described as a
25 hate group, in military garb, with one of them having

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1 a baton. Racial slurs were invoked.

2 There is evidence that at least three
3 people, although it's unclear whether or not it was a
4 result of Mr. Shabazz's and Mr. Jackson's conduct,
5 were deterred from voting, at least turned away from
6 voting. And we have a circumstance in which the case
7 was poised for default. And we see it on the
8 videotape.

9 If the public views this and then sees
10 that there is no movement going forward on at least
11 two of the defendants and a limited, very limited,
12 injunction -- and, you know, we can debate that, but I
13 tend to agree with my colleague that it seemed to be a
14 fairly narrow injunction for one of them.

15 To what extent do those facts go into
16 deliberation among persons within the Section,
17 Division, or Department that this may cause others to
18 think that there is some concern about or that the
19 Department has a certain view as to how to proceed on
20 these particular cases?

21 ASST. ATTY. GEN. PEREZ: We apply the
22 facts to the law in every single case that we do. And
23 we make our best judgments as to whether the facts
24 sustain the evidentiary burden, an admittedly high
25 evidentiary burden that we had under Section 11(b).

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1 We do that analysis in every case that we
2 bring. In every statutory context in which we bring a
3 case, we apply the facts to the law and make our best
4 judgment possible. And that is what happened in this
5 case.

6 Again, this is not the first and, nor I
7 will predict with great confidence, will it be the
8 last case where, as you move up the chain, you have
9 robust debate and differences of opinion about how to
10 apply a set of facts that we have before us to the law
11 that we must apply --

12 COMMISSIONER KIRSANOW: And one last
13 question. If, in fact, you determine that default was
14 not appropriate for at least two of the defendants and
15 only a narrow injunction for one of them, why not make
16 that determination or yield that determination to the
17 trier of fact?

18 CHAIRPERSON REYNOLDS: I yield two minutes
19 of my time so you can finish the question.

20 ASST. ATTY. GEN. PEREZ: This was the
21 judgment that was made by the two people with 60 years
22 of experience. And they looked at the entire totality
23 of the circumstances. They reviewed all the evidence
24 that they had before them. And they made their best
25 judgment on the merits.

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1 And, again, this is a -- we will continue
2 to have cases in the Department of Justice where we
3 move up the chain and we have robust dialogue and
4 debate.

5 We can always after the fact say, "Could
6 you do this? Could you do that?" They made a
7 decision on the merits based on the evidence that was
8 presented before them at the time. And it was a
9 decision that was made by the Acting Assistant
10 Attorney General. And it was the product of, I think,
11 very careful consideration.

12 Are there people who might disagree with
13 it? Undeniably, or we wouldn't be here today. But we
14 will frequently have decisions that we make that
15 people will disagree with. And that's the beauty of
16 representative democracy, is that people can indeed
17 disagree.

18 COMMISSIONER KIRSANOW: Thank you, Mr.
19 Perez. Thank you, Mr. Chairman.

20 CHAIRPERSON REYNOLDS: All right. Well,
21 Assistant Attorney General Perez, thank you for your
22 time.

23 ASST. ATTY. GEN. PEREZ: Thank you.

24 III. CLOSING REMARKS BY CHAIR

25 CHAIRPERSON REYNOLDS: I suspect that you

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1 will be hearing from us again. We would appreciate
2 the opportunity to seek out ways that we can get
3 information that will help us to form our final
4 product, our report, but get it in a way that we don't
5 undermine the work that you do.

6 I think that if we have good faith
7 discussions and negotiations over some of the
8 remaining discovery disputes, I suspect that we could
9 reduce the size of the dispute.

10 But, in any event, I thank you for
11 providing us with the time you did. And this is an
12 interesting case.

13 ASST. ATTY. GEN. PEREZ: Thank you. And
14 we will continue to keep the lines of communication
15 open.

16 VICE CHAIR THERNSTROM: Thanks from all of
17 us at the Commission.

18 ASST. ATTY. GEN. PEREZ: Thank you. Have
19 a nice day.

20 CHAIRPERSON REYNOLDS: Okay. Folks, at
21 this time, closing statements for the Commissioners
22 who wish to make them? Vice Chair Thernstrom, we will
23 start with you.

24 VICE CHAIR THERNSTROM: Well, I had a
25 closing question for him, but I am not sure I have a

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1 closing statement. I guess I will say two things.
2 One, I very much appreciate Mr. Perez coming today. I
3 thought he answered the questions in a forthright way
4 and with integrity.

5 I cannot say too strongly that I agree
6 with Attorney General Meese that an administration
7 cannot function if its internal deliberations are
8 always vulnerable to ending up in the public sphere.

9 And, lastly, as I understand it, there is
10 no evidence that the New Black Panther Party, which is
11 a lunatic fringe group and dysfunctional lunatic
12 fringe group, largely dysfunctional, was sufficiently
13 well-organized to show up at any other polling place
14 and to be likely to show up in a suburban setting or
15 other urban setting. And I appreciated his stress on
16 the fact that, look, different attorneys can look at
17 the same facts and come to different conclusions.

18 This is a legitimate argument between
19 people of integrity, both on this Commission and in
20 the Justice Department. And I think we need to
21 respect both sides of this dispute.

22 That's it.

23 CHAIRPERSON REYNOLDS: Commissioner
24 Gaziano?

25 COMMISSIONER GAZIANO: I think that there

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1 are two -- what comes to mind about the conflicts that
2 we have with the Department's refusal to cooperate
3 comes down to this.

4 Greg Katsas has testified very clearly and
5 very explicitly that a decision to dismiss a lawsuit
6 could not have been made at the Division level alone.
7 And we have some interrogatory answers from the
8 Department that suggest Perelli was consulted.

9 I think we need more clarity on exactly
10 what the role of Perelli, Holder, and others was,
11 because we heard time and time again from the
12 Assistant Attorney General that the real decision was
13 made at the Division level. We have a former
14 Associate Attorney General who said that is
15 impossible.

16 Secondly, notwithstanding the 4,000 pages
17 of largely peripheral redacted documents the
18 Department has given us, we all know the elephant in
19 the room. They won't give us the most important and
20 helpful material that would help us in our
21 investigation. And that is interviewing four to six
22 people who would help us understand whether an
23 impermissible racial motive or other impermissible
24 motive was at play.

25 Those individuals include Perelli, King,

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1 Rosenbaum, and some of the trial team. There might be
2 one or two others if we were allowed to do our job
3 back in October and begin where we are.

4 But the central question is, why did they
5 continue to stonewall allowing us to do our job and
6 interview, depose, or hear testimony from those
7 critical witnesses? And why won't they even appoint a
8 special counsel to allow us to take that legal issue
9 to court?

10 CHAIRPERSON REYNOLDS: Commissioner Yaki?

11 COMMISSIONER YAKI: Thank you very much,
12 Mr. Chairman.

13 As I think I have made it very clear, I
14 think that we are spending enormous time and resources
15 on re-litigating an issue, a single-focused issue, and
16 trying to bootstrap within it some Whitewater-esque
17 conspiracy, which I think is going to get us nowhere.
18 It only undermines our credibility as a Commission.

19 We somehow are going to create this
20 atmosphere that the Justice Department will not be
21 pursuing enforcement of voting rights. And I would
22 just like to say this.

23 When you look at what happened during the
24 Bush administration, when you look at the fact that
25 they declined people wearing guns and intimidating

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1 Latino voters, that they declined people interviewing
2 elderly black voters in their homes in Mississippi,
3 interviewing elderly Latino voters in New Mexico,
4 going into Philadelphia in sort of Men in Black-type
5 outfits and this Commission has turned a blind eye to
6 that for years, turned a blind eye to Katrina, turned
7 a blind eye to so many other issues but, somehow in
8 this particular instance, we're going to find fault
9 with the Justice Department is the height, height of
10 hypocrisy.

11 I agree, you know, with Commissioner
12 Thernstrom. We should try and be respectful. But
13 this process has shown no respect for the process, has
14 shown no respect for fairness. And once again, I just
15 think that this is a laughable exercise of the
16 Commission's powers.

17 CHAIRPERSON REYNOLDS: Commissioner
18 Melendez?

19 COMMISSIONER MELENDEZ: I didn't have a
20 statement. Thank you.

21 CHAIRPERSON REYNOLDS: Commissioner
22 Heriot?

23 COMMISSIONER HERIOT: Well, I had thought
24 I wouldn't make a statement, but I guess I am going to
25 go back to my plan to make a statement here. And that

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1 thought was just to make, I think, what is one single
2 point. And that is, in the year running up to the
3 2008 election, there was a lot of very partisan
4 bickering about election procedures.

5 Republicans argued, on the one hand, that
6 there was a lot of voter fraud out there in the world.
7 Democrats argued that there was a lot of voter
8 intimidation out there and that something ought to be
9 done. And, in truth, I have to tell you that I
10 thought that both sides were overstating their case.

11 Although, of course, voter intimidation
12 and voter fraud are both very important issues and
13 they need to be dealt with, it seemed to me there was
14 more hysteria than was appropriate.

15 But because the Bush administration was a
16 Republican administration, naturally the accusation
17 was that the Bush DOJ was not doing enough about voter
18 intimidation.

19 So I thought, perhaps naively, that when
20 the Obama administration came in, that they would
21 naturally want to emphasize voter intimidation, as is
22 their right. I have no objection to that. I believe
23 that each administration has to decide its priorities
24 and that that is appropriate.

25 But, lo and behold, what I regard and what

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1 I think most people regard as an extremely strong case
2 got dropped at a point where the resources necessary
3 to follow through were really very, very small. And
4 so that was surprising to me.

5 Again, each administration can and should
6 set its own priorities unless the motivation has
7 something to do with the fact that, in this particular
8 case, the defendants were black. If the reason for
9 dismissing the case has to do with the race of the
10 parties, then I think that is something that the
11 Commission has a duty to look into. And that is why
12 we are doing this case.

13 If that possibility were not there, I
14 don't think it's very likely that this case would have
15 been chosen as a subject for an enforcement report.
16 It is the fact that there is the possibility that race
17 is infecting these decisions and that that would be,
18 as the Assistant Attorney General said, that that is
19 not what they should be about. That is why we are
20 looking into this.

21 Not all of the evidence is in, but this is
22 something that is perfectly appropriate for this
23 Commission to look at. And, in fact, I think it would
24 be inappropriate for us to neglect this kind of issue.

25 CHAIRPERSON REYNOLDS: Commissioner

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1 Kirsanow?

2 COMMISSIONER KIRSANOW: Mr. Chair, voter
3 intimidation is a matter of some seriousness. And we
4 are specifically charged with investigating those
5 matters.

6 I don't know if we have turned a blind eye
7 to some of the other cases that have been cited:
8 Pima, Mississippi, or some of the others. I will tell
9 you that, frankly, had it been brought to my
10 attention, I would have counseled that we should look
11 into those. I don't recall those ever being raised
12 before the Commission as subjects for our
13 investigation. But, again, had they been, I would
14 have aligned myself with those who would have wanted
15 to take a look at it.

16 I think this particular case was a public
17 case. It was brought to our attention. It merited
18 our review. And I will withhold or at least hold in
19 abeyance the balance of any other statement on this
20 matter until such time as I have had an opportunity to
21 review the depositions, transcript of the hearing, all
22 of the documents that have been produced. And I am
23 hopeful more will be produced at the conclusion of our
24 investigation of this matter.

25 CHAIRPERSON REYNOLDS: Okay. And I would

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1 just like to share some observations. I listened to
2 Mr. Perez. And some of the thoughts that came to mind
3 were, well, I was just surprised at the cramped,
4 narrow approach taken by the Obama administration on
5 this point. It was very technical, very conservative,
6 just giving me the impression that the administration
7 was just uncomfortable with this case.

8 I was also struck by the fact that the
9 characterization as to who was responsible for the
10 decision, the notion that the buck stops with the
11 administration, it's not clear that that is true with
12 this administration.

13 I kept hearing that Loretta King and Mr.
14 Rosenbaum with their 60 years of collective experience
15 were the shot callers in this matter. That struck me
16 as odd. It is the administration that is responsible
17 for decisions. Good, bad or indifferent, the
18 administration owns it.

19 And hiding behind the decisions of career
20 civil servants, it's not what I expect of an
21 administration that accepts responsibilities for its
22 decisions.

23 In any event, at this point, though, I
24 would like to say that this concludes our hearing for
25 today. We are adjourned sine die until a later date.

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1 We will hold the record open for
2 additional evidence pursuant to 45 CFR section 702.8.
3 Individuals who wish to submit items for consideration
4 to be included in the record may send them to the
5 General Counsel at the U.S. Commission on Civil Rights
6 at 624 9th Street, Northwest, Washington, D.C. 20425.
7 Thank you.

8 We will have a business meeting. Let's
9 give ourselves a 15-minute break.

10 (Whereupon, the foregoing matter was
11 concluded sine die at 11:34 a.m.)

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U.S. COMMISSION ON CIVIL RIGHTS

+ + + + +

HEARING ON THE
 DEPARTMENT OF JUSTICE'S ACTIONS RELATED TO
 THE NEW BLACK PANTHER PARTY LITIGATION
 AND ITS ENFORCEMENT OF
 SECTION 11(b) OF THE VOTING RIGHTS ACT

+ + + + +

FRIDAY, APRIL 23, 2010

+ + + + +

The Commission convened in Room 540 at 624
 Ninth Street, Northwest, Washington, D.C. at 9:30
 a.m., Gerald A. Reynolds, Chairman, presiding.

PRESENT:

GERALD A. REYNOLDS, Chairman
 ABIGAIL THERNSTROM, Vice Chairman
 TODD F. GAZIANO, Commissioner
 GAIL L. HERIOT, Commissioner
 PETER N. KIRSANOW, Commissioner
 ARLAN D. MELENDEZ, Commissioner
 ASHLEY L. TAYLOR, JR., Commissioner
 MICHAEL YAKI, Commissioner

MARTIN DANNENFELSER, Staff Director

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel, OGC
 TERESA BROOKS
 CHRISTOPHER BYRNES, Director, RPCU
 DEMITRIA DEAS
 LILLIAN DUNLAP
 PAMELA A. DUNSTON, Chief, ASCD
 HANNAH GEYER, Legal Intern
 MAHA JWEIED
 TINALOUISE MARTIN, Director, OM
 LENORE OSTROWSKY
 JOHN RATCLIFFE, Chief, Budget and Finance
 KIMBERLY TOLHURST
 VANESSA WILLIAMSON
 AUDREY WRIGHT

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MICHELE YORKMAN-RAMEY

COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COLTEN
ALEC DEULL
TIM FAY
DOMINIQUE LUDVIGSON
JOHN MARTIN
ALISON SCHMAUCH
KIMBERLY SCHULD

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Adjourn	

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P-R-O-C-E-E-D-I-N-G-S

(9:35 a.m.)

I. INTRODUCTION BY CHAIR

CHAIRPERSON REYNOLDS: Ladies and gentlemen, this hearing of the United States Commission on Civil Rights will come to order. Our purpose today is to collect facts and information regarding the Department of Justice's actions related to the New Black Panther Party litigation and its enforcement of Section 11(b) of the Voting Rights Act.

The Commission began its investigation of this matter almost a year ago, in June of 2009. This hearing is an outgrowth of that project. Notice regarding the time, place and content of this hearing appeared in the Federal Register on March 18th, 2010, pursuant to the Commission's regulations.

Since its inception, the US Commission on Civil Rights has had a special mandate over issues of voting and voting rights. In fact, one of the Commission's first official projects upon its establishment by the Civil Rights Act of 1957, the same act that created the Civil Rights Division at the Department of Justice, was to convene hearings in Alabama to look for evidence of racial discrimination in voting there.

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1 Witness after witness testified of efforts
2 to interfere with their right to vote, whether by
3 threats, intimidation, coercion, trickery, or the
4 erection of legal or other impediments. The data
5 gathered by the Commission formed the basis for the
6 Voting Rights Act of 1965, which is unequivocal in its
7 command that no person, whether acting under color of
8 law or otherwise, shall intimidate, threaten, coerce,
9 or attempt to intimidate, threaten or coerce anyone
10 from voting or attempting to vote, or from aiding a
11 voter.

12 Investigating such claims, and bringing
13 them to the attention of enforcement entities, such as
14 the Department of Justice, remains a -- remains an
15 essential part of the Commission's statutory mission
16 to this day.

17 Our mandate also includes investigating
18 and reporting to the President and Congress on how
19 well federal agencies are enforcing the nation's civil
20 rights laws. Since 1961, the Commission has adopted
21 12 statutory enforcement reports, and have -- has
22 produced over 30 publications on the subject of voting
23 and voting rights.

24 The right to vote freely without
25 interference, discrimination or intimidation is

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1 fundamental and indeed at the heart of our work here
2 at the Commission. In the nation's mind, voting
3 rights are regarded as sacred and, by extension, the
4 area surrounding our polling stations.

5 We treat these areas with a high level of
6 sensitivity and care befitting the heady process that
7 unfolds there. It is with great concern, then, that
8 we turn to the events of Election Day in 2008 at a
9 polling place in Philadelphia.

10 On November 4th, 2008, two members of the
11 New Black Panther Party appeared at a polling station
12 in Philadelphia, Pennsylvania. The allegations
13 against these two members include standing in front of
14 the entrance to the polling station, wearing
15 paramilitary style uniforms and black combat boots.

16 One of these individuals was armed with a
17 nightstick. These members of the New Black Panther
18 Party are alleged to have cursed at various poll
19 watchers, and to have acted in a threatening manner.

20 Based on the allegations of voter
21 intimidation, the Department of Justice interviewed
22 numerous witnesses and, on January 7th, 2009, filed a
23 civil complaint pursuant to Section 11(b) of the
24 Voting Rights Act of 1965.

25 The suit named as defendants the party

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1 members at the polling station, King Samir Shabazz and
2 Jerry Jackson, as well as the New Black Panther Party
3 and its head, Malik Zulu Shabazz. The lawsuit sought
4 a permanent injunction against each of these
5 defendants from in part engaging in coercing,
6 threatening or intimidating behavior at polling
7 locations during elections.

8 The record reveals that each of the
9 defendants was served with a complaint; however, none
10 of them contested the charges, and a default was
11 entered against them. As a matter of law, that meant
12 that none of the factual allegations contained in the
13 complaint were contested by the defendants.

14 All that remained for the Department of
15 Justice -- all that -- all that remained was for the -
16 - for the Department of Justice to request the entry
17 of a default judgment, and entry of an effective
18 injunction to stop future acts of intimidation. Yet,
19 that did not happen.

20 The Court had set a deadline of May 1st,
21 2009, for the Department to request the default
22 judgment. On May 1st, however, the Department instead
23 requested a continuance until May 15th, 2009.

24 Press reports indicate that, at this
25 stage, the experienced career line attorneys who were

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1 responsible for the case were put under intense
2 pressure to justify the lawsuit against the New Black
3 Panther Party. In addition, press reports indicate
4 that although the lawsuit was uncontested, the Acting
5 Assistant Attorney General of the Civil Rights
6 Division sought a review of the matter by the
7 division's appellate section.

8 Although the memorandum written by the
9 chief of the appellate section of the Civil Rights
10 Division supported pursuing a default judgment as to
11 each of the four defendants, the Department dropped
12 its claim against three of the defendants: Jerry
13 Jackson, Malik Zulu Shabazz and the New Black Panther
14 Party itself.

15 As to the final defendant, King Samir
16 Shabazz, the Department greatly reduced the injunctive
17 relief it was seeking. Whereas the original complaint
18 sought an unlimited injunction, prohibiting acts of
19 intimidation anywhere in the United States, the final
20 relief sought by the Department was limited solely to
21 the City of Philadelphia, and was only to last through
22 November of 2012.

23 If the press reports are to be believed,
24 these dismissals, as well as the reduction of the
25 release -- relief sought against the final defendant,

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1 occurred only after Loretta King, the Acting Head of
2 the Civil Rights Division, acting with the approval of
3 her politically-appointed supervisors, explicitly
4 overread the career-line attorneys handling the case,
5 the Chief and the Deputy Chief of the Voting Rights
6 Section, and the Chief of the Civil Rights Appellate
7 Section, who reviewed the matter.

8 The Commission began its inquiry under
9 this matter by writing a letter dated June 6th, 2009,
10 to the Department requesting information with regard
11 to the lawsuit; additional letters seeking information
12 about the case was -- were then sent on August 10th and
13 September 30th of 2009. When the Department was
14 unresponsive, the Commission served subpoenas on the
15 Department's officials on November 10th, 2009 in an
16 effort to determine what had occurred.

17 The Department refused to allow these
18 individuals, these officials, to testify. Due to this
19 refusal, on December 8th, 2009, the Commission directly
20 subpoenaed the Justice Department, serving it with
21 both a set of interrogatories and a request for
22 production of documents.

23 Up until very recently, the Department
24 provided little information about the New Black
25 Panther Party litigation, other than providing copies

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1 of pleadings and despite -- and this is despite
2 repeated requests. The correspondence between the
3 Commission and the Department is posted on our
4 website.

5 Perhaps in recognition of its prior lack
6 of cooperation and its pattern of delay, just last
7 Friday, the Department turned over many heavily
8 redacted documents for the first time that relate to
9 the investigation relating to the New Black Panther
10 litigation.

11 While it is disappointing that this
12 information was not provided eight or nine months ago
13 before this hearing, the Commission thanks the
14 Department for its belated efforts. Because of the
15 Department's lack of cooperation, the scope of today's
16 hearing necessarily is limited.

17 Nevertheless, we examine the following.
18 First, we will examine video evidence that provides
19 some background on the New Black Panther Party, as
20 well as the events of November 4th, 2008. Second, we
21 will hear from three witnesses who were present at the
22 polling place on Election Day: Mike -- Mike Mauro,
23 Chris Hill and Bartle Bull.

24 Then, depending on when Chris -- Frank
25 Wolf arrives, we will likely hear testimony next from

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1 Gregory Katsas, who has served in many senior
2 positions in the Department of Justice, including
3 Senior Attorney General for the Civil Division, and
4 Acting Associate Attorney General, regarding the
5 procedures and channels of Department and White House
6 review that would normally apply to the Department's
7 actions in a case like this one.

8 Finally, we will hear from Congressman
9 Frank Wolf, who has shared the Commission's concerns
10 relating to the New Black Panther Party litigation, as
11 well -- as well as the Department of Justice's failure
12 to provide information to him, the Commission and
13 other members of Congress with oversight
14 responsibility for the Department.

15 Before we begin the actual presentation of
16 evidence, each of the Commissioners has two minutes in
17 which to make an opening statement if they wish. I
18 would request that each Commissioner adhere to this
19 firm time limit. We will proceed in order of
20 seniority. Thank you, Commissioners. At this point,
21 I turn matters over to our General Counsel, Mr. David
22 Blackwood.

23 MR. BLACKWOOD: Their statements?

24 CHAIRPERSON REYNOLDS: Forgive me. Vice
25 Chair Thernstrom.

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II. REMARKS BY COMMISSIONERS

1
2 VICE CHAIR THERNSTROM: Thank you very
3 much, Mr. Chairman. I hope my mic is working here.
4 Let me switch glasses as well. I am Abigail
5 Thernstrom, and I thank the witnesses for appearing
6 today.

7 In addition to being the Vice Chair, I'm
8 an adjunct scholar at the American Enterprise
9 Institute. I am the only non-lawyer on the
10 Commission. I hold a Ph.D. from the Department of
11 Government at Harvard University. I am a Republican
12 appointee to this Commission, and I have served on it
13 now for more than nine years.

14 As the author of two books on the Voting
15 Rights Act, one of which won multiple awards,
16 including one from the American Bar Association, I
17 have a particularly strong interest in the vigorous
18 protection of voting rights. But, as much as I abhor
19 the New Black Panther Party, it is nothing in my view
20 but a lunatic fringe group, a few of whose members
21 showed up at one polling place in a largely black,
22 safe Democratic precinct. The Philadelphia incident
23 was an isolated one off. There is no analogy to
24 racist whites stopping blacks from voting throughout
25 the Jim Crow south.

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1 My colleagues assert that our purpose
2 today is not to prove that voter intimidation did or
3 did not occur. Our aim, they say, is to examine why
4 the Justice Department handled the case as it did, and
5 indeed, I too am interested in the answer to that
6 question.

7 But we are very unlikely, I am heartened
8 to hear, that we've now got a pile of document dumped,
9 but we -- nevertheless, I remain skeptical that we are
10 likely to get the evidence needed to answer that
11 question. We could have chosen, in my view, a much
12 more fruitful topic of national importance for our
13 annual statutory report, the most important report
14 that we issue in the course of a year.

15 I do not think that this inquiry has
16 served the interests of the Commission as being a
17 bipartisan watchdog for important civil rights
18 violations, and I do not believe it has served well
19 the party to which I belong. Thank you very much.

20 CHAIRPERSON REYNOLDS: Thank you, Vice
21 Chair Thernstrom. Commissioner Kirsanow?

22 COMMISSIONER KIRSANOW: Mr. Chair, I'd
23 waive opening statement, other than to thank the
24 witnesses for being here today.

25 CHAIRPERSON REYNOLDS: Okay, next up would

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1 be Commissioner Taylor.

2 COMMISSIONER TAYLOR: Thank you, Mr.
3 Chairman. My name is Ashley Taylor, and I've been on
4 this Commission now about five years, and I am focused
5 on frankly one issue, and that is the rule of law
6 because the rule of law is our nation's cornerstone,
7 and the Declaration and the Constitution created it,
8 and the Civil Rights and Voting Rights affirmed it.

9 All persons are created equal. They stand
10 equal before the law, and they are entitled to be
11 protected equally by the law. When government treats
12 people differently, it owes an explanation. And when
13 government declines to enforce the law, it is
14 obligated to justify its decision.

15 The history of Section 11(b) of the Voting
16 Rights Act, and DOJ's longstanding position, are
17 clear: Proof of intent to intimidate or an actual
18 intimidating effect is not necessary to prosecute
19 voter intimidation.

20 It's enough to show that the conduct would
21 have threatened, intimidated or coerced a reasonable
22 voter. In the past decade, DOJ has prosecuted
23 criminals who jammed phone lines and slashed van tires
24 in an effort to prevent voters from reaching the
25 voting place.

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1 Now, we have before us the case of two men
2 clad in paramilitary uniforms, openly carrying a
3 weapon, literally standing at the doorway of a voting
4 place in Philadelphia, and the case was not
5 aggressively pursued.

6 Today, we will view the video that will
7 very clearly show the defendants acting in a
8 threatening manner. We will also hear from witnesses
9 and put documents in the record to shed further light
10 on the intimidation felt by the people who were
11 present that very day.

12 What we don't have, and what we won't get
13 today, is an explanation. In 2008, the head of DOJ's
14 Voting Rights Section told this Commission that one of
15 DOJ's priorities would be to monitor polling places
16 where racial slurs or other insensitive behaviors
17 could be anticipated.

18 Here we have a record incident of just
19 such behavior, but DOJ's decision to drop charges
20 indicates that its priorities have changed. And we
21 simply ask what accounts for the difference?

22 I hope that at some point DOJ will answer
23 these questions. In the meantime, the selective
24 enforcement of our laws and the appearance of
25 selective enforcement, more importantly, will erode

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1 the faith and confidence in the impartial
2 administration of justice, and will undermine the rule
3 of law in our society. Thank you, Mr. Chairman.

4 CHAIRPERSON REYNOLDS: Thank you,
5 Commissioner Taylor. Commissioner Yaki?

6 COMMISSIONER YAKI: Thank you, very much,
7 Mr. Chair. It is with, as you know, great reluctance
8 that I am here today. I do not believe that this
9 Commission should be involved in essentially
10 relitigating and reprosecuting a decision, a single
11 decision, made by the Department of Justice.

12 It strikes me as somewhat rather pious and
13 sanctimonious to talk about the rule of law and
14 equality, and how we are here to protect voting
15 rights. Of course we are. But that is not what this
16 proceeding is about. That is not what the proceeding
17 has ever been about.

18 If that were the case, we would be talking
19 about a legion of cases that have been -- that have
20 been put before the Department of Justice over the
21 last 10 to 15 years, involving clear cases and
22 patterns and practice of voter intimidation. But that
23 has never been and not been the scope of this
24 particular hearing.

25 No, this hearing alone, comprising the

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1 National Enforcement Report for this Commission, an
2 enormous expenditure of time and resources, is in my -
3 - is to me just simply one thing. It's about partisan
4 payback. That's all it is. Because we're -- because
5 there is nothing about this inquiry that talks about
6 how this really goes to a broader question for civil
7 rights enforcement.

8 There's nothing in the scope of this
9 hearing; there's been nothing in the scope of
10 discovery that talks about a broader scope and
11 application to this country. No. Instead we're going
12 to extrapolate from one single incident on one single
13 precinct in one single city, and one single charging
14 decision by the Department of Justice, and from that,
15 create national -- recommend national policy. That is
16 absurd.

17 Any scientist, any social science, any
18 Congressional committee would laugh that out of the
19 ballpark. But no, we are spending enormous time and
20 effort here doing just that. And I just want to say
21 that that -- this is not a defense of the Black
22 Panthers.

23 This is not to -- to belittle anything
24 that any of the witnesses saw or heard, but it is
25 about the greater issue of what this Commission is

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1 really all about, and a mission that we have been
2 sorely lacking for the last five years that I have
3 been on the Commission: a mission that we have
4 advocated time and again until suddenly in this one
5 instance, we see the light on voter intimidation, and
6 that to me is hypocrisy in its highest form. Thank
7 you.

8 CHAIRPERSON REYNOLDS: Thank you,
9 Commissioner Yaki. Commissioner Melendez?

10 COMMISSIONER MELENDEZ: Good morning, Mr.
11 Chairman, to our audience here this morning. My name
12 is Arlan Melendez. I'm in my fifth year as a
13 Commissioner here with the US Commission on Civil
14 Rights. My other responsibility is I'm a tribal
15 chairman of a federally recognized Indian tribe
16 located in Reno, Nevada: Washoe, Paiute, Shoshone
17 People. I'm glad to be here today and welcome you
18 again.

19 My remarks are going to be brief because I
20 think far too much of our time has been consumed on
21 this seemingly unnecessary investigation. Citizens
22 should be able to vote without intimidation, and it is
23 our Commission's duty to investigate complaints from
24 citizens that their voting rights have been infringed.

25 In this case, however, no citizen has even

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1 alleged that he or she was intimidated from voting at
2 the Fairmount Avenue Polling Station in 2008. This
3 absence of voter intimidation was clear to the Justice
4 Department last spring, which is why they took the
5 course of action that they did.

6 This absence of voter intimidation was
7 clear to the members of this Commission as well, or at
8 least it should've been. Our investigation has been
9 going on now for the better part of a year. We have
10 wasted a good deal of our staff's time, and the
11 taxpayers' money.

12 In addition to that, we have also consumed
13 a considerable amount of the Justice Department's
14 resources, forcing them to devote attention to a case
15 that they had long ago concluded was meritless.

16 I hope that we can quickly conclude this
17 hearing, and conclude this investigation. This
18 Commission needs to get back to seriously addressing
19 civil rights issues, and stop chasing conspiracy
20 theories and pursuing partisan fishing expeditions.
21 So, thank you very much.

22 CHAIRPERSON REYNOLDS: Thank you,
23 Commissioner Melendez. Commissioner Heriot?

24 COMMISSIONER HERIOT: Thank you, Mr.
25 Chairman. I don't think I will need the full two

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1 minutes. I just want to -- want to state that no one
2 is on trial here. Not the members of the New Black
3 Panther Party, not the witnesses to the incident, not
4 the DOJ lawyers who initially filed this civil
5 lawsuit, and not the DOJ officials who ultimately
6 decided to terminate the lawsuit, except in a very
7 minor -- minor aspect.

8 The Commission on Civil Rights,
9 nevertheless, has a duty to investigate matters
10 exactly like the one that we are investigating today.
11 We are specifically charged with investigating the
12 enforcement of civil rights laws, and the voting
13 rights in particular, and that's what this hearing is
14 about.

15 CHAIRPERSON REYNOLDS: Thank you,
16 Commissioner Heriot. Commissioner Gaziano?

17 COMMISSIONER GAZIANO: Thank you. I won't
18 respond to the false claims that our investigation is
19 unnecessarily narrow, except to say that the record of
20 our scope of investigation is in our concept paper,
21 which is available, which shows that we very much
22 sought every single report of voter intimidation in
23 evidence of how the Department treated those, compared
24 with the current surprising action, and it was those
25 requests for other investigations that were part of

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1 the overall pattern of stonewalling.

2 So, I hope that Commissioner Yaki will
3 continue to help us get all of that evidence, which he
4 claims that he is really interested in. But with this
5 hearing, I believe we are entering the third phase of
6 our investigation, and I hope that places it in
7 context.

8 When we began more than ten months ago, we
9 had high hopes that the Department of Justice would
10 admit its error, and reverse course. But that didn't
11 happen. Phase one was the Department's insistence
12 that there was nothing to investigate, and then making
13 matters much worse by asserting, without any credible
14 explanation, that the intimidating events viewed by
15 countless thousands on YouTube did not warrant further
16 action.

17 This may encourage other hate groups to
18 engage in their own coordinated campaigns of voter
19 intimidation. That's why this particular incident is
20 important. Phase two was the more than 300 days of
21 excuses, stonewalling, forwarding our lawful
22 subpoenas, refusal to give the evidence that
23 Commissioner Yaki and the rest of us want, in the
24 creation of non-existent privileges and aid thereof.

25 Phase three begins with these hearings,

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1 which will expose the facts and place evidence on the
2 record for the entire world to see. I sincerely hope
3 that phase four will be the Department of Justice's
4 complete cooperation to our -- as our federal statute
5 unambiguously requires the enforcement of our
6 subpoenas to talk to people who we -- who were
7 actually involved in the decision-making, rather than
8 an assistant attorney general who came much later, and
9 the production of all the evidence we have asked for,
10 rather than that which the Department suggests we
11 should be content with.

12 Phase five will be our issuance of our
13 statutory enforcement report, in which we will make
14 our own findings of fact, conclusions regarding legal
15 authorities, and our recommendations to Congress and
16 the President for further action.

17 But unless the DOJ changes its posture,
18 our preliminary report due in September should not end
19 our review. No entity should believe it can run out
20 the clock on our examination of serious voting rights
21 enforcement problems.

22 We rightfully earned the reputation as the
23 conscience of the nation for our refusal to be
24 intimidated when southern officials tried to thwart
25 the Commission's early investigations into voting

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1 rights violations. We should be no less vigilant in
2 our pursuit of the truth today.

3 CHAIRPERSON REYNOLDS: Thank you.

4 COMMISSIONER KIRSANOW: Mr. Chair, if I
5 may invoke a privilege to make a brief rebuttal to
6 some of the comments that were made? I initially
7 waived my right to make an opening statement, but I've
8 heard that this Commission is engaged in a waste of
9 time and resources, and that this is an unnecessary
10 endeavor; that this incident is isolated and one offs,
11 and does not merit any kind of consideration.

12 I would note that it is the specific
13 charter of this Commission to address matters related
14 to voting rights, and deprivation of voting rights.
15 About three years ago, I testified in a Senate
16 Judiciary Committee hearing on a bill called the Voter
17 Intimidation and Deceptive Practices Act.

18 The Senate has a number of charters, but
19 is not solely devoted to the protection of voting
20 rights. Nonetheless, they wasted, apparently, a
21 significant amount of time and resources. They
22 devoted a considerable amount of attention to a matter
23 pertaining to voting rights. Not a specific incident.
24 Nothing had happened. Nothing had triggered this
25 specifically.

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1 Nonetheless, the entire Senate Judiciary
2 Committee and the entire Senate decided to take this
3 matter up. Apparently, they wasted their resources
4 because scores of staff members were involved in
5 adducing evidence pertaining to that. A number of
6 senators also testified during that hearing. In fact,
7 one of the sponsors of that particular bill testified
8 at that hearing, and indicated that this was a serious
9 problem worthy of national attention.

10 Much more time and resources were devoted
11 in that hearing than I would argue even comes close to
12 what's going to be devoted in this particular hearing.
13 The senator who sponsored that bill was someone by the
14 name of Barack Obama.

15 I think that this is a worthy endeavor. I
16 think this falls squarely within our charter, and I
17 look forward to the testimony of the witnesses.

18 CHAIRPERSON REYNOLDS: Thank you,
19 Commissioner Kirsanow.

20 VICE CHAIR THERNSTROM: Can I just make --
21 say one sentence? It's in response to Commissioner
22 Kirsanow.

23 CHAIRPERSON REYNOLDS: I think that we
24 need to stick with the structure that we planned.

25 VICE CHAIR THERNSTROM: That's fine. This

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1 is up to you.

2 CHAIRPERSON REYNOLDS: Okay. All right,
3 at this point, I'd like to turn it over to our General
4 Counsel, Mr. Blackwood.

5 **III. REMARKS BY GENERAL COUNSEL**

6 MR. BLACKWOOD: Thank you, Mr. Chairman.
7 What we're going to show in this next segment are
8 three video clips that the Commission has obtained.
9 The first -- and they will run one right after the
10 other. The first is from the National Geographic
11 Channel's documentary on the New Black Panther Party,
12 which was obtained by subpoena.

13 The documentary was produced in 2008,
14 before the election. It has background as to the New
15 Black Panther Party. It shows clips of statements
16 from Malik Zulu Shabazz, who is head of the party, and
17 has footage and comments from the New Black Panther
18 Party members who were at the Fairmount Street Polling
19 Place: Minister King Samir Shabazz and Jerry Jackson.

20 I think it's appropriate at this time to
21 note that both Mr. Jackson and Minister King Samir
22 Shabazz are present today, along with several other
23 members of the New Black Panther Party. The segment
24 that we're going to show is edited rather abruptly,
25 but it's -- the purpose was to keep the video clips as

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1 short as possible. So, it will start mid scene, but
2 it is meant to be edited in such a way that it is
3 focused simply on the party -- New Black Panther Party
4 for Self Defense, and the individuals I mentioned.

5 Immediately thereafter, the video will go
6 to two video clips from YouTube that many people have
7 already seen. This was video taken at the Fairmount
8 Street polling location. It's disjointed the audio
9 was poor. But nonetheless, it is the only realtime
10 depiction of the scene at the time, showing King Samir
11 Shabazz and Jerry Jackson.

12 Lastly, there will be a third clip, which
13 contains an interview with Malik Zulu Shabazz that --
14 the head of the New Black Panther Party, that took
15 place on November 7, 2008. One of the people doing
16 most of the interviewing is Rick Leventhal, a reporter
17 who was also at the scene on Fairmount Street. This
18 was obtained by subpoena.

19 The whole video segment shall last about
20 20 minutes. I would ask that it start.

21 **IV: VIDEO EVIDENCE**

22 (Whereupon, a series of videos were
23 played)

24 MR. BLACKWOOD: Thank you.

25 CHAIRPERSON REYNOLDS: Okay, please

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1 continue, Mr. Blackwood.

2 MR. BLACKWOOD: At this point, Mr.
3 Chairman, I'd like to introduce evidence, and have it
4 accepted into the record.

5 **V: SUBMISSION OF EVIDENCE**

6 MR. BLACKWOOD: As you all are aware, the
7 Commission has been conducting a great deal of
8 discovery over the last several months. But this is
9 the first time that we've been able to formally
10 introduce it into the record.

11 I'd like to introduce the following, all
12 of which materials are here, directly behind you, and
13 all of which have been provided to each of the
14 Commissioners previously. First are the subpoenas,
15 discovery requests and deposition transcripts of the
16 following: First, Jerry Jackson and King Samir
17 Shabazz. These are the New Black Panther Party
18 members who were at Fairmount Street, who are here
19 today, and who, when deposed, asserted their fifth
20 amendment right against self incrimination.

21 Second, we have several depositions and
22 information from a variety of poll watchers, Ronald
23 Vann, who is a Democratic poll watcher, as well as
24 Larry Counts and Angela Counts, who although are
25 registered Democrats, were working for the Republicans

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1 as poll watchers that day.

2 Third, we have the deposition of Kristen
3 Clarke. Fourth, we have a subpoena and related
4 discovery request to the head of the New Black Panther
5 Party, Malik Zulu Shabazz. Unfortunately, he did not
6 appear for his deposition. There is now currently
7 pending in the United States District Court for the
8 District of Columbia an action to compel him to appear
9 before the Commission. As I say, that is pending
10 before the court.

11 Next is the document request and responses
12 from and to the Department of Justice. This includes
13 a subpoena, interrogatories, discovery requests, their
14 written responses from the Department, as well as a
15 large volume of documents. I will refer to them as
16 the -- for purposes of introducing them into the
17 record as three disks of information, dated January
18 11, 2010, February 26th, 2010 and April 6th, 2010.

19 Lastly, we have subpoenas -- video
20 information, which has -- was subpoenaed, some of
21 which you just saw, all of which has been provided to
22 you previously; the National Geographic Program in its
23 entirety, the Strategy Room interview in its entirety,
24 a guest segment on the O'Reilly Factor, in which
25 witness Bartle Bull appeared, and finally two video

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1 clips from Rick Leventhal, who reported from the scene
2 at Fairmount Street.

3 And I would ask at this time, Mr. Chair,
4 that all that evidence be admitted into the record.

5 CHAIRPERSON REYNOLDS: Thank you, Mr.
6 Blackwood. The aforementioned items have been entered
7 into the record.

8 MR. BLACKWOOD: I would indicate to -- all
9 right, in abundance of caution, I evidently failed to
10 mention Larry Counts and Angela Counts as Republican
11 poll watchers. Oh, Coates. I'm sorry. Pardon me, I
12 did forget that. We had Notices of Deposition to two
13 employees/officials at the Department of Justice,
14 Christopher Coates and J. Christian Adams. They were
15 -- as has been reported, the Department declined to
16 allow them to testify. I would also add that into the
17 record.

18 CHAIRPERSON REYNOLDS: Okay, those items
19 are added to the record as well.

20 MR. BLACKWOOD: For purposes of
21 clarification, since I was asked earlier this morning,
22 Commissioners now may refer to those documents, and
23 the materials within them in their questioning today,
24 or in their statements. At this time, Mr. Chairman,
25 I'd like to proceed with the examination of the three

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1 witnesses that we have here today. The procedure is
2 I'm going to ask questions, one in a row, first Mr.
3 Mauro, then Mr. Hill, then Mr. Bull.

4 At that point, the testimony and
5 examination will be thrown open to all the
6 Commissioners of all the panelists.

7 CHAIRPERSON REYNOLDS: Okay.

8 **VI: TESTIMONY OF WITNESSES**

9 MR. BLACKWOOD: I would like to proceed.

10 CHAIRPERSON REYNOLDS: Please proceed.

11 MR. BLACKWOOD: Mr. Mauro, would you
12 please state your name, full name, and profession for
13 the record?

14 MR. MAURO: Michael Mauro.

15 MR. BLACKWOOD: I'm sorry. We need to
16 swear you in. Mr. Chairman, would you swear them in?

17 CHAIRPERSON REYNOLDS: Okay, please raise
18 your right hand.

19 MR. BLACKWOOD: All of them. Yes, please.

20 CHAIRPERSON REYNOLDS: Do you swear or
21 affirm under penalty of perjury that the testimony
22 you're about to give will be the truth, the whole
23 truth, and nothing but the truth?

24 MR. MAURO: I do.

25 MR. BULL: I do.

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1 MR. HILL: I do.

2 CHAIRPERSON REYNOLDS: Thank you. Mr.
3 Blackwood, the floor is yours.

4 MR. BLACKWOOD: Thank you. Mr. Mauro, I'm
5 sorry.

6 MR. MAURO: Sure. My name is Michael
7 Mauro, and I'm an attorney.

8 MR. BLACKWOOD: Mr. Mauro, did there come
9 a time that you appeared -- that you were in
10 Philadelphia for Election Day 2008?

11 MR. MAURO: Yes.

12 MR. BLACKWOOD: And what was the purpose
13 of that?

14 MR. MAURO: I was a volunteer poll watcher
15 for the Republican Party.

16 MR. BLACKWOOD: Did you receive any
17 training?

18 MR. MAURO: Yes, I did.

19 MR. BLACKWOOD: And what did that training
20 consist of?

21 MR. MAURO: It was an informational
22 session, where we were told that we were given
23 procedures to follow. When we were at the polls, if
24 someone had complained that they were being denied an
25 ability to vote, to call it in, and then that an

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1 injunction action needed to be instituted then that
2 would -- the process would start.

3 MR. BLACKWOOD: Were you paid for your
4 work?

5 MR. MAURO: No, I -- no, I was not.

6 MR. BLACKWOOD: Did there come a time when
7 you went to the polling place at 1221 Fairmount Street
8 on Election Day?

9 MR. MAURO: Yes.

10 MR. BLACKWOOD: Could you tell the
11 Commissioners why you went to that location?

12 MR. MAURO: Sure. I was a part of a
13 three-person team called a Roving Watching Patrol with
14 Mr. Hill and another individual. We had received a
15 call from what I would characterize as our
16 headquarters in Philadelphia, that there was a report
17 of voter intimidation and harassment at the Fairmount
18 polling facility, and that my car that I was in I
19 suppose was close enough to respond. And at that
20 point, we drove on over to the polling station.

21 MR. BLACKWOOD: Around what time of the
22 day was that?

23 MR. MAURO: It was before noon perhaps,
24 maybe 10:00-11:00 in the morning maybe.

25 MR. BLACKWOOD: When you arrived at the

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1 scene, what did you observe?

2 MR. MAURO: When we arrived, we actually
3 drove by the -- from what you could see from that --
4 from that polling station, there was a circular
5 driveway in the front, but we drove past the circular
6 driveway first to see what was going on. When we
7 drove past the circle, we could see the two
8 individuals of the New Black Panther Party standing at
9 the front of the entrance to the building.

10 MR. BLACKWOOD: How were they positioned?

11 MR. MAURO: They were standing shoulder to
12 shoulder, or close to shoulder to shoulder.

13 MR. BLACKWOOD: Can you identify those
14 individuals today?

15 MR. MAURO: I suppose I could.

16 MR. BLACKWOOD: Would you look behind you
17 and see if you can identify them?

18 MR. MAURO: This gentleman right here.

19 MR. BLACKWOOD: That's in the second row?

20 MR. MAURO: Yes, the second row, the third
21 in. And I -- I don't know if I'm -- if I see the
22 second one. I'm not really sure if I see him.

23 MR. BLACKWOOD: How were they dressed?

24 MR. MAURO: Not unlike they're dressed
25 right now, with a black paramilitary outfit on, with

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1 berets and military-style boots.

2 MR. BLACKWOOD: Was anybody carrying
3 anything?

4 MR. MAURO: Yes. One of the individuals
5 was carrying a billy club.

6 MR. BLACKWOOD: And how was he handling
7 that?

8 MR. MAURO: I believe it was in his --
9 perhaps his right hand. It may have been his left
10 hand, and he was -- at times, it was to his side.
11 Other times, it was being put into his hand like a
12 banging fashion. And I -- that's what I recall.

13 MR. BLACKWOOD: Did he point it at
14 anybody?

15 MR. MAURO: I don't particularly recall
16 him pointing at anybody with it.

17 MR. BLACKWOOD: At any time --
18 approximately how long were you there?

19 MR. MAURO: I was there for approximately
20 45 minutes to an hour, maybe a little less than that.

21 MR. BLACKWOOD: On the first video clip
22 that we watched of the YouTube videos, were you in
23 that scene?

24 MR. MAURO: Yes, I was.

25 MR. BLACKWOOD: Can you basically describe

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1 what you were wearing that day?

2 MR. MAURO: I probably was wearing the
3 same suit. It was a blue suit and a white shirt is
4 what I was wearing.

5 MR. BLACKWOOD: Okay, so you were off to
6 the left-hand side of the original scene?

7 MR. MAURO: That's correct, yes.

8 MR. BLACKWOOD: It was only -- were both
9 panthers carrying night sticks?

10 MR. MAURO: No, only one was.

11 MR. BLACKWOOD: Was that the shorter one,
12 or the taller one?

13 MR. MAURO: I believe it was the shorter
14 one.

15 MR. BLACKWOOD: At any time that you were
16 there during that 45 minutes, did you move away from
17 the polling place?

18 MR. MAURO: I purposely stood away from --
19 from where they were standing, and kind of off to the
20 side. If you can see, I had my hands in my pockets
21 because I -- I wasn't there to confront either of
22 these two men. That's not my purpose in being there.
23 I'm not a law enforcement officer. That was it.

24 So, I purposely took a non-confrontational
25 pose, and in fact, I didn't even engage them in any

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1 kind of a discussion at all. It was the -- I believe
2 he was a UPenn journalism student who was filming
3 that. He was doing all of the speaking.

4 MR. BLACKWOOD: Did he come after you had
5 arrived?

6 MR. MAURO: He did come after, yes.

7 MR. BLACKWOOD: About how long? Do you
8 recall?

9 MR. MAURO: Probably within ten of 15 minutes of us
10 being there.

11 MR. BLACKWOOD: Okay. During the entire
12 time that you were there, did you see the two Panther
13 members ever move apart?

14 MR. MAURO: No, I did not. I do recall
15 that when Mr. Hill approached the entrance of the
16 polling facility, they actually moved closer to each
17 other. What it appeared to me is almost be more
18 striking a confrontational pose to obstruct Mr. Hill's
19 entrance into the polling facility, which he had an
20 ability to be there, or a right to be there, actually.

21 MR. BLACKWOOD: Did they ever move away
22 from the entrance to the polling place?

23 MR. MAURO: No, they did not. Not -- no.
24 Only from what I observed, it was when the police had
25 ordered them to speak with them where their cars were

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1 parked.

2 MR. BLACKWOOD: Approximately how far away
3 were you from the two Black Panthers during that time?

4 MR. MAURO: I was probably ten to 12 feet
5 away at the time.

6 MR. BLACKWOOD: At any time, did you hear
7 the taller Black Panther direct the younger -- or the
8 smaller Black Panther to put away the night stick?

9 MR. MAURO: No. I did not hear anyone
10 give any instructions to the individual holding the
11 night stick.

12 MR. BLACKWOOD: Did anyone else come to
13 the smaller gentleman, and say, "You need to put the
14 night stick away?"

15 MR. MAURO: No, I did not see anything
16 like that.

17 MR. BLACKWOOD: Did anybody say anything?

18 MR. MAURO: The -- when the journalism
19 student approached and engaged them in a conversation,
20 that's when I did hear the members -- the New Black
21 Panther Party speak. Mostly, it was -- the shorter of
22 the individuals, he had engaged in -- as you can see
23 from the YouTube video, there was a -- there was a
24 little bit of a back and forth about what constitutes
25 a weapon; whether the billy club was a weapon, whether

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1 the camera that the journalism student was holding was
2 a weapon.

3 So, at that point, the -- I also heard the
4 -- the gentleman, Mr. Shabazz, I believe. It was
5 something to the effect of, you know, he had a right
6 to be there, and that -- somehow that we didn't have a
7 right to be there, from what I recall him saying.

8 MR. BLACKWOOD: Did -- at any time, did he
9 make any racial comments?

10 MR. MAURO: I believe the term, "White
11 devil." He said the term white devil at some point.

12 MR. BLACKWOOD: Did he say that to you, or
13 to others?

14 MR. MAURO: He didn't say it to me. He --
15 that came in the process of his conversation with that
16 -- with the journalism student.

17 MR. BLACKWOOD: Did you talk to any of the
18 poll workers that day?

19 MR. MAURO: I didn't speak with the poll
20 workers, no.

21 MR. BLACKWOOD: Did your credentials allow
22 you inside the polling place?

23 MR. MAURO: They did not.

24 MR. BLACKWOOD: Okay. You saw a minute
25 ago comments made by Malik Zulu Shabazz, who is the

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1 head of the Black Panther Party that Skinheads, Aryan
2 Nation members and Nazi Party members were at the
3 site. Did you see any such people?

4 MR. MAURO: No, I did not.

5 MR. BLACKWOOD: This is a rather open
6 location, is it not?

7 MR. MAURO: It is.

8 MR. BLACKWOOD: There's parking lots on
9 both sides of the driveway?

10 MR. MAURO: Yes, it is.

11 MR. BLACKWOOD: So, if there were Aryan --
12 members of the Aryan Nation, or Nazi Party there, do
13 you think you would've seen them?

14 MR. MAURO: I would have seen them. I
15 didn't see them. I saw these two individuals standing
16 at the front of that polling facility. I do --
17 actually, I recall a comment that was made by I
18 believe Mr. Shabazz. He yelled it out to Mr. Hill.
19 He said, "How's it gonna feel to be ruled by a black
20 man?"

21 And Mr. Hill, who is a veteran, actually
22 said, "So long as he is elected fairly, I'll get up
23 tomorrow and salute." That's what I remember.

24 MR. BLACKWOOD: Did he -- did Mr. Shabazz
25 say anything in response?

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1 MR. MAURO: He said, "Whatever, cracker."

2 MR. BLACKWOOD: Did any of the panther
3 members, while you were there, mention anything about
4 Nazis or Skinheads, and that they were there to
5 protect people against them?

6 MR. MAURO: No. I did not hear that.

7 MR. BLACKWOOD: And you were there
8 approximately 45 minutes. Did there come a time when
9 the police came?

10 MR. MAURO: Yes. I was there when the
11 police arrived, and I witnessed the police approach
12 the two individuals, and ask them to remove themselves
13 from where they were standing, and speak with the
14 police officers at their police cars.

15 MR. BLACKWOOD: Do you know what happened
16 to the night club?

17 MR. MAURO: They confiscated the night
18 club, from what I understand.

19 MR. BLACKWOOD: I'm sorry, the billy club
20 I should say.

21 MR. MAURO: The billy club, right. I
22 believe that was confiscated, and I don't believe any
23 arrests were made that day.

24 MR. BLACKWOOD: From your observation, how
25 were third parties, other people, reacting to the

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1 presence and the actions of the Black Panthers?

2 MR. MAURO: While I was standing there, I
3 did notice that when -- what I would -- what would
4 appear to be people coming to vote, when they entered
5 into that circle area, they would stop and they would
6 congregate and speak to each other, and wait a little
7 bit, and then proceed on in to vote.

8 So, it wasn't like they were coming right
9 in and walking straight in to vote. They actually
10 stopped for a little bit, and then eventually vote.
11 So, that -- that's what I witnessed. Probably I would
12 say at least six to eight people I saw that that had
13 happened. And then as far as other third parties, you
14 can see from that YouTube video, there was a young
15 lady standing behind the two individuals from the
16 Black Panther Party.

17 From what I understand, and I don't know
18 for a fact whether it makes sense that she was what I
19 would consider what my counterpart would be for I
20 guess the Democratic Party, and she was on the phone
21 calling in a -- an incident of harassment at the
22 voting place, the Fairmount Polling Center, that a
23 couple of white guys in suits were intimidating
24 voters.

25 Since I was the only white guy in a suit

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1 around there, I assumed she was talking about me, and
2 I was not talking to anybody. So, obviously that
3 disturbed me greatly. And in addition, she said that
4 as she was standing behind the two individuals.

5 MR. BLACKWOOD: Specifically, with regard
6 to that woman, did you ever hear her talk to the
7 Panther members?

8 MR. MAURO: I did not, no. As you can see
9 in the YouTube video, you'll see where she's standing,
10 and you actually can hear her a little bit.

11 MR. BLACKWOOD: The 40-foot -- the whole
12 time that you were there, was she there the whole time
13 as well?

14 MR. MAURO: Yes, the whole time.

15 MR. BLACKWOOD: Standing directly behind
16 the Panthers?

17 MR. MAURO: She wasn't standing directly
18 behind them the entire time, but for a period she was,
19 yes. Otherwise, she was off to the side.

20 MR. BLACKWOOD: Did the police ask you any
21 questions?

22 MR. MAURO: They did not.

23 MR. BLACKWOOD: Did there come a time when
24 you talked to anybody from the Department of Justice?

25 MR. MAURO: Yes. Sometime within the next

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1 maybe two hours or so, or three hours. I guess DOJ
2 had some roving attorneys out in cars, and we met with
3 two attorneys. They must've had a rental car, and we
4 rendezvoused with them in a parking lot, and --

5 MR. BLACKWOOD: That was you and Mr. Hill?

6 MR. MAURO: Yes, and the third individual
7 who was with us, and the three of us got in the back
8 of the car with the DOJ attorneys, and we had given
9 statements that were handwritten by the attorneys. I
10 was not given a copy of the statement.

11 MR. BLACKWOOD: Were you allowed to look
12 at the statement?

13 MR. MAURO: No. And I didn't ask, so.

14 MR. BLACKWOOD: Did you get the name of
15 the DOJ attorneys that you were interviewed by?

16 MR. MAURO: I did not. I can't recall. It
17 was two young females.

18 MR. BLACKWOOD: Did there come a time --
19 did you talk to anybody else from the Department?

20 MR. MAURO: Yes. I was contacted by I
21 believe Christopher Coates, who is an attorney at the
22 DOJ, and he had wanted to arrange to meet with me to
23 take a statement. They were investigating whether
24 they were going to bring an action in District Court.

25 I agreed. I met with him, and Jay

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1 Spencer. I can't recall his last name right now.

2 MR. BLACKWOOD: Fischer?

3 MR. MAURO: Fischer, yes. And I met with
4 them, and I gave my statement to them. And then
5 probably a few months later, I met them again, and I
6 gave an affidavit, which I -- which I signed, which I
7 believed was going to be used as part of the
8 injunctive relief that was being filed in Federal
9 Court.

10 MR. BLACKWOOD: Okay. Did you ever -- did
11 you keep a copy of that statement?

12 MR. MAURO: No. I did not get a copy.

13 MR. BLACKWOOD: Okay. At this time, I'd
14 like to direct my questions to Mr. Hill. I'm
15 basically going to ask the same questions, but if you
16 could, let's start -- if you could, give your name and
17 profession.

18 MR. HILL: Chris Hill, Senior Registrar
19 for the Hospital University of Pennsylvania
20 Dermatology.

21 MR. BLACKWOOD: And you were in
22 Philadelphia for Election Day 2008?

23 MR. HILL: I was.

24 MR. BLACKWOOD: And you're a Citizen of
25 Philadelphia?

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1 MR. HILL: I am indeed.

2 MR. BLACKWOOD: So, you had -- were you
3 credentialed to go into polling places?

4 MR. HILL: I was.

5 MR. BLACKWOOD: What was your purpose as
6 serving as an election officer?

7 MR. HILL: According to my training, they
8 did several nights of training with us because we'd be
9 entering polling places, and we were told that we were
10 there to protect voting rights and provide assistance
11 to voters of either party, as needed.

12 MR. BLACKWOOD: And did there come a time
13 on Election Day that you went to the Fairmount Street
14 location?

15 MR. HILL: Yes, we did.

16 MR. BLACKWOOD: Why? What was the purpose
17 of your going there?

18 MR. HILL: We were at I guess our third or
19 fourth polling location of the morning, and we
20 received a -- I received a phone call from the head of
21 the Poll Watchers in Philadelphia, and he said that
22 the poll watcher on site had been threatened, and we
23 were initially -- I was initially told there were
24 three Black Panthers there, and he asked if we could
25 swing by and see if that were the case.

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1 MR. BLACKWOOD: About what time did you
2 arrive at the site?

3 MR. HILL: Morning, some time between
4 10:00-11:00. Somewhere in that time. We started
5 early in the morning.

6 MR. BLACKWOOD: Could you tell the
7 Commissioners what you observed when you got there?

8 MR. HILL: I was driving. I was in my
9 Jeep. And as we came down the street, I passed in
10 front of the circular driveway. I could clearly see
11 two members of the New Black Panther Party out --
12 outfitted in their paramilitary garb, directly in
13 front of the doors. So, we went down the street to
14 the first available parking spot, jumped out, and
15 walked back over to the polling spot.

16 MR. BLACKWOOD: Could you describe what
17 they looked like?

18 MR. HILL: Two African-American males, one
19 taller, one shorter, both dressed in black BDU style
20 paramilitary garb, berets, black combat boots, patches
21 with, "New Black Panther Party."

22 MR. BLACKWOOD: Can you identify those
23 individuals here today?

24 MR. HILL: Mr. Shabazz is the third one in
25 on the second row. That's -- Mr. Shabazz I can

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1 recognize --

2 MR. BLACKWOOD: Okay.

3 MR. HILL: -- for sure.

4 MR. BLACKWOOD: Was anybody carrying
5 anything?

6 MR. HILL: Mr. Shabazz was carrying a
7 night stick.

8 MR. BLACKWOOD: And how was he carrying
9 it?

10 MR. HILL: He had a lanyard wrapped around
11 his hand, and as I approached the door, he was
12 slapping it into the palm of his other hand.

13 MR. BLACKWOOD: Did he say anything to
14 you?

15 MR. HILL: Immediately started with, "What
16 are you doing here, Cracker?" And he and Mr. Jackson
17 attempted to close ranks. I went straight between
18 them through the door to find our poll watcher, who
19 was inside the building at the time.

20 MR. BLACKWOOD: And who -- do you recall
21 the name of that person inside?

22 MR. HILL: No, I do not. He was -- he was
23 pretty shaken up, and I wasn't really too concerned
24 about finding out what his name was. You know, he was
25 -- he was visibly upset.

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1 MR. BLACKWOOD: What did he tell you?

2 MR. HILL: He was told he was called a
3 race traitor for being a poll watcher, credentialed
4 poll watcher for the Republican Party as a black man,
5 and that he was threatened if he stepped outside of
6 the building, there would be hell to pay.

7 MR. BLACKWOOD: And he said he was told
8 that -- or he relayed that he was told that by the two
9 Black Panthers you saw outside?

10 MR. HILL: He did.

11 MR. BLACKWOOD: Did that poll watcher, the
12 Republican poll watcher, ask you to do anything?

13 MR. HILL: He asked me what we were going
14 to do, and I said, "I have two attorneys with us.
15 We've already called back to headquarters. I'm
16 certain by now the police have been called. If they
17 haven't, we will call them as soon as I get back
18 outside."

19 I asked if he was okay for the moment, and
20 he said as long as he didn't have to go out of the
21 building.

22 MR. BLACKWOOD: Did you make a call to the
23 police?

24 MR. HILL: I did.

25 MR. BLACKWOOD: Did -- were there anymore

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1 comments from the individuals outside, the Panther
2 members?

3 MR. HILL: Cracker on more than several
4 occasions from Mr. Shabazz. I never heard Mr. Jackson
5 say anything. He did say something to Mr. Shabazz
6 that I didn't catch, but I was called a cracker, white
7 devil. Told that I was going to be ruled by a black
8 man on the next day, and I would have to get used to
9 being under his boot. Similar things to that.

10 MR. BLACKWOOD: Okay. How long
11 approximately were you both at the polling place?

12 MR. HILL: Forty-five minutes to an hour
13 sounds accurate to me.

14 MR. BLACKWOOD: Same question I asked
15 before: Did you ever see the two Panther members
16 separate by more than a few feet?

17 MR. HILL: Never.

18 MR. BLACKWOOD: Did they ever --

19 MR. HILL: They were within arm's length
20 of each other the entire time.

21 MR. BLACKWOOD: Did they ever move away
22 from the entrance to the polling place?

23 MR. HILL: Not until the police physically
24 ordered them to.

25 MR. BLACKWOOD: If someone wanted to enter

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1 the polling place, how close would they have to pass
2 from the Panther members?

3 MR. HILL: Arm's length on either side.
4 They were directly in front of the doors, no more than
5 five feet in front of the door. And in order to get
6 to that double door, you'd have had to walk right next
7 to them.

8 MR. BLACKWOOD: Did you ever hear Mr.
9 Jackson, or anyone else, ask Mr. Shabazz to put away
10 the night stick?

11 MR. HILL: No.

12 MR. BLACKWOOD: How were third parties
13 reacting to the presence and the actions of the
14 Panther members?

15 MR. HILL: People were put off when --
16 there were a couple of people that walked up, couple
17 of people that drove up, and they would come to a
18 screeching halt because it's not something you expect
19 to see in front of a polling place. As I was standing
20 on the corner, I had two older ladies and an older
21 gentleman stop right next to me, ask what was going
22 on.

23 I said, "Truthfully, we don't really know.
24 All we know is there's two Black Panthers here." And
25 the lady said, "Well, we'll just come back." And so,

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1 they walked away. I didn't see anybody other than
2 them leave, but I did see those three leave.

3 MR. BLACKWOOD: You saw the comments made
4 on the video by Malik Zulu Shabazz about Skinheads and
5 people from the Aryan Nation, and Nazis. Did you see
6 any members of those organizations there?

7 MR. HILL: Absolutely not.

8 MR. BLACKWOOD: And again, this is an open
9 area, correct?

10 MR. HILL: Indeed. And we were the first
11 ones on the scene. There was -- there were no one
12 there but them when we got there.

13 MR. BLACKWOOD: And did any of the Panther
14 members say that they had seen Nazis or Aryans or
15 Skinheads?

16 MR. HILL: No. I never heard that until I
17 saw that particular clip.

18 MR. BLACKWOOD: Did you talk to the
19 police, other than calling in the --

20 MR. HILL: I did not.

21 MR. BLACKWOOD: Did you talk to anybody
22 from the Department of Justice?

23 MR. HILL: A couple hours later, two
24 female attorneys met us in a parking lot, as Mike
25 said, and we got in the car with them. They asked us

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1 what happened. They took notes, and then we went on
2 our way because we were responding to polling places
3 all day long. So, you know.

4 MR. BLACKWOOD: Did you get a copy of the
5 statement?

6 MR. HILL: No, I did not, but once again,
7 I didn't ask for one either.

8 MR. BLACKWOOD: Were you ever asked to
9 testify at a hearing or a trial?

10 MR. HILL: No. I was deposed. I mean
11 Department -- DOJ came to my house. Well, met me at a
12 coffee shop in Philadelphia twice; took a statement.
13 The first time, I gave them a handwritten -- a typed
14 statement. Second time they came back with the
15 statement, asked me to read over it and sign it, that
16 it was as I had relayed it.

17 MR. BLACKWOOD: Did you keep a copy of
18 either statement?

19 MR. HILL: I did not.

20 MR. BLACKWOOD: Both you and Mr. Mauro
21 mentioned that you were accompanied by a third
22 individual. Do you know who that person was?

23 MR. HILL: He was another attorney from
24 New York. I don't remember his name, though.

25 MR. BLACKWOOD: With regard to the woman

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1 in the video, standing -- that Mr. Mauro testified
2 about, did you have any interaction with her?

3 MR. HILL: I did not. She -- when I went
4 through into the polling place itself, she was coming
5 around the side. So, that's when she's making the
6 phone call. And all I heard her say was, "The white
7 guys in suits are trying to stop people from voting."
8 Or something to that effect. I was a little
9 incredulous by that, but I was concerned about our
10 poll watcher inside. So, I didn't bother with it.

11 MR. BLACKWOOD: Was she there the whole
12 time that you were there?

13 MR. HILL: She was.

14 MR. BLACKWOOD: At this time, Mr.
15 Chairman, I'd like to switch to Mr. Bull.

16 CHAIRPERSON REYNOLDS: Please proceed.

17 MR. BLACKWOOD: Again, Mr. Bull, roughly
18 the same questions. But if you could, tell us your
19 name and profession, please.

20 MR. BULL: Thank you. My name is Bartle
21 Bull. I'm a retired lawyer. I'm a former publisher
22 of the Village Voice in New York. I've written for
23 all five New York newspapers, and for many magazines.
24 And I have six books throughout now. So, at the
25 present time, I'm a full time writer, but a former

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1 lawyer.

2 MR. BLACKWOOD: Could you detail for the
3 Commission your experience in Civil Rights matters and
4 politics?

5 MR. BULL: Yes, sir. Briefly, I've done
6 it all my life as a Democrat. In 1956, I was a
7 freshman at Harvard College, where I coordinated
8 Students for Adlai Stevenson. Then in -- in 1970 --
9 1968, I was Robert Kennedy's New York State Campaign
10 Manager when he ran for president of the country, the
11 following year or two.

12 In the early '70s, I went down to
13 Mississippi, and worked in the campaign to elect
14 Charles Evers as Governor of Mississippi. I ran
15 security and poll watching in his home county of
16 Fayette, in towns like Red Lick, Mississippi and
17 Midnight, Mississippi, where I saw nooses hung over
18 the branches of trees.

19 In 1972, I was chairman in New York State,
20 Democrats for Governor Shriver. In 1976, I was Jimmy
21 Carter's New York State campaign manager. In 1980, I
22 was chairman of New York Democrats for Edward Kennedy
23 when he ran for President, and I did the same thing in
24 campaigns for Mario Cuomo, Hugh Carey. I also worked
25 for Ramsey Clark when he ran for the Senate, and I've

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1 worked in campaigns in New Hampshire, Massachusetts,
2 New York, South Carolina, where I worked against Strom
3 Thurmond, also in Florida and in Mississippi.

4 So, I've done this all my life, always
5 unpaid as a volunteer, and often organizing poll
6 watchers.

7 MR. BLACKWOOD: Now, you're in
8 Philadelphia on Election Day 2008. Why are you there?

9 MR. BULL: Well, I had been serving in New
10 York State, my second Republican candidate, as
11 Chairman of Democrats for McCain in New York State. I
12 knew we were going to lose New York. I thought
13 perhaps I could help in Philadelphia. So, I took the
14 train down there at 5:00 in the morning, and spent a
15 day there, troubleshooting on Election Day for the
16 McCain Campaign.

17 MR. BLACKWOOD: And did there come a time
18 that you went to the Fairmount Street polling place?

19 MR. BULL: Yes. I was in a car, driven by
20 a young volunteer, with another volunteer from New
21 York. And we were receiving cell phone messages,
22 saying that in many, many polling places, there was
23 intimidation. Not so much of voters, Mr. Melendez,
24 but intimidation of poll watchers. A very important
25 point, sir, if I may say.

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1 And that was what was going on. Our poll
2 watchers were driven out of the polls in five or six
3 places I went to. And while we were examining those
4 situations, we had a call on the radio -- on the cell
5 phone, excuse me, saying that on -- on -- at Fairmount
6 Street, there were two Black Panthers intimidating
7 voters and poll watchers, as you just heard.

8 So, we drove there, and there indeed we
9 saw the two Black Panthers, blocking the door to a
10 polling place, one of them armed with a weapon. I may
11 say in my many years as a Civil Rights lawyer -- I
12 didn't mention that. You asked me that question, I'm
13 sorry. I also worked for a group called the Lawyer's
14 Committee for Civil Rights Under Law in Mississippi.

15 In 1966, I took my summer vacation as a
16 lawyer; went down to Hattiesburg and other towns in
17 Mississippi, and worked as a Civil Rights lawyer
18 there. And even there, I never saw armed people
19 blocking the doors to a polling place.

20 MR. BLACKWOOD: When you arrived at the
21 Fairmount Street location, what did -- what did you
22 actually see?

23 MR. BULL: Well, these two gentlemen I
24 believe were there already. They were a bit off to
25 one side from the entrance. There were two Black

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1 Panthers, one of them was armed, standing very close
2 to each other, directly blocking the door to the
3 polling places.

4 One of them was waving a baton like that,
5 slapping against his hand, pointing at people. And
6 several people -- I was more or less at the end of the
7 driveway, and several people began to walk up the
8 driveways, saw these guys, and then went back and
9 didn't go on to vote.

10 MR. BLACKWOOD: All right. Did the
11 individuals that you saw turn around, those were
12 people that you believed were coming to vote?

13 MR. BULL: Oh, yes, yes. That's the only
14 reason you walk along that long block on the pavement,
15 and then go in the long driveway. And several walked
16 in, saw this at the door, and walked back out the
17 drive.

18 MR. BLACKWOOD: Can you identify the
19 individuals, the Black Panthers that were there that
20 day?

21 MR. BULL: I will try to. Yes, sir. The
22 second row, the third gentleman in, he was the one
23 with the baton, with the weapon, the club in his hand.

24 MR. BLACKWOOD: Did either of those
25 members make any comments while you were there?

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1 MR. BULL: Yes, sir. After the police
2 arrived, and did not take the club away, by the way,
3 and they asked the gentleman with the club to get away
4 from the polling place. And as he walked by me, I was
5 standing by a car at the end of the driveway with my
6 two companions, he pointed the billy club at me and
7 said, "Now you will see what it means to be ruled by
8 the black man, Cracker." And the reason I recall that
9 very well is because it struck me as ironic that
10 having worked as a Civil Rights lawyer and being
11 threatened in Mississippi, I was now being threatened
12 in this way here, and being called a cracker, frankly.

13 MR. BLACKWOOD: About how long were you at
14 the polling place?

15 MR. BULL: About 45 minutes, maybe.

16 MR. BLACKWOOD: Okay, and the whole time
17 that you were there, did you see either of the Panther
18 members separate from each other?

19 MR. BULL: No. Only when they left. Only
20 on leaving.

21 MR. BLACKWOOD: Up to that point in time,
22 they stayed in front of the polling place?

23 MR. BULL: They were shoulder to shoulder.
24 They were -- they were clearly -- they had this
25 paramilitary presentation.

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1 MR. BLACKWOOD: Other than the -- you
2 mentioned that -- you indicated that you saw some
3 voters turn away. Was that a single incident, or did
4 you see it multiple times?

5 MR. BULL: No more than two or three
6 times, I would say.

7 MR. BLACKWOOD: Okay. Did you talk to the
8 Republican poll watchers inside the polling place?

9 MR. BULL: No, no. I didn't have access
10 to the polling place.

11 MR. BLACKWOOD: Again, the same question
12 that I've asked the others: did you see any Skinheads
13 or Aryans or Nazi members during the time at the
14 polling place?

15 MR. BULL: Absolutely not, and no
16 reference to any such thing.

17 MR. BLACKWOOD: And did you hear any of
18 the Panther members make any reference to Nazis or
19 Aryan Nation folks?

20 MR. BULL: Absolutely not.

21 MR. BLACKWOOD: Did you talk to anybody
22 from the Department of Justice?

23 MR. BULL: Not on -- not on that occasion.
24 Not that day. But some -- some weeks later, I
25 received a call in New York from the Department of

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1 Justice, saying would I be prepared to sign an
2 affidavit to what I have just told you, and I said
3 yes, provided you guys don't drop the lawsuit. And
4 they said, "Well, we should warn you that this is a
5 dangerous group; they injured several New York
6 policemen at a rally in New York." And I said, "I
7 don't care about that. I will do this as long as you
8 continue with the lawsuit."

9 That's why I was so shocked when it was
10 dropped, frankly.

11 MR. BLACKWOOD: Mr. Chairman, I am through
12 my examination of the witnesses. I would point out
13 that Congressman Frank Wolf is here, and has some
14 urgency about --

15 CONGRESSMAN WOLF: I'm okay.

16 COMMISSIONER YAKI: I think as a personal
17 privilege, we should reserve questioning until
18 Congressman Wolf --

19 CHAIRPERSON REYNOLDS: Yes. Okay, we are
20 going to change our proceedings a bit. The original
21 plan called for us to question the witnesses at this
22 point. Since Congressman Wolf is here, we will at
23 this point listen to the testimony that Congressman
24 Wolf has to -- has to put in for the record.

25 So, Gentlemen, please stick around.

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1 Congressman Wolf, would you please move to the table?

2 **VII. TESTIMONY OF CONGRESSMAN FRANK WOLF**

3 CHAIRPERSON REYNOLDS: Okay, we are
4 honored to have with us today Representative Frank
5 Wolf of Virginia. Thank you for carving out time in
6 your busy schedule to join us. Congressman Wolf,
7 please raise your right hand. Do you swear and affirm
8 that the information you're about to provide is true
9 and accurate to the best of your knowledge and belief?

10 CONGRESSMAN WOLF: I do.

11 CHAIRPERSON REYNOLDS: Very good. You may
12 proceed, Congressman Wolf.

13 CONGRESSMAN WOLF: Thank you very much.
14 Mr. Chairman and Members of the Commission, I want to
15 personally thank you for the opportunity to testify
16 today.

17 I've several documents I'd like to submit
18 for the Commission's record as part of my testimony.
19 As a former chairman and current ranking member on the
20 House Commerce Justice Science Appropriations
21 Subcommittee, with jurisdiction over the US Commission
22 on Civil Rights, I'm very familiar with the
23 Commission's essential role in ensuring the integrity
24 of our nation's civil and voting rights laws.

25 As you know, the Commission has an

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1 important, special statutory responsibility to
2 investigate voting rights deprivation, and make
3 appraisals of federal policies to enforce federal
4 voting rights laws.

5 Congress instilled the independent
6 overnight responsibility on the Commission in statute,
7 where it said, "All federal agencies shall fully
8 cooperate with the Commission to the end that it may
9 effectively carry out its functions and duties." And
10 I remind the Attorney General that this includes the
11 Commission's authority to subpoena witnesses.

12 I appreciate your efforts to investigate
13 this unexplained dismissal of the US versus New Black
14 Panther Party Case, which is serious and dangerous
15 consequences for future voter intimidation
16 enforcement. I am a strong supporter of the Voting
17 Rights Act, which is why I was so deeply troubled by
18 Justice's questionable dismissal of such an important
19 voter intimidation case in Philadelphia, where I grew
20 up and my father was a Philadelphia policeman.

21 My commitment to voting rights is
22 unquestioned. In 1981, I was the only member,
23 Republican or Democrat, of the Virginia Delegation in
24 the House of Representatives to vote for the Voting
25 Rights Act, and was harshly criticized then by the

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1 editorial page of the Richmond Times Dispatch, the
2 State's leading newspaper.

3 I was again criticized in a number of
4 editorials in 2006, by another newspaper in my
5 district, when I supported the Act's reauthorization.
6 From beginning, I have asked the question: Why did the
7 Department dismiss this serious case?

8 Looking at the facts, if this is not a
9 clear case of voter intimidation, I do not know what
10 is. The public can view a video of the incident, as
11 well as other examples of the party's intimidation,
12 and a clip from National Geographic Channel
13 documentary, entitled, "Coming To a Polling Place Near
14 You." Posted on the website at
15 www.ElectionJournal.org.

16 My concerns have only been compounded over
17 the last year in light of the Department's obstruction
18 of oversight investigations by the Congress and this
19 Commission. The action of the Attorney General to
20 allow the Department's obstruction of this
21 Commission's investigation are puzzling.

22 I believe he is undermining in some
23 respects the federal oversight of the Justice
24 Department. For nearly a year, I've been urging the
25 Department to release all the documents surrounding

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1 this case, and to make a genuine attempt to answer the
2 questions asked by members of Congress and by this
3 Commission.

4 The requests have been rebuffed at each
5 turn. Earlier this year, I introduced a resolution of
6 inquiry that would've compelled the Attorney General
7 to release all requested documents to the Congress.
8 It was defeated in a party line vote in the House
9 Judiciary Committee.

10 I've urged the Department's Inspector
11 General, Glenn Fine, on multiple occasions, to open an
12 investigation into whether improper political
13 influence contributed to dismissal of this case.
14 Unfortunately, Mr. Fine continues to maintain that
15 ignorance, which I believe is an unacceptable
16 abdication of his responsibility because the IG's
17 office is supposed to look at these things in the
18 Justice Department, and we fully fund the IG to give
19 them the resources to do so.

20 Mr. Fine's lack of action, I believe,
21 deserves the scrutiny of the Council of Inspector
22 Generals on Integrity Efficiency, called the CIGIE,
23 and I'll be requesting that the Council look into its
24 failure with regard to this matter.

25 What should be a bipartisan support for

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1 robust voting rights enforcement has become I think a
2 bad example of the types of partisan obstruction that
3 undermine our nation's Civil Rights laws. While some
4 are the Washington Times, and it's been somewhat
5 troubling some papers have covered this, and others
6 have just almost ignored it.

7 The Philadelphia Inquirer, the last
8 remaining paper, major paper, in the City of
9 Philadelphia -- I used to deliver the Philadelphia
10 Bulletin, but in Philadelphia, nearly everyone reads
11 the Inquirer. The Inquirer has almost pretended that
12 this has not even -- even -- even taken -- taken
13 place.

14 Last summer, the Washington Times reported
15 that the Department's voter intimidation case against
16 the New Black Panther Party was dismissed over the
17 objections of career attorneys. And again, all this
18 has been initiated by career people.

19 I was a -- used to work for the Department
20 of Interior before I served in Congress, but all of
21 the activity has all been with regard to the decisions
22 on moving ahead have been made by career people. And
23 this was dismissed over the objections of career
24 attorneys on the trial team, as well as the Chief of
25 the Division, Appellant Division.

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1 According to the Appellant Division, memos
2 first disclosed in the Times articles, Appellant
3 Chief, Diana K. Flynn, said, "The appropriate action
4 was to pursue the default judgment." And that justice
5 had made, "A reasonable argument in favor of default
6 related against all defendants."

7 Flynn's opinion was shared by a second
8 Appellant Division official, Marie K. McElderry, who
9 stated, "The Government's predominant interest in
10 preventing intimidation, threats and coercion against
11 voters or persons urging or aiding persons to vote or
12 to attempt to vote."

13 Given these troubling disclosures, I have
14 repeatedly called on the Attorney General to refile
15 the civil suit, and to allow a ruling from the judge
16 based on the merits of the case. Not political
17 expediency, but solely on the merits of the case.

18 The career trial team should be allowed to
19 bring the case again, per the guidance I obtained from
20 the Congressional Research Services, American Law
21 Division, in its July 30 memo, "To allow our nation's
22 justice system to work as it was intended:
23 impartially, and without bias."

24 Sources within the Department stated that
25 the Associate Attorney General, Thomas Perrelli, a

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1 political appointee, in conjunction with the Acting
2 Assistant Attorney General for Civil Rights, Ms.
3 Loretta King and her deputy, Mr. Steven Rosenbaum,
4 overruled the career attorneys in the voting rights
5 section.

6 Earlier this week, the Department finally
7 acknowledged that the Attorney General was made aware
8 on multiple occasions of the steps being taken to
9 dismiss this case. Why would the Department's
10 political leadership overrule the unanimous opinion of
11 the career attorneys on the trial team, and the
12 Appellate Division?

13 Why would the Department's political
14 leadership not seek a default judgment to secure the
15 maximum enforcement of the Voting Rights Act?

16 The Justice Department is responsible for
17 the vigorous enforcement of Civil Rights statutes. It
18 is my understanding that the career attorneys, who
19 originally brought this case, continued to stand by
20 its -- by its merit.

21 These are again career people who have
22 dedicated their life and their career, and had been
23 very courageous to be pushing this ahead, and knowing
24 that their careers could be impacted by the political
25 people who run the Department.

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1 The politicization of the Justice
2 Department against career employees is absolutely
3 wrong, and both the Congress and the Commission have
4 to get to the bottom of this.

5 I want to leave you with one last thought.
6 It is my understanding that the Career Voting Section
7 Chief, Chris Coates, offered a vigorous defense of the
8 New Black Panther Party Case at his going away
9 luncheon earlier this year. According to one report,
10 "At the end of the luncheon in his honor, the
11 attendees were startled when Coates pulled out a
12 binder and began reciting a written defense of his
13 decision to file the New Black Panther case."

14 Coates reportedly stated, "I did my best
15 to enforce all of our voting statutes for all
16 Americans, and I leave here with my soul rested that I
17 did the right thing to the best of my ability."

18 Although the Attorney General will not
19 allow the career attorneys to testify before this
20 Commission, I believe this anecdote helps to convey
21 the ardent opposition of the Department's career
22 attorneys to the dismissal of this voting rights case.

23 I call again on the Attorney General to
24 comply with the Commission's subpoena, and to allow
25 the career attorneys to testify. This Commission and

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1 the American people should be concerned that the
2 Justice Department and the Attorney General would only
3 agree to allow Tom Perez, a political appointee, who
4 really wasn't even employed at the Department at the
5 time of the dismissal to testify.

6 I believe and I believe the American
7 people would agree that it's imperative that we
8 protect the right of every American to vote a
9 sacrosanct and inalienable right of any democracy.

10 The career attorneys in the Appellate
11 Division within the Department sought to demonstrate
12 the federal government's commitment to protecting this
13 right by vigorously prosecuting any individual or
14 group who seeks to undermine this right. The American
15 people deserve the kind of impartial leadership at the
16 Justice Department that will allow this case to go
17 forward again, not to counter political leadership
18 that has tilted the scales of justice.

19 And again, I want to thank you for having
20 the hearing, and thank you for giving me the
21 opportunity to -- to testify.

22 CHAIRPERSON REYNOLDS: Thank you,
23 Congressman Wolf. Rest assured that the information
24 that you provided today will be entered into the
25 record. At this time, Mr. Blackwood, do you have any

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1 questions?

2 MR. BLACKWOOD: No, I do not.

3 CHAIRPERSON REYNOLDS: Okay, Vice Chair
4 Thernstrom?

5 VICE CHAIR THERNSTROM: And are we now
6 questioning just Congressman Wolf?

7 CHAIRPERSON REYNOLDS: That is correct.

8 VICE CHAIR THERNSTROM: Okay, Congressman
9 Wolf, welcome. And I should mention that I am one of
10 your constituents. I live in McLean --

11 CONGRESSMAN WOLF: Yes, ma'am.

12 VICE CHAIR THERNSTROM: -- Virginia. A
13 couple of questions. First, you described the DOJ
14 dismissal as possibly having serious and dangerous
15 consequences, and I wondered what specific
16 consequences you had in mind? Do you think that the
17 New Black Panther Party intimidation is a nationwide
18 alarming phenomenon, or doesn't it matter if it's
19 nationwide? Is it sufficient that it was at this one
20 polling place on this specific day?

21 CONGRESSMAN WOLF: I think it's sufficient
22 that it took place there, but to have bullies like
23 this intimidating people? If these were three white
24 men standing outside a polling booth in Clinton,
25 Mississippi, and I went to school for a year in

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1 Mississippi back in the mid-'50s, and saw the
2 intimidation and the segregation and what went on.
3 And to have three white men standing outside a polling
4 booth to intimidate African-Americans who were coming
5 in would be totally unacceptable.

6 And Bartle Bull, I think makes the case
7 better than anyone. No one can question his -- his
8 record. And the fact that it took place in my former
9 home town, to see that people could be intimidated by
10 people standing there and do this? No one should live
11 in fear in this nation with regard to be intimidating
12 for anything, but particularly for the right to vote.

13 Thirdly, we see some of these fringe
14 groups moving around, and allow them to crack down and
15 say they're going to keep people from doing it is a
16 wrong thing. And I just thought it was almost a no-
17 brainer for the Justice Department. And again, I have
18 great respect for career people.

19 A large number of federal employees, as
20 you know if you live in my district, live in my -- my
21 congressional district. I have been a champion for --
22 I used to be a federal employee. I still am a federal
23 employee. My wife was a federal employee when she put
24 me through law school.

25 The -- to see that federal employees can

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1 be intimidated, can sort of be kind of cut off and
2 blocked? I used to work for a cabinet secretary,
3 Roger C. B. Morton, and the political involvement of
4 pushing back on career people I think can be very,
5 very dangerous.

6 So, I think it's really both, both of the
7 questions that you asked.

8 VICE CHAIR THERNSTROM: Well, let -- let
9 me just pick up on something you said. I wondered --
10 in the first place, we're not in Mississippi in the
11 1950's. I know that history extremely well, and by
12 the way, you weren't here for my opening statement,
13 but I have written two -- two books on the Voting
14 Rights Act, and Section 11(b) is the most minor
15 provision in the entire Act.

16 It has -- there have been three Civil
17 Rights -- civil lawsuits, as you know, before this
18 one, based on it. But the -- and I fully support
19 robust voting rights enforcement, obviously, and I am
20 a Republican appointee, by the way, to the Commission.

21 But surely, the jury is out as to whether
22 the DOJ has in fact been delinquent in this respect,
23 since we don't have the inside story. You don't have
24 it. And in fact, Chris Coates did not have the inside
25 story. I know Chris Adams very well, and he doesn't

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1 know why the decision was made, which was the question
2 before -- that we were supposed to be addressing at
3 this Commission.

4 So, you know, I have no idea what the
5 reasoning of DOJ was, and I don't think that -- I
6 don't think that any of us do, and I don't think we're
7 going to get the answer to that question. And
8 finally, let me say that I'm not wild about the idea
9 of career attorneys being hauled before hearings like
10 this. I do think that -- and I base this on some
11 experience that -- that if you're trying to do your
12 job in an administration as -- as the career attorneys
13 in the Civil Rights Division, of the voting rights
14 section of the Civil Rights Division are trying to do
15 their job, that to have to constantly think, "If I
16 have the following conversation, or make the following
17 decision, or write the following email, it may become
18 public information." I don't think people can do
19 their job properly.

20 And so, I -- with all due respect, I would
21 not have liked to have seen them forced to appear
22 here. But let's go back to my first question, how do
23 you define voter intimidation under 11(b)? As I said,
24 there have been three cases prior -- prior to this
25 one. Only one before the Bush -- before the Bush

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1 Administration -- two under the Bush Administration.

2 CONGRESSMAN WOLF: I don't know that I
3 would define it, and I think that -- excuse me. I
4 don't know that I would define it, and I think the
5 career people there have -- had defined it, and I
6 think what I saw, and after talking to people that
7 were there, and after talking to Bartle Bull, I think
8 that that is. But the point is, the case should've
9 gone forward, and it didn't go forward.

10 VICE CHAIR THERNSTROM: But we don't know
11 that without knowing more.

12 CONGRESSMAN WOLF: But you don't get any
13 cooperation from the Justice Department to tell you
14 why. You don't know who they met with. You don't
15 know why the decision was --

16 VICE CHAIR THERNSTROM: That's why we
17 don't know.

18 CHAIRPERSON REYNOLDS: Okay, at this
19 point, Commissioner Kirsanow, do you have any
20 questions?

21 COMMISSIONER KIRSANOW: I do. Thank you.
22 Welcome, Congressman Wolf. Thank you for appearing
23 today. Following up on something Commissioner
24 Thernstrom said, she indicated that we don't know the
25 reason why Justice made the decision to dismiss this

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1 case.

2 Given all the extent evidence that we
3 have; you were not here for the video that we saw. We
4 have adduced evidence through the Justice Department,
5 supplying us with certain documentation, and obviously
6 you've received a lot of documentation. Given what we
7 do know, can you articulate a plausible reason why
8 Justice would dismiss this case under 11(b)?

9 CONGRESSMAN WOLF: I think that's
10 something you'll have to look at. I have talked to
11 career people over there, and I do have personal views
12 on it, but I think -- I think they could better answer
13 that question.

14 COMMISSIONER KIRSANOW: Okay. Second, at
15 the Civil Rights Commission, we've got finite
16 resources. But as a member of Congress, do you think
17 -- do you have an opinion as to whether or not we are
18 wasting our resources in investigating the dismissal
19 of this particular matter today?

20 CONGRESSMAN WOLF: No, I do not. I don't
21 think -- in fact, if you didn't do this, I think you'd
22 be neglecting your -- your responsibility. And I
23 think maybe the whole credibility of the Commission
24 would be gone.

25 COMMISSIONER KIRSANOW: And would your

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1 answer be --

2 CONGRESSMAN WOLF: And if you lived in
3 that neighborhood, and you were there, and they were
4 standing in front of you and intimidating you from
5 voting, you would feel the same way.

6 COMMISSIONER KIRSANOW: Yes. And is your
7 answer any different because this is a single
8 incident, as opposed to there being maybe a couple of
9 incidents or ten incidents?

10 CONGRESSMAN WOLF: Any incident.

11 COMMISSIONER KIRSANOW: Okay. How many
12 times have you been in touch with staff or members of
13 the Department of Justice in order to obtain
14 information related to this particular matter?

15 CONGRESSMAN WOLF: A number of times I've
16 spoken to people. Many times.

17 COMMISSIONER KIRSANOW: And are you
18 satisfied with the adequacy of the response of DOJ?

19 CONGRESSMAN WOLF: No.

20 COMMISSIONER KIRSANOW: What have they
21 done or not done to satisfy your --

22 CONGRESSMAN WOLF: They almost never
23 answer a letter.

24 COMMISSIONER KIRSANOW: What would you say
25 to individuals who would say that the Commission's

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1 inquiry here today, or your inquiry, is motivated by
2 partisan reasons?

3 CONGRESSMAN WOLF: I think that's
4 ridiculous.

5 COMMISSIONER KIRSANOW: Would your actions
6 related to this particular matter be at all different
7 if in fact this was -- this dismissal was done under a
8 different administration?

9 CONGRESSMAN WOLF: No, it wouldn't, and I
10 see the line that you're going on. I have been in
11 Congress for 30 years. My best friend in Congress is
12 a Democratic member of Congress, Congressman Tony
13 Hall, who has actually contributed to my campaign.

14 If you go call Congressman Hoyer and ask
15 him if I'm a partisan person, he'll tell you that I'm
16 not. I was the author of the Iraq study group, which
17 questioned the whole operation of the Iraq War when
18 the Congress had failed to have aggressive oversight.

19 I have the most bipartisan bill in
20 Congress with regard to dealing with the debt and the
21 deficit, Jim Cooper and I. So, I approach these
22 things based on what I believe is an important issue
23 with regard to is it right or wrong, and I have not
24 been reluctant to speak out and criticize Republican
25 administrations, as well as Democrat administrations.

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1 So, the answer to your question is no.

2 COMMISSIONER KIRSANOW: Do you believe
3 that the incident that we are reviewing here today,
4 and I think the scope of this inquiry is really into
5 the adequacy of your response, although obviously
6 we've got to get to the underlying predicate. But do
7 you think that the incident that is the reason why
8 we're here today is any less serious because it
9 occurred in a black neighborhood, or that the alleged
10 intimidators are black?

11 CONGRESSMAN WOLF: I think it's serious no
12 matter what the case may be. For anyone to intimidate
13 people from voting would be serious, no matter what
14 their race were.

15 COMMISSIONER KIRSANOW: And does that also
16 include party? In other words, would it be less
17 serious --

18 CONGRESSMAN WOLF: Yes, absolutely.

19 COMMISSIONER KIRSANOW: -- if this --

20 CONGRESSMAN WOLF: No, Republican or
21 Democrat.

22 COMMISSIONER KIRSANOW: Okay. Thank you,
23 Mr. Chairman.

24 CHAIRPERSON REYNOLDS: Thank you.
25 Commission Taylor?

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1 COMMISSIONER TAYLOR: I'm going to pass
2 for the moment, Mr. Chairman.

3 CHAIRPERSON REYNOLDS: Commissioner Yaki?

4 COMMISSIONER YAKI: Thank you very much,
5 Mr. Chair. Thank you very much for appearing,
6 Congressman Wolf. On a personal note, I used to be a
7 senior aide to a young congresswoman named Nancy
8 Pelosi, and we had very good relations with your
9 office on appropriations, and you and your staff was
10 always very accommodating. So thank you.

11 CONGRESSMAN WOLF: And we still do.

12 COMMISSIONER YAKI: I know you do. And I
13 also -- and I also used to be a constituent of yours
14 when I used to live in Great Falls. In fact, when you
15 were first elected in 1980, I think.

16 CONGRESSMAN WOLF: Correct, yes.

17 COMMISSIONER YAKI: So, the -- I wanted to
18 ask a couple questions, and first I wanted to say that
19 I do commend you for the bipartisan work that you have
20 done on issues. One in particular was the -- your
21 role in questioning the interrogation memos that --
22 regarding now Judge Bybee and John Yoo, and the fact
23 that at that time you initiated a request for the
24 Office of Professional Responsibility in Justice to
25 take a look at that, if I recall correctly.

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1 My question has to do with this. You've
2 talked a lot about some of the different offices
3 within DOJ, but OPR certainly has been -- perhaps I'm
4 characterizing wrong, but perhaps in your opinion it
5 has been a very good fact-finding and independent
6 watchdog within Justice.

7 Is it -- isn't it -- why -- why is it that
8 you are not satisfied that OPR has opened an
9 investigation into this matter?

10 CONGRESSMAN WOLF: It's gone on for so
11 long, and -- and other potential political reasons,
12 but it's gone on for so long, and every time we send a
13 letter over there, we almost get no response back. I
14 think the appropriate place to look at this is really
15 the Inspector General.

16 COMMISSIONER YAKI: In the -- in the case
17 of the torture memos, why would -- why were you
18 satisfied at OPR versus inspector general for its --

19 CONGRESSMAN WOLF: Well, we've gone on on
20 this thing over and over. We've talked to Bartle
21 Bull. We've also looked at other things. And I've
22 also talked to career people over at the Department.
23 Many times, I've talked to them off the record, and I
24 think this is a fairly open and shut case that ought
25 to be proceeding and moving ahead, and I -- I -- did

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1 you just watch the film?

2 I don't think anybody here would want to
3 go vote next November and have anyone standing outside
4 of your polling place with that type of intimidation,
5 and the obvious nature of that. We have the right to
6 vote, the right to be able to take a decision, the
7 right to kind of go down.

8 I mean I've seen as we travel around the
9 world and see the intimidation of people in other
10 areas; I just think it's just inappropriate. And the
11 career people I think have made a pretty compelling
12 case, and the Justice Department is moving ahead. And
13 something happened, and we're not sure what happened
14 for the political people to intercede and change that.

15 COMMISSIONER YAKI: Let me just get --
16 I'll get back to career people in just one second, but
17 based on what you had said to Commissioner Kirsanow, I
18 take it that if -- if you had been informed that cases
19 equally egregious on the facts as this had been
20 brought to the Justice Department in 2002 and 2004 and
21 2006, and had not been referred for 11(b) prosecution,
22 you would be as concerned about that as you were about
23 this case, correct?

24 CONGRESSMAN WOLF: I would hope so.

25 COMMISSIONER YAKI: I mean if someone was

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1 -- if someone was standing at a voting booth with an -
2 - with an open weapon, and asking only certain types
3 of voters, "Why are you here? Are you really
4 registered to vote?" That'd be the kind of thing that
5 would probably upset you.

6 CONGRESSMAN WOLF: Well, I would -- I
7 would hope so. I'm the co-chairman of the Tom Lantos
8 Human Rights Caucus, which the speaker has set up.
9 And whenever we see activity in places that whether it
10 is -- whoever is involved in it, we hope we speak out.
11 So, I would hope so.

12 COMMISSIONER YAKI: I agree, and that's
13 certainly been your record in Congress. In fact, I
14 also forgot how much work we did together in the China
15 issue during the -- during the early '90s.

16 The last question I have -- I have for you
17 has to do with the -- I know that you place a lot of
18 faith in career, and I think that as a matter of
19 practice in the federal government, we tend to look at
20 career people as having a little more insulation, or
21 expertise and professionalism in their job.

22 The question I have to ask though is this
23 concerns a department within the -- within the Justice
24 Department that the Office of Professional
25 Responsibility cited as having extreme politicization

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1 in the hiring and firing of folks. And I just want --
2 I just would like to, A, put that on the record, and
3 B, ask you whether or not the fact that if any of the
4 individuals involved were part of that, or had been
5 referenced in that report, or in other citations with
6 regard to the politicization, would that change your -
7 - change your opinion about whether or not as career
8 people, qua career people, their opinion is as sound
9 as, say, someone who had been there 20 or 30 years?

10 CONGRESSMAN WOLF: Well, I think there's a
11 rebuttable presumption, and the career people are --
12 are -- almost have been removed for whatever case --
13 case may be. My staff just gave me a note saying that
14 Chris Coates was hired by the Clinton Administration.

15 COMMISSIONER YAKI: I understand.

16 CONGRESSMAN WOLF: But --

17 COMMISSIONER YAKI: But Chris Coates was
18 also --

19 CONGRESSMAN WOLF: Let me answer your
20 question. Back in I forget what year it was, the
21 Congress brought up a proposal to -- to amend or to
22 drastically change the Hatch Act. Since having been a
23 federal employee, I was the only member that
24 represented a large number of federal employees to
25 vote against that because I remember during the Nixon

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1 Administration there was a politicizing of the career.

2 At that time, I was working for a cabinet
3 secretary, and I felt that the Hatch Act provided a
4 protection for career people in the following way:
5 that if someone could come by and say, "Well, we're
6 having a political event and you got to donate," or,
7 "We're going to be out flyering cars next week at the
8 shopping centers, and we want you," the fact that the
9 Hatch Act was there provided a protection for the
10 federal employee where he could say, or she could say,
11 "Well, that's against the law. I really can't do
12 that."

13 So, I have always kind of leaned in with
14 regard to protecting the career -- you see in other
15 governments around the world the politicizing and
16 manipulation. So, I think the career process has been
17 very good, and I have always gone the extra mile,
18 including voting in a way that probably many people
19 thought I should not have of -- of not repealing the
20 change in the Hatch Act as a way to protect --

21 COMMISSIONER YAKI: And I agree. No one
22 is impugning your integrity. And I would just say --

23 CHAIRPERSON REYNOLDS: Commissioner Yaki,
24 I just wanted to let you know you've run out of time.

25 COMMISSIONER YAKI: Just to finish really

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1 quickly, I assume that the OPR report about the
2 conduct of Mr. Schlozman in DOJ must've had some
3 concern to you with regard to politicization of the
4 Civil Rights Division, and I would just simply say
5 that yes, I understand that Mr. Coates has been -- has
6 been there for quite some time. There have been some
7 allegations, whether they're true or not, that he was
8 a subject of a memo by Mr. Schlozman saying that he's
9 now part of our team, but those are the kinds of --

10 CONGRESSMAN WOLF: I don't know.

11 COMMISSIONER YAKI: I understand, but
12 those are the kinds of things that -- that do concern
13 me.

14 CHAIRPERSON REYNOLDS: Thank you,
15 Commissioner Yaki.

16 CONGRESSMAN WOLF: Where do you live now?

17 COMMISSIONER YAKI: San Francisco.

18 CHAIRPERSON REYNOLDS: Mr. Melendez?

19 COMMISSIONER MELENDEZ: No further
20 questions.

21 CHAIRPERSON REYNOLDS: Okay, Commissioner
22 Heriot?

23 COMMISSIONER HERIOT: I have no questions.

24 CHAIRPERSON REYNOLDS: Commissioner
25 Gaziano?

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1 COMMISSIONER GAZIANO: Thank you,
2 Congressman Wolf. I would like to think, and I feel
3 confident we would've been investigating this matter
4 had it not been for your prior work, but your prior
5 work has certainly been very helpful and drew a lot of
6 attention to this issue. And I have two lines of
7 questioning that I hope won't take very long, but
8 there were some Commissioners in their opening
9 statements, and one in their questions to you,
10 suggested that since this was a single incident, it
11 wasn't worth our examination.

12 You responded to Commissioner Kirsanow in
13 saying that you certainly felt we would be derelict,
14 and I'll go back to your words that it might undermine
15 the credibility of the Commission if we didn't. Let
16 me -- let me just tell you one other reason for my
17 concern.

18 Would you agree with me that it sends a
19 stronger signal, good or bad, depending on what the
20 decision is, to dismiss a suit if you're on the verge
21 of winning, than not filing charges?

22 CONGRESSMAN WOLF: I would because then
23 that would just send a message. I -- I would.
24 Sometimes when you respond -- when a -- when a
25 teacher, when a third grade teacher goes to the

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1 defense of the most defenseless in the class -- as a
2 young boy, I was a stutterer. I still stutter now.
3 When a -- when a teacher would come to the defense of
4 the person having the most difficult time, that sends
5 a message to the whole class. "You're not going to do
6 that."

7 And I think by doing precisely what you
8 said sends a message, and we're not going to allow
9 voter intimidation anywhere, period.

10 COMMISSIONER GAZIANO: Right, and of
11 course if you -- does it send a stronger signal to
12 dismiss a claim that has received national attention,
13 and that most reasonable people who've seen this
14 YouTube that was repeated on Fox News, that it would
15 send a wrong -- a larger negative symbol, than another
16 case which perhaps should've been brought where the
17 evidence is less clear?

18 CONGRESSMAN WOLF: I agree because if the
19 third grade teacher allows the young stutterer to be
20 harassed, and pushed around, and beaten up, then that
21 sends a message to the rest of the class that you can
22 do it to anybody. So, I think it absolutely does.

23 COMMISSIONER GAZIANO: Yes. And let me
24 tell you one -- one final reason that I tried to
25 articulate in my opening statement why I think this is

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1 utterly -- by the way, we and you I think too, but
2 certainly we in the scope of our investigation
3 requested evidence on every single investigation the
4 Justice Department has done under 11(b) because we
5 want to compare that response.

6 I might agree with Commissioner Yaki and
7 others that some of those prior responses are
8 questionable. Some of them are inadequate, but I very
9 much want all of that information. And as you know,
10 as I think your experience reflects, we've been
11 stonewalled, delayed, and -- and only last week, we
12 had -- well, let me -- one of the new privileges that
13 doesn't exist, and I used to work in the Department of
14 Justice's Office of Legal Counsel, responding to
15 congressional requests from the president's side.

16 This is, to me, the most flagrant. They
17 said that they would have to deny us some material
18 last January. "The Department is constrained by the
19 need to protect against disclosures that otherwise
20 would undermine its ability to carry out its mission."

21 The statute that Congress has conferred
22 upon us requires every federal agency to comply fully
23 with our requests. And so, last Friday, we finally
24 got some dribbling out of documents, which I hope you
25 also have. And among them, I'm going to ask this

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1 panel of witnesses to maybe identify what their
2 statement was. Because prior to last Friday, we got
3 none of the witnesses statements.

4 For ten months, they deemed that either
5 not relevant, or -- so, let me ask in their words.
6 So, do you think that supplying you and other members
7 of Congress, and supplying the Commission with the
8 witnesses statements prior to last Friday would,
9 "Undermine the ability of the Department to carry out
10 its mission?"

11 CONGRESSMAN WOLF: No, I don't think it
12 would undermine it.

13 COMMISSIONER GAZIANO: Okay. So, what we
14 got last Friday, and this is our continuing problem,
15 has redactions that seem to me ridiculous. I'm going
16 to try to ask the witnesses who -- because the names
17 of the witnesses are redacted.

18 I have declaration of redacted. Now comes
19 defendant, redacted. Do you not think it's maybe
20 relevant to our investigation to know which witness
21 said which statement?

22 CONGRESSMAN WOLF: Sure. Of course.

23 COMMISSIONER GAZIANO: Please. I thank
24 you for your effort to get the information for your
25 own benefit, and to help the Commission get the

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1 information so that we can come to these conclusions
2 that Vice Chairman Thernstrom says that we don't have
3 sufficient information.

4 I think we've got sufficient information
5 to conclude that this case shouldn't have been
6 dropped. We may or may not ever get sufficient
7 information to conclude why, but I think it's
8 incumbent upon the Department to explain why it
9 dropped the suit.

10 I think we have sufficient evidence to
11 know that it should not have been.

12 CHAIRPERSON REYNOLDS: Thank you,
13 Commissioner Gaziano. Would you care to respond?

14 CONGRESSMAN WOLF: Oh, I would just tell
15 the Commission I'm going to stay with this issue until
16 it's resolved.

17 CHAIRPERSON REYNOLDS: Commissioner
18 Taylor?

19 COMMISSIONER TAYLOR: Congressman Wolf, my
20 name is Ashley Taylor, and I'm actually a resident of
21 the Commonwealth, not in your district. I live in
22 Richmond. But thank you for coming, and I want to
23 thank you for the manner in which you've gone about
24 this process, the respectful tone, my sense of you
25 working hard to ensure that it's not drawn into a

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1 political fight; that you can discuss the issue in a
2 way that actually advances the substantive issues I
3 think that are important here.

4 I wanted you to know personally I have
5 reserved judgment on this matter. I think it's
6 important to try to keep an open mind, and to try to
7 do nothing more at this point than try to draw out the
8 facts and ask questions. I want you to comment in
9 that regard on two things: one is the message that you
10 mentioned before that either the lack of aggressive
11 prosecution sends, or aggressive prosecution sends in
12 a neighborhood.

13 I'd like you to comment on that in the
14 context in my view of the longstanding refusal to
15 value incidents in the black community on the same
16 plane that incidents in the white community are
17 valued. Also, I'd like you to comment on the lack of
18 transparency that I sense, which I think causes a lot
19 of people concern and makes it more difficult to trust
20 decisions made by governmental entities when they
21 refuse to answer questions, or hide behind privileges.

22 So, with that, I want to again thank you
23 and ask you to comment on those two points.

24 CONGRESSMAN WOLF: Well, I think the
25 transparency and the trust issue is important because

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1 you saw the -- the Pew Foundation study that came out
2 last -- I guess it was earlier this week or last week.
3 Last week, excuse me. Seventy-eight percent of the
4 people in the United States have lost confidence in
5 their government, and I think accountability and
6 transparency.

7 I'm the author of this bill with
8 Congressman Cooper, a Democrat, to set up a bipartisan
9 commission to deal with the economic situation of
10 where we are, and we -- in our bill, we require that
11 there be public hearings and transparency around the
12 country to develop the confidence by the American
13 people in whatever decision is -- is done. Very tough
14 things are going to have to be done to deal with that.

15 So, I think the transparency, to build the
16 confidence up, because the Pew Foundation -- and I saw
17 one of the reports saying that the Pew -- the Pew
18 Foundation did that poll four times because the first
19 time they came back, they found the numbers were so
20 startling that they didn't really believe it was
21 possible, and they went back and they validated it
22 three additional times.

23 Lastly, I think that the enforcement --
24 justice, justice. You know, I just think there's some
25 things that have to be done, no matter where they take

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1 you and whatever they do. And I think you have to
2 restore the confidence. Obviously, somebody -- that
3 was if you go back and look at the Richmond Times
4 Dispatch editorial that criticized me in 1981.

5 I remember I was there, and some of my
6 colleagues said, "What are you doing?" And they
7 really took me to task. If you were an African-
8 American that lived in the south during that period of
9 time, and I always tried to put myself in the same
10 position of how I would feel if I were an African-
11 American and were driving down from Philadelphia to
12 Ole Miss, and couldn't stop at a restaurant to have a
13 burger, or stop -- or have young kids who have to go
14 to the bathroom. How would I feel?

15 And that's why I voted for the Voting
16 Rights Act. And so, I think there ought to be a
17 transparency, and there ought to be an openness, and
18 there ought to be -- fundamentally, everyone should
19 have the confidence to the best of the ability to
20 address their government. And -- and I think to have
21 people standing in front of the polling booth doing
22 that, and -- and it did strike me to come in from
23 Philadelphia, I was born and raised in south
24 Philadelphia.

25 I went to high school in John Bartram High

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1 School. To see this taking place in the city that I
2 have a warm sort of fuzzy feeling for because I was
3 born there, a lot of my life experiences have been
4 there, I just said, "This is not good." This is --
5 there's just some things you see, and you know they're
6 not right. And I saw this, and I said, "This is not
7 right."

8 COMMISSIONER TAYLOR: Thank you.

9 CHAIRPERSON REYNOLDS: Okay, thank you,
10 Congressman Wolf. At this point, I would like to
11 bring Mr. Hill, Bull and Mauro back to the table.

12 CONGRESSMAN WOLF: Am I dismissed?

13 CHAIRPERSON REYNOLDS: Yes. And on behalf
14 of the Commission, thank you very much.

15 CONGRESSMAN WOLF: Thank you.

16 MR. BLACKWOOD: If I might, Mr.
17 Commissioner, before we proceed with the questioning
18 of these witnesses, just some formalities. One, I
19 would like to move the documents that Congressman Wolf
20 submitted formally into the record?

21 CHAIRPERSON REYNOLDS: Sure.

22 MR. BLACKWOOD: And secondly, before I
23 ended my -- my questioning of Bartle Bull, I forgot to
24 ask one question. Mr. Bull, did you bring with you a
25 copy of your declaration that you gave to the

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1 Department of Justice?

2 MR. BULL: My affidavit?

3 MR. BLACKWOOD: Yes.

4 MR. BULL: Yes, I have an affidavit here.

5 MR. BLACKWOOD: And I would like to move
6 that into evidence as well.

7 MR. BULL: Yes. I'll leave it here.

8 COMMISSIONER GAZIANO: May I ask the
9 general counsel did we receive Mr. Bull's affidavit
10 from the Department?

11 MR. BLACKWOOD: The only document we
12 received from the Department is heavily redacted. Mr.
13 Bull has his full statement. The other witnesses do
14 not have copies of their statements.

15 COMMISSIONER GAZIANO: Did we receive
16 even, to your knowledge, a partially redacted --

17 MR. BLACKWOOD: Yes.

18 COMMISSIONER GAZIANO: -- version? Was
19 his name blacked out?

20 MR. BLACKWOOD: Absolutely.

21 COMMISSIONER GAZIANO: Okay.

22 MR. BULL: What are they afraid of?

23 VICE CHAIR THERNSTROM: You.

24 CHAIRPERSON REYNOLDS: Anything else?

25 COMMISSIONER GAZIANO: No, I'm through.

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1 Thank you. So, that was admitted into evidence?

2 **VIII: QUESTIONING OF WITNESSES BY COMMISSIONERS**

3 CHAIRPERSON REYNOLDS: Yes. Okay, at this
4 point, we will continue. We were -- before we made
5 our little detour, we were about to question the
6 witnesses. Vice Chair Thernstrom?

7 VICE CHAIR THERNSTROM: Thank you very
8 much, Mr. Chairman. One opening comment here. I'm
9 having a little trouble distinguishing a line of
10 questioning that seems like an effort to establish the
11 fact that the New Black Panther Party is exactly as
12 they describe themselves, which is -- now, it's not a
13 pretty picture.

14 Now, distinguishing that from the line of
15 inquiry that informs -- and that line of inquiry
16 informs of simply of what we already know.
17 Distinguishing that from the questions that address
18 the issue of clear intimidation. And neither line of
19 questioning, it seems to me, really get to the matter
20 of the internal DOJ decision to dismiss this lawsuit.

21 But I wondered on the matter of clear
22 intimidation. I've already asked Congressman Wolf
23 what he thought was the definition of intimidation
24 under 11(b), and in fact there is no settled
25 definition. But did you see -- you saw two women

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1 arriving at the polling place, and saying they'll come
2 back later. They were uncomfortable with what they
3 saw.

4 But otherwise, did you see anybody at the
5 polling place who obviously intended to vote, and
6 didn't end up voting because of the presence of the
7 New Black Panther Party members?

8 MR. HILL: It was two women and a
9 gentleman.

10 VICE CHAIR THERNSTROM: Two women and a
11 gentleman? These were the people in the car that you
12 mentioned?

13 MR. HILL: No. They stopped at the
14 corner. They came walking down Fairmount.

15 VICE CHAIR THERNSTROM: Okay, okay. I
16 misunderstood.

17 MR. HILL: They stopped right at the
18 corner of the driveway, circular drive, where I was
19 standing on the phone, and they said, "What's going
20 on?" Truthfully, I didn't really have a good answer
21 for them.

22 VICE CHAIR THERNSTROM: And they said
23 they'd come back later, which they may or may not have
24 come?

25 MR. HILL: They may or may not have, yes.

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1 VICE CHAIR THERNSTROM: Yes, I understand.

2 MR. HILL: But at that exact moment in
3 time, those people were not going near that doorway,
4 and ma'am, I'm not as well versed as you are in these
5 Civil Rights issues, but they were intimidated.

6 VICE CHAIR THERNSTROM: They were
7 intimidated, okay. Do we have -- I mean I take
8 seriously when anybody is intimidated, and I'm not
9 dismissing that experience of theirs. But yet, we
10 don't seem to have any evidence other than these three
11 people. Three people are three people, I agree with
12 you, but nevertheless, it seems to me the case of the
13 New Black Panther Party actually blocking people from
14 voting would be stronger if there were more than three
15 people that we're talking about here.

16 MR. HILL: Indeed that's true, but I
17 proudly wore the uniform of the United States Army
18 Infantry, and it wasn't so that anybody could be
19 stopped. One person is way too many, and not on my
20 watch, ma'am. I was standing there. I saw these
21 guys. They attempted to intimidate me. I'm Army
22 Infantry. I don't intimidate, but they did stop those
23 three people from voting at that second.

24 Whether or not they voted later, none of
25 us can tell because I don't have their names. We

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1 can't check the rolls. But at that exact moment when
2 those three people walked up, I was disgusted that
3 those guys were standing there, and they weren't able
4 to access the polling place.

5 MR. BULL: May I respond too, ma'am?

6 VICE CHAIR THERNSTROM: Yes, sure.

7 MR. BULL: Thank you. I don't know if the
8 individuals I saw were the same ones that he
9 mentioned. I was standing by our parked car near the
10 end of the driveway, and I only saw again I would say
11 three people, but it doesn't sound to me it was
12 exactly the same one.

13 It was an elderly couple who started
14 walking down the drive, and then they just thought --
15 I don't know what they thought, but they left. And
16 then one individual later. But I want to say most of
17 us are lawyers at this table, and we know almost every
18 single system of justice, from the Magna Carta to
19 Brown versus Board of Education, comes down to one
20 incident, and one individual. Every time.

21 These aren't mass trials of 100 incidents.

22 VICE CHAIR THERNSTROM: Well, not --

23 MR. BULL: If you study the history of
24 justice, it comes down to normally one individual and
25 one case.

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1 VICE CHAIR THERNSTROM: Not really. Well,
2 wait a minute. I mean Brown versus Board, we're
3 talking about --

4 MR. BULL: No, but there's a point I'm
5 making. The -- the nature of our system lends itself
6 to an individual person being involved in a
7 proceeding.

8 VICE CHAIR THERNSTROM: Yes, I know, but
9 the whole Voting Rights Act was, for instance, built
10 on years and years --

11 MR. BULL: Of course.

12 VICE CHAIR THERNSTROM: -- of experience
13 and testimony and frustration on the part of the
14 Justice Department --

15 MR. BULL: Absolutely right.

16 VICE CHAIR THERNSTROM: -- and so forth.
17 And this is really a little different. Look, I mean I
18 guess in part I ask this, because I've got a rather --
19 okay, let me just finish this sentence. I've got a
20 rather cynical view of elections that elections are
21 messy. They're never - across the country in various
22 iterations. There are voting problems.

23 We can't make them perfect. We've got
24 three people here who seem to have been intimidated by
25 guys. I don't like the way they were standing around

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1 there. I don't like the way they look, and I don't
2 like their voice, but -- and by the way, I would not
3 have been opposed to a briefing on this subject. My -
4 - my opposition in my opening statement was to having
5 made this a statutory report.

6 CHAIRPERSON REYNOLDS: Okay. At this
7 point, I'll turn to Commissioner Kirsanow.

8 COMMISSIONER KIRSANOW: Thank you, Mr.
9 Chairman. This is to each one of you. You each gave
10 statements to the Department of Justice, correct?

11 MR. MAURO: Yes.

12 MR. HILL: Yes, sir.

13 MR. BULL: Yes.

14 COMMISSIONER KIRSANOW: When did you give
15 those statements to the Department of Justice, if you
16 recall?

17 MR. MAURO: I can only tell you what it is
18 in relation to the time the complaint was filed. So,
19 it was probably a few months, two to three months,
20 prior to that. I just don't recall when the complaint
21 was filed. I think it's the Eastern District in
22 Philadelphia.

23 COMMISSIONER KIRSANOW: Okay. Mr. Hill,
24 do you recall?

25 MR. HILL: Would've been early spring

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1 2009. I gave the formal statement. Then they brought
2 it back to me and had me sign it.

3 COMMISSIONER KIRSANOW: And that was
4 before the complaint was filed, to your knowledge?

5 MR. HILL: To the best of my knowledge,
6 yes.

7 COMMISSIONER KIRSANOW: Mr. Bull, do you
8 recall when you --

9 MR. BULL: I think it was January.

10 COMMISSIONER KIRSANOW: January of 2009?

11 MR. BULL: I believe so. Yes, sir.

12 COMMISSIONER KIRSANOW: Okay. Now, as
13 you're all aware, Department of Justice decided to
14 dismiss this effort, a default having been entered
15 already, and that dismissal was in, Mr. General
16 Counsel, May of 2009?

17 MR. BLACKWOOD: Yes.

18 COMMISSIONER KIRSANOW: The dismissal. At
19 any time in or about May of 2009, did you give any
20 further statements to the Department of Justice?

21 MR. MAURO: I did not, no.

22 MR. BULL: No, sir.

23 COMMISSIONER KIRSANOW: Did Department of
24 Justice follow up with you in any regard prior to the
25 dismissal of this particular lawsuit?

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1 MR. MAURO: I have no contacts.

2 MR. HILL: They called me on a couple of
3 different occasions to clarify comments in my -- my
4 statement, and also because there's another clip that
5 we didn't see, where I was actually interviewed
6 onsite, and they wanted to clarify something.

7 COMMISSIONER KIRSANOW: Do you recall
8 approximately when that was?

9 MR. HILL: I was in short sleeves outside.
10 I met them at a coffee shop. So, it wasn't cold. So,
11 it would've had to have been late March, early April,
12 I guess.

13 COMMISSIONER KIRSANOW: Mr. Bull, do you
14 know?

15 MR. BULL: I don't think I talked to them
16 again after I signed my affidavit. I don't think so.

17 COMMISSIONER KIRSANOW: Were any of you
18 advised by the Department of Justice of their intent
19 to dismiss this lawsuit?

20 MR. BULL: No. Oh, no.

21 MR. MAURO: No.

22 MR. HILL: Absolutely not.

23 COMMISSIONER KIRSANOW: All right. I
24 think Mr. Mauro -- strike that. Mr. Bull, you
25 testified, I believe, that on this -- on that Election

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1 Day in 2008, you'd had a report of several poll
2 watchers being driven from the polls?

3 MR. BULL: Yes, I could give you the
4 addresses of polling places. I took notes on filing
5 cards at each polling place. One was in West
6 Philadelphia, 5501 Market Street, Community Center.
7 We had trouble here earlier. Our poll watcher left
8 intimidated. I wrote that down in quotes. Another
9 one in West Philadelphia, 56th and Christian Street, a
10 woman left hysterically after being intimidated.

11 We had these going on all over these
12 neighborhoods.

13 COMMISSIONER KIRSANOW: Do you have any
14 more detail to that? I mean how were they intimidated
15 and by whom?

16 MR. BULL: I don't know because I wasn't
17 there at the time. We would get a call, saying,
18 "There's trouble here. Will you go there?" I'd go
19 there and try to collect the evidence, see if we could
20 help, and they'd say that the poll watcher left
21 already. You know, they'd been driven out. And so, I
22 couldn't get their statement.

23 COMMISSIONER KIRSANOW: Okay, Mr. Bull,
24 did you get involved in poll watching because you
25 thought it was permissible to allow one or two people

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1 to be intimidated, but only if there were more than
2 one or two was it time for Justice Department to step
3 in and --

4 MR. BULL: Well, I didn't get involved for
5 either A or B on your question. I got involved in
6 this, as I have been, in perhaps 20 Democratic
7 campaigns because I think that we should make this as
8 civil and Democratic society as possible. I'm not
9 getting involved in anticipation of the Department of
10 Justice doing something.

11 COMMISSIONER KIRSANOW: Mr. Hill, you were
12 about to say something.

13 MR. HILL: I'd like to reiterate Mr.
14 Bull's comment. We went to at least half a dozen
15 polling places where poll watchers had been expelled
16 from the building.

17 MR. BULL: Yes.

18 MR. HILL: And I personally got both the
19 Obama and the McCain poll watchers back into three
20 polling places by just not refusing to leave. I had
21 the two attorneys with me, who gave me legal
22 background on things, and then my Irish stubbornness
23 just kept me there until I got those guys back in the
24 building.

25 This is more to me than just, you know,

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1 two guys standing outside a polling place. This is
2 the fundamental right of the United States, and as I
3 said in my statement about serving in the Army,
4 everybody should get to participate. And it just
5 drives me nuts that Department of Justice doesn't take
6 this as seriously as I think they should.

7 MR. BULL: Absolutely.

8 COMMISSIONER KIRSANOW: And this is to
9 maybe Mr. Mauro, could you please -- just a specific
10 technical question. Could you please describe the
11 duties of an elections observer poll watcher? Is it -
12 - more specifically, in your experience, do poll
13 watchers, regardless of for which party they're
14 working, do they stand outside of an election or a
15 polling place and simply stand there? Or, how do they
16 normally comport themselves?

17 MR. MAURO: The role is to be, as my role
18 was, to be an observer, which is to observe. What is
19 going on? What am I seeing? What am I hearing? Is
20 anyone -- I can also receive a complaint that someone
21 has been denied access to voting or have a question
22 about where they should vote.

23 That's what the role is, and if there is
24 some kind of impropriety, or some kind of
25 inappropriate conduct, some kind of electioneering

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1 that's going on that violates some federal statute,
2 it's my obligation as an observer to call it into what
3 I characterized earlier as headquarters, and say,
4 "Hey, there's an issue here. There's a problem. We
5 may need to take action here."

6 And action meaning do we need to have
7 further investigation, do we need to start the process
8 of moving for an injunction? That is what the process
9 is. It's really on those legal procedures.

10 COMMISSIONER KIRSANOW: Thank you, Mr.
11 Chairman.

12 CHAIRPERSON REYNOLDS: Thank you.
13 Commissioner Taylor?

14 COMMISSIONER TAYLOR: Mr. Hill, you
15 mentioned the possible intimidation of a poll watcher.

16 MR. HILL: It wasn't possible
17 intimidation, Mr. Commissioner.

18 COMMISSIONER TAYLOR: Well, that's what
19 I'd like you to expand upon because I have -- I have
20 served as counsel in a number of statewide elections,
21 and I appreciate the importance of having poll
22 watchers from both parties at every poll.

23 MR. HILL: Right.

24 COMMISSIONER TAYLOR: To ensure a level
25 and balanced playing field.

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1 MR. HILL: Right on.

2 COMMISSIONER TAYLOR: Two advocates
3 aggressively arguing their point; you tend to get the
4 right result.

5 MR. HILL: Right.

6 COMMISSIONER TAYLOR: So, I want to hear
7 more about the poll watcher in particular at this
8 precinct that you observed, what you observed, and
9 what you reported about that aspect of this incident
10 to the Department of Justice.

11 MR. HILL: Initially, they said that the
12 Black Panthers -- I was told on the phone that the
13 Black Panthers had threatened him personally. They
14 said they were standing outside. They didn't mention
15 at the initial phone call any voter intimidation. It
16 was just that they had threatened the poll watcher.

17 So, I had -- that's why I headed straight
18 into the building, and didn't waste any time in the
19 parking lot with him. When I found him, he wasn't
20 quite cowering, but he was definitely shook up.

21 COMMISSIONER TAYLOR: How old was this
22 poll watcher?

23 MR. HILL: I would say mid-`50s.

24 COMMISSIONER TAYLOR: Was he African-
25 American?

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1 MR. HILL: He was.

2 COMMISSIONER TAYLOR: He was the
3 Republican poll watcher?

4 MR. HILL: He was. And he told me that he
5 was called a race traitor by Mr. Shabazz, and was told
6 he better not walk outside into the parking lot while
7 they were there. And I said, "Well, I'm going back
8 out into the parking lot." I mean that got my Irish
9 up -- you know, like I said, that's not what this is
10 supposed to be about.

11 And he said, "Are you going to call the
12 police?" I said, "Yes." When I got outside, I called
13 the police. I dialed 911. They said, "We've already
14 received three phone calls. The police are on the
15 way."

16 COMMISSIONER TAYLOR: Did you report this
17 to the Department of Justice?

18 MR. HILL: I did. I did.

19 COMMISSIONER TAYLOR: Was this part of the
20 affidavit you submitted?

21 MR. HILL: I don't --

22 COMMISSIONER TAYLOR: This aspect of the
23 incident, specifically with respect to the poll
24 watcher?

25 MR. HILL: I -- I thought that I mentioned

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1 that, but with the redacted part in there, I'm not
2 certain that it's actually in that statement.

3 COMMISSIONER TAYLOR: Okay. As part of
4 your organizing efforts, did you all assign poll
5 watchers? In a lot of these statewide elections,
6 you'll have a master list, and you'll say, "Poll
7 watcher X, you go here."

8 MR. HILL: Right.

9 COMMISSIONER TAYLOR: Did you all keep a
10 list of that nature so we could perhaps find this poll
11 watcher?

12 MR. HILL: I do not have a copy of that,
13 but I know who does.

14 COMMISSIONER TAYLOR: Okay, all right.
15 Thank you.

16 CHAIRPERSON REYNOLDS: Commissioner Yaki.

17 COMMISSIONER TAYLOR: Who has that list?
18 I'm sorry.

19 MR. HILL: His name is Joseph J. DeFelice.

20 MR. BLACKWOOD: We already have that
21 information.

22 COMMISSIONER TAYLOR: Okay, that's what I
23 was going to ask. Wanted to make sure you had all
24 that information. Great.

25 CHAIRPERSON REYNOLDS: Okay, great.

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1 Commissioner Yaki?

2 COMMISSIONER YAKI: Yes, thank you very
3 much all of you for -- for being here today. I'm
4 opening up to each one. I'm just going to go down
5 each line because I have questions. Mr. Hill, did you
6 -- did you witness the defendants -- well, forget
7 that. The fact of the matter is that -- is that I am
8 not as -- I am not as concerned about whether or not -
9 - relitigating the issue whether there was
10 intimidation or not. In my opinion, there was
11 intimidation.

12 MR. BULL: There was.

13 COMMISSIONER YAKI: There was
14 intimidation. And in fact, what sort of bothers me
15 about this entire proceeding has been the fact we keep
16 on saying that Justice dropped the charges, when in
17 fact for Mr. Shabazz, the one with the -- one with the
18 billy club, the charges were not dropped, and that a
19 judgment was entered against him.

20 And he is enjoined from being within 100
21 feet of any polling location in any election, in any
22 place in the City of Philadelphia, through the --
23 through the presidential election of 2012.

24 So, for the record, it is important to
25 note that that person who you've identified in this

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1 room today does have a civil injunction against him,
2 keeping him from engaging in voter intimidation, and
3 it's thanks to your affidavits that did it.

4 So, I don't want -- I don't want to get
5 into that. But what I do want to get into is just a
6 little bit about sort of what was going -- some of the
7 other stuff that was going on. Because the greater
8 allegation that seems to be being made is that there
9 was some sort of concerted nationwide attempt, or
10 whatever, by this -- by -- as Commissioner Thernstrom
11 described it, a fringe group.

12 So, with regard to you, Mr. Hill, and the
13 other locations that you went to in which there were
14 allegations that poll watchers were intimidated or
15 thrown out, was there any indication from anyone that
16 you spoke to at any of those other locations that it
17 was a result of any action by people associated with
18 the New Black Panther Party?

19 MR. HILL: At the other locations? No.

20 COMMISSIONER YAKI: Mr. Bull, same
21 question.

22 MR. BULL: Not to my knowledge, no, sir.

23 COMMISSIONER YAKI: And Mr. Mauro?

24 MR. MAURO: Correct. The answer is no.

25 COMMISSIONER YAKI: Hypothetically

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1 speaking -- hypothetically speaking, I would just note
2 for the record that what you've told us here today
3 differs slightly from the affidavits that we've seen
4 here, just in one critical area, and that is the --
5 the notion that -- the fact -- the facts as you saw
6 them, and I have no reason to doubt them, that people
7 -- as you say, one person is enough were turned away.

8 I would just note that for whatever
9 reason, they're not in the affidavits and they
10 probably should've been. But the -- the question that
11 I have goes to -- so, you were -- you were -- you're
12 volunteering for the Republican Party. You're
13 volunteering for -- I'm sorry, Mr. Hill, you were --
14 Mr. Mauro, you were a volunteer for the Republican
15 Party?

16 MR. MAURO: Correct.

17 COMMISSIONER YAKI: Where do you live?

18 MR. MAURO: I live in New York --
19 Connecticut.

20 COMMISSIONER YAKI: So, you drove down,
21 drove up. My geography is so bad. To volunteer in
22 the --

23 MR. MAURO: Right.

24 COMMISSIONER YAKI: Mr. Hill, you actually
25 live in the Philadelphia -- well, in the Pennsylvania

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1 area?

2 MR. HILL: Nine blocks from that polling
3 station.

4 COMMISSIONER YAKI: Okay, Mr. Bull, you --

5 MR. BULL: I live in Amenia, New York,
6 which is mid-state New York, about an hour from the
7 City.

8 COMMISSIONER YAKI: Now, were you there
9 for the McCain Campaign or the Republican campaign?

10 MR. BULL: As I said in my statement, I
11 was there -- I'm a democrat, but I was chairman of
12 Democrats for McCain in New York State. Almost every
13 state has one of those for the other party.

14 COMMISSIONER YAKI: Right, sure.

15 MR. BULL: But this was the first time in
16 a presidential campaign I'd ever worked for a
17 Republican. And I thought we were going to lose New
18 York, so --

19 COMMISSIONER YAKI: Hopefully it'll be the
20 last.

21 MR. BULL: Well, we'll see. It depends on
22 this kind of matter. But no, I'm -- when the
23 Department of Justice enforces a law, and the
24 president is sworn in, he says, "I will enforce the
25 laws of the United States." The Voting Rights Act

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1 says people should not be intimidated. So, let's have
2 it enforced.

3 COMMISSIONER YAKI: So, were you --

4 MR. BULL: That's why I'm doing it.

5 COMMISSIONER YAKI: So, were you there for
6 the McCain Campaign, or the Republican Party?

7 MR. BULL: McCain party. I don't care
8 much about the Republican Party in that sense.

9 COMMISSIONER YAKI: So, knowing that -- so
10 the question I have for you is the person who was the
11 most, I believe, culpable in terms of certainly when
12 you identified has an injunction and for -- in place
13 against correct. So, then what -- what then --

14 MR. BULL: For one election, or just the
15 next election?

16 COMMISSIONER YAKI: No, it's through all
17 elections up through the presidential of 2012.

18 MR. BULL: Which essentially means two
19 days?

20 COMMISSIONER YAKI: No, not at all.
21 There's city elections. There are district elections.

22 MR. BULL: Okay.

23 COMMISSIONER YAKI: There's state
24 elections. There's a number of elections. One might
25 argue, and -- and -- and this is not the time or place

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1 to do it. How long? Should it be forever? Whatever.
2 We might -- we might want to -- but the one question -
3 - one statement that kind of startled me about what
4 you said is you said this is the worst kind of voter
5 intimidation you've ever seen.

6 MR. BULL: Yes. I've never seen -- I've
7 never seen the entrance of a polling place blocked by
8 uniformed men with a weapon, and there is -- but may I
9 answer the question? It really is, because even when
10 I was in Mississippi, particularly in a little town
11 called Midnight, Mississippi, and there were truly
12 nooses across the tree, and I thought this really is
13 the end. And I stopped the voting there until they
14 took them down.

15 But -- but even then, you -- you could go
16 in and cast your vote. Here you had to go, as he
17 said, within arm's length of -- of an armed man. And
18 I think that's really egregious. And my own point of
19 view, just to put it in a sentence, is that Martin
20 Luther King and Robert Kennedy did not die to have
21 armed thugs in uniforms block the door to a polling
22 place.

23 COMMISSIONER YAKI: I understand, but let
24 me ask this.

25 MR. BULL: That's an important point.

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1 COMMISSIONER YAKI: That is an important
2 point, but let me ask you this. I'm sorry.

3 CHAIRPERSON REYNOLDS: Commission Yaki,
4 you've run out of time.

5 COMMISSIONER YAKI: Well, I was in the
6 middle of asking a question, and he wanted to --

7 CHAIRPERSON REYNOLDS: You ran out of time
8 during your last --

9 COMMISSIONER YAKI: So, the question I
10 have, though, is -- yes, I -- I really appreciate what
11 it is you're saying, but certainly you can't mean that
12 this is the worst form of voter intimidation.
13 Certainly, Selma, certainly the three --

14 MR. BULL: I have never seen what --
15 you're giving me an answer. You're telling me that I
16 certainly can't mean what I mean? Is that what you're
17 saying?

18 COMMISSIONER YAKI: No, I'm saying --

19 MR. BULL: You just said, "You certainly
20 cannot mean what you mean." Is that a question?

21 COMMISSIONER YAKI: You know what? You
22 certainly -- I'm going to ask you that. Do you really
23 mean it's the worst example ever?

24 MR. BULL: No. I didn't say ever. I
25 said, "I've seen." I have never in my lifetime, and

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1 I've worked in seven states in elections, seen an
2 armed person blocking a door to a polling place.

3 COMMISSIONER YAKI: And the people --

4 CHAIRPERSON REYNOLDS: Okay, Commissioner.

5 COMMISSIONER YAKI: Did you still see
6 people going in there and voting?

7 CHAIRPERSON REYNOLDS: Commissioner Yaki,
8 you -- Mr. Yaki, you have run out of time.

9 COMMISSIONER YAKI: Okay.

10 CHAIRPERSON REYNOLDS: Commissioner
11 Melendez.

12 COMMISSIONER YAKI: I'm sorry. As a point
13 of order, I was watching the red dot for some of the
14 other Commissioners continue on for quite some time.
15 I actually have my watch going right here, and I have
16 not come anywhere close to where some of those red
17 dots were at the point that it was over.

18 CHAIRPERSON REYNOLDS: Commissioner Yaki,
19 I have been lenient. Commissioner Yaki --

20 COMMISSIONER YAKI: What I would do -- we
21 are -- we are allowed for the second round, and I
22 reserve for the second round.

23 CHAIRPERSON REYNOLDS: Okay, very good.
24 Commissioner Melendez.

25 COMMISSIONER MELENDEZ: You're telling --

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1 this is for all three of you. You've said that the --
2 that you saw people approach the polling place and
3 that they were turned away. Did you actually tell
4 that to the Department of Justice?

5 MR. HILL: Yes, I did.

6 MR. BULL: I didn't say they were turned
7 away. You said that; not me. I said they walked up
8 the drive and turned around. I didn't say they were
9 turned away.

10 COMMISSIONER MELENDEZ: Okay.

11 MR. BULL: You changed the language, sir.

12 COMMISSIONER MELENDEZ: Yes, I didn't say
13 that. Okay, thank you. That's the only question I
14 have.

15 VICE CHAIR THERNSTROM: Why don't you
16 yield the rest of your time to Commissioner Yaki so he
17 can finish.

18 COMMISSIONER YAKI: Yeah, could you?

19 COMMISSIONER MELENDEZ: Okay.

20 CHAIRPERSON REYNOLDS: That's fine.

21 COMMISSIONER YAKI: Very quickly, part of
22 this case deals with the fact that, as I said before,
23 there was a concerted effort elsewhere to deal with
24 this, but it's clear that you're testifying only --
25 only is concerned with this one precinct in this one

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1 city of Philadelphia.

2 So, again, I ask you, in any other -- in
3 your voter poll watching protection roles that you
4 had, aside from this one precinct, did you hear of any
5 other incidents involving the New Black Panther Party
6 intimidating poll watchers, or voters?

7 MR. MAURO: I did not.

8 MR. HILL: No, I did not.

9 MR. BULL: No, I did not.

10 COMMISSIONER YAKI: Thank you.

11 CHAIRPERSON REYNOLDS: Okay, Commissioner
12 Heriot?

13 COMMISSIONER HERIOT: I just have -- have
14 one question, I think, and that is with regard to the
15 other precincts where -- where poll watchers may have
16 been intimidated. Have the harassing parties, or were
17 the harassing parties in those situations ever
18 identified to your knowledge?

19 MR. HILL: Not to my knowledge. I want to
20 make it clear that it wasn't always malfeasance at
21 those polling places. It was on a few occasions.
22 Some of it was just poor information. The Citywide
23 Accreditation --

24 COMMISSIONER HERIOT: What do you mean?
25 What do you mean on that?

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1 MR. HILL: The Citywide Accreditation
2 allowed certified poll watchers to go into any poll
3 anywhere in the city, whether they were Democrat or
4 Republican. At some of the polling places, whomever
5 was in charge would make the argument that only if the
6 -- your documentation said their physical address
7 could you get into their polling place.

8 So, it wasn't always intimidation. I
9 don't want to make it sound like it was bigger than it
10 was, because it wasn't. And I had Mike with me for
11 the legal background, and we were able to get the
12 statute and get guys back into those places fairly
13 quickly.

14 In the places where there were
15 intimidation, which would've been two or three more
16 places, we just explained that we're not going
17 anywhere until these people get back into the
18 building.

19 COMMISSIONER HERIOT: Who was doing the
20 intimidating?

21 MR. HILL: Committeemen for the most part,
22 or self identified committeemen. I don't know if they
23 were necessarily committeemen. In a couple of cases,
24 the poll watchers were 20-21 years old, and weren't
25 really sure of themselves. And the one in particular,

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1 who we actually eventually developed a pretty decent
2 rapport with, was a large guy, and he was bodying up
3 on them, and attempting to be intimidating to keep
4 them out of the building.

5 And then once Mike explained the statute,
6 and I said, "Well, I'm not going anywhere until they
7 get inside," eventually, it was just easier to agree
8 with us and get rid of us, and let them in the
9 building than to have us stay around all day.

10 COMMISSIONER HERIOT: Did you hear about
11 any other cases?

12 MR. HILL: Oh, dozens during the course of
13 the day. They were related back and forth. Because
14 of our particular situation, we were sent to some of
15 the rougher neighborhoods, and that was part of the
16 deal.

17 They told me at the beginning. They said,
18 "6:30 in the morning." They said, "Be expected you're
19 going to go to bad neighborhoods, and it's going to be
20 tough all day long." Okay, cool.

21 MR. BULL: That's right.

22 MR. HILL: So, there were at least -- I'd
23 say at least a dozen came back to us while we were
24 driving around at those sorts of things, and then
25 anecdotally, later when we got back to -- to the

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1 headquarters to turn in the paperwork and all that,
2 there were several dozen, I would say.

3 COMMISSIONER HERIOT: Any name-calling?

4 MR. HILL: Yes, there was name-calling.
5 There was name-calling. It seemed to go both ways,
6 apparently. It was a pretty contentious election.
7 And so, it did seem to go both ways. Nobody held
8 complete sway on being the bad guy. So, there seemed
9 to be a lot of bad actors acting out I guess is the
10 best word.

11 COMMISSIONER HERIOT: Okay.

12 MR. BULL: One of the background reasons
13 for this, we were told, is that there had been a lot
14 of press before the election; that there was an
15 enormous number of illegally registered voters,
16 perhaps the largest in history.

17 The New York Times, on October 27th, eight
18 days before the election, said that there were
19 1,300,000 voters registered nationally by ACORN, of
20 which it said 30 percent were fraudulent. That meant
21 there were 400,000 illegal voters just from that
22 source alone. And of course, that organization was
23 active in Chicago and Philadelphia.

24 So, there was a huge effort to protect
25 voters who might be challenged, and a big effort to

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1 identify the voters who should be challenged, and that
2 made these incidents more contentious. You could see
3 a pattern. That's why it's more than one place. Do
4 you see what I mean?

5 COMMISSIONER HERIOT: Yes.

6 MR. HILL: There was also a lot of
7 question with absentee ballots that day. We ran
8 across that on a number of occasions. Just literally
9 boxes full of absentee ballots when the voting
10 machines were working, and they said, "Well, they
11 weren't working an hour ago. They're working now,
12 though."

13 So, it was -- there was a lot going on in
14 Philadelphia that day. And I grew up in New Orleans,
15 so I'm used to a little skullduggery on Election Day.
16 But there was a lot going on on Election Day in
17 Philadelphia.

18 COMMISSIONER HERIOT: Thank you.

19 CHAIRPERSON REYNOLDS: Commissioner
20 Gaziano?

21 COMMISSIONER GAZIANO: Wish I didn't have
22 to take up my question time with this, but I observed
23 the defendant, King Samir Shabazz, taking a picture of
24 you all. And from someone who -- who has said that
25 black people should kill white people, I want to know

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1 that I have -- I have some concern about that, and I -
2 - I -- there are perfectly legitimate reasons to take
3 pictures, but I wondered if any of you saw that?

4 MR. BULL: You mean just now here?

5 COMMISSIONER GAZIANO: Just --

6 MR. BULL: I wasn't aware of that, no.

7 COMMISSIONER HERIOT: He's doing it right
8 now.

9 MR. HILL: Yes, I did notice it.

10 COMMISSIONER GAZIANO: You did notice it?
11 It seems to me he stood here with a purpose so that
12 you could see that he was taking your picture. Well,
13 let me move on. We can -- we can think about that
14 later.

15 VICE CHAIR THERNSTROM: Not taking the
16 pictures of the rest of us?

17 MR. BULL: You're not witnesses.

18 COMMISSIONER GAZIANO: I may ask a
19 different version of this --

20 CHAIRPERSON REYNOLDS: Folks, folks --
21 Commissioner Gaziano, please continue.

22 COMMISSIONER GAZIANO: Please give me an
23 extra 30 seconds for that. I may ask a different
24 version of this question to the former Justice
25 Department official, but I want to ask particularly

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1 the writer and publisher of this. Certainly, there
2 was large concern about the wrongs of the Jim Crow
3 era, but many writers have said that one of the
4 turning points was the national TV pictures of Bull
5 Connor turning dogs and hoses on -- on the Civil
6 Rights marchers. And that properly led to some of the
7 -- the great Civil Rights reform.

8 MR. BULL: Yes. It educated the public
9 about the evils of the problems.

10 COMMISSIONER GAZIANO: Yes. After that
11 national viewing, though, Americans who wanted to
12 believe it wasn't as bad as it was, could no longer
13 deny it. But if there had not been action after that,
14 do you think that the heartache and the despair would
15 have been worse for those who wanted Civil Rights?

16 MR. BULL: The problem would've gone on
17 longer, and it would've been worse. It's essential to
18 educate the public about these evils. That's part of
19 our job.

20 COMMISSIONER GAZIANO: So, the fact that
21 the YouTube was viewed by tens of thousands, and on --
22 then broadcast on national TV, raised the awareness of
23 this issue. So, that -- would you agree with me that
24 the dismissal is a bigger problem than non-filing
25 where the evidence is ambiguous?

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1 MR. BULL: Of course, because the message
2 is that you are allowed to intimidate people as long
3 as it's only caught in one place at a time.

4 COMMISSIONER GAZIANO: Okay, I'd like to
5 follow up with one other comment you made earlier.
6 11(b) of the Voting Rights Act prohibits intimidating
7 either voters or poll watchers.

8 MR. BULL: Yes.

9 COMMISSIONER GAZIANO: You seem to imply
10 that that was important. Can you tell me why you
11 think that's important?

12 MR. BULL: Well, it depends on the
13 setting. But if you are in a district like the
14 district we were in, it's not so much the voters that
15 one side is worried about as the poll watchers who
16 were challenging their fraudulent voters. And as I
17 said, it was even in The New York Times that there
18 were 400,000 from just one organization.

19 So, of course it's more important. The
20 poll watcher is the central point of democratic
21 efficiency at the election place.

22 COMMISSIONER GAZIANO: And they're there
23 also to make the voters feel comfortable?

24 MR. BULL: Yes.

25 COMMISSIONER GAZIANO: Prevent future

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1 possible intimidation?

2 MR. BULL: Yes, but also to challenge
3 dishonest voting.

4 COMMISSIONER GAZIANO: There's been a lot
5 of back and forth about this -- this -- this
6 injunction against one of the defendants that seems to
7 me to have been extremely awkwardly written to -- to
8 just cover City of Philadelphia. Is there any reason
9 in your mind to -- by the way, the injunction as I
10 read it doesn't prevent him from standing with ten of
11 his friends in uniform with his arms out like this.
12 Do -- do you think --

13 MR. BULL: Or the organization they claim
14 in the six cities they claim.

15 COMMISSIONER GAZIANO: Yes. As a -- as a
16 lawyer, does this seem like a broad injunction, or a
17 rather narrow injunction?

18 MR. BULL: It's what we would call
19 minimalist.

20 COMMISSIONER GAZIANO: And is there any
21 reason in any of your minds that the case should've
22 been dropped against the person who seemed to be
23 acting in concert with the man with the billy club?

24 MR. BULL: Gentlemen?

25 MR. HILL: No.

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1 COMMISSIONER GAZIANO: To you, did the
2 fact that they were together add to the intimidation?

3 MR. HILL: They were a team. They were
4 acting in concert. They moved together.

5 MR. BULL: They were uniformed.

6 MR. HILL: Mr. Jackson took direction from
7 Mr. Shabazz constantly. When he moved, Mr. Jackson
8 moved, and it was a definite pattern. I don't know if
9 they worked it out ahead of time, but they were
10 definitely moving in concert.

11 COMMISSIONER GAZIANO: Okay. And do you
12 know if some of these problems with poll watchers
13 being intimidated, do you know whether that may or may
14 not have involved -- oh, let me go back to correcting,
15 clarifying one other part of the record. The
16 complaint was filed on January 7th, I believe. So, I
17 know you all seem to have given statements before it
18 to the -- sounds like female employees of the
19 Department.

20 If you gave statements after January 7th,
21 is it possible that it would be in furtherance of the
22 case that was already filed?

23 MR. HILL: Yes. I would say yes.

24 COMMISSIONER GAZIANO: I just wanted to
25 see if that clarified your record. I'll yield.

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1 CHAIRPERSON REYNOLDS: Okay. Gentlemen,
2 thank you. Second round, okay. Vice Chair
3 Thernstrom?

4 VICE CHAIR THERNSTROM: I'll save my time
5 to Commissioner Yaki. He's got something on his mind.

6 CHAIRPERSON REYNOLDS: Well, no. He will
7 -- he will have any opportunity to ask questions. You
8 could give him ten minutes if you'd like.

9 VICE CHAIR THERNSTROM: All right.
10 Actually, I disagree with something that Commissioner
11 Yaki said, that this is a clear instance of
12 intimidation, because I don't have a clear definition
13 of what voter intimidation, specifically under 11(b)
14 is. I mean not simply by my own common sense, but
15 there's a legal question here, and it seems to me
16 because 11(b) has been so seldom used, once before the
17 Bush Administration, twice during the years of the
18 Bush Administration, we are left without a legally
19 clear definition of what voter intimidation amounts
20 to.

21 But I'm going to go back for a second.
22 I'm really not going to take substantial time here. I
23 don't like the New Black Panther Party. Huey Newton
24 didn't like the New Black Panther Party. You know,
25 all sorts of stalwart Civil Rights spokespersons don't

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1 like the New Black Panther Party.

2 But we cannot pretend that elections are
3 clean of racial and ethnic tension across the country.
4 There's not only black-white tension, there is tension
5 involving Asians, involving Hispanics. There is group
6 friction wherever we look in America, and it affects
7 elections.

8 And had we turned -- had we had a
9 statutory report, that subject I would have been all
10 for it. But it does remain a problem for me that we
11 have so narrowly focused on this one incident, and I
12 have also, and this is going to be my last statement,
13 I also have a real problem with making any analogy to
14 the Jim Crow South. I know that history very, very
15 well.

16 I am old enough to feel it was just
17 yesterday. If my daughter had not been born in the
18 summer of 1964, I would've been in Mississippi, and
19 it's -- I think it does a disservice to -- to the --
20 to -- to this country to suggest in any way that we
21 have not made the most enormous progress in terms of
22 race relations.

23 MR. BULL: None of us suggested that.

24 VICE CHAIR THERNSTROM: Right, but the
25 analogies to the Jim Crow South are, for that reason,

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1 troubling to me. I'll just leave it there.

2 CHAIRPERSON REYNOLDS: Commissioner
3 Kirsanow?

4 COMMISSIONER KIRSANOW: No questions.

5 CHAIRPERSON REYNOLDS: Okay, going down
6 the list. Commissioner Taylor?

7 COMMISSIONER TAYLOR: None.

8 CHAIRPERSON REYNOLDS: Commissioner Yaki?

9 COMMISSIONER YAKI: Yes, thank you very
10 much. One more quick question to clean up the record.
11 Aside from what you -- what you witnessed in this
12 precinct in Philadelphia, do any of you have any
13 personal knowledge that the New Black Panther Party
14 engaged in any similar tactics in any other cities?

15 MR. MAURO: I do not.

16 MR. HILL: Mr. Shabazz -- Mr. Shabazz said
17 they were, but I didn't see any. No. But if it had
18 happened in Rittenhouse Square, I bet you we'd have a
19 different result right now.

20 MR. BULL: Only that the Department of
21 Justice lawyer warned me that they had injured New
22 York policemen.

23 COMMISSIONER YAKI: Do you know when? Did
24 they say when?

25 MR. BULL: No, no.

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1 COMMISSIONER YAKI: Any time frame?

2 MR. BULL: As I recall, it was two or
3 three years before when he talked to me.

4 COMMISSIONER YAKI: But not -- but not
5 with regard to this particular --

6 MR. BULL: Oh, no, sir. Absolutely not.

7 COMMISSIONER YAKI: One other thing that -
8 - that I just wanted to follow up on something that
9 you said, and it follows up on something that
10 Commissioner Gaziano said, when you talked about the
11 limited nature of the injunction against Mr. Shabazz.

12 Are you -- if -- if Mr. Shabazz and Mr.
13 Jackson did not have a night stick with them, they'd
14 merely been standing there at the polls, would that
15 have made a difference in how -- in how you viewed
16 whether they were intimidating or not?

17 MR. BULL: Well, obviously, carrying a
18 weapon makes you more intimidating than if you're not
19 carrying a weapon. Is that what you mean?

20 COMMISSIONER YAKI: Well, I'm just saying.
21 Would -- absent the weapon, would you consider them to
22 be intimidating?

23 MR. BULL: In uniform and calling people
24 crackers and so on? Yes. But not as intimidating.
25 Obviously a weapon, carrying a club, is more

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1 intimidating.

2 COMMISSIONER YAKI: What about the uniform
3 was it that made them intimidating?

4 MR. BULL: Well, it has a history. For
5 example, this is the way paramilitaries dressed in
6 fascist Italy and Nazi Germany, did they not, before
7 those governments took over. They wore jackboots like
8 these gentlemen. They wore caps like these gentlemen.
9 They wore uniforms with their own regalia like these
10 gentlemen.

11 So, this is a pattern and culture that
12 they're very aware of.

13 COMMISSIONER YAKI: Okay, Mr. Hill?

14 MR. HILL: Yes, without a doubt. I mean -
15 -

16 COMMISSIONER YAKI: Without a doubt?

17 MR. HILL: Without a doubt it's
18 intimidating. You know, like I said, to me? No. But
19 if I'm an older lady or an older gentleman walking up
20 to the door? Yes. I mean --

21 COMMISSIONER YAKI: Sure. Let me ask the
22 question --

23 MR. BULL: They were called Black Shirts
24 in former times.

25 COMMISSIONER YAKI: Let me -- let me flip

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1 the question around. Let's say you went to some place
2 in mainline Philadelphia. Say it's like 90 some
3 percent white suburb. What -- what if -- scratch
4 that. That's the wrong example.

5 Let's go, for example, to Phoenix,
6 Arizona. Okay, and you have a precinct out in Western
7 Phoenix, which is 80 percent Latino. If you saw -- if
8 you were there as a poll watcher, and there were two
9 guys, dark suits, dark glasses, with a video camera
10 and a clipboard, taping and -- taping every single
11 Latino voter who was going to the polls, would you
12 call that intimidation or not?

13 MR. HILL: Yes.

14 COMMISSIONER YAKI: Mr. Bull?

15 MR. BULL: I'd have to know more about the
16 circumstances. I mean are suits you're suggesting
17 intimidating, such as your dark suit?

18 COMMISSIONER YAKI: I'm just saying dark
19 suits, dark glasses.

20 MR. BULL: Dark suits and dark glasses?

21 COMMISSIONER YAKI: Dark suits and dark
22 glasses, holding video cameras, and clipboards, and
23 taping people who were only Latino voters, walking by
24 them?

25 MR. BULL: I'm really not sure. I'd have

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1 to see that. I think it could be seen as
2 intimidating, but wearing sunglasses in Arizona is not
3 an unusual manner, and wearing dark suits is not an
4 unusual manner, and actually --

5 COMMISSIONER YAKI: Actually, dark suit in
6 the mid day of Arizona would be unusual.

7 MR. BULL: Yes, but dark suits essentially
8 could come out -- they could be lawyers or whatever.
9 Who knows?

10 COMMISSIONER YAKI: Now, do you -- do you
11 -- let me take a third example. And this actually
12 happened in Philadelphia. Dark suits, dark glasses,
13 dark van, blacked out vans, patrolling black
14 neighborhoods. The people were Caucasian. They would
15 be aggressively questioning people whether they were
16 registered to vote, or the circumstances of their
17 voting, intimidated or not? And they had no
18 identifying, other than --

19 MR. BULL: I don't understand the nature
20 of these hypotheticals.

21 COMMISSIONER YAKI: It's not a
22 hypothetical. It actually happened in Philadelphia.

23 MR. BULL: Yes, but in this room it's a
24 hypothetical.

25 COMMISSIONER YAKI: No.

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1 MR. BULL: You're saying if. What is if
2 but a hypothetical? I mean it's hypothetical. That's
3 the point of the word.

4 COMMISSIONER YAKI: Well, but you just
5 answered with a hypothetical yourself. You said --

6 MR. BULL: I'm trying to be courteous, but
7 you're pursuing an artificial line of questioning.

8 COMMISSIONER YAKI: No, because you said,
9 Mr. Bull, with all due respect, you said if there were
10 ten members of the Black Panther Party locked arm in
11 arm, you would consider that --

12 MR. BULL: No. That was him. I did not
13 say that. I never used -- the ten was not directed to
14 me.

15 COMMISSIONER YAKI: Well, then you --

16 MR. BULL: You're confusing your
17 witnesses.

18 COMMISSIONER YAKI: But you did say that
19 two would?

20 MR. BULL: I did say what?

21 COMMISSIONER YAKI: If they -- if they
22 were there without a night stick, you said they would
23 still be intimidating?

24 MR. BULL: Yes, but much less so, I would
25 say. Wouldn't you agree?

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1 COMMISSIONER YAKI: I don't know.

2 MR. MAURO: Commissioner Yaki, I would
3 only add this, only because I have a little bit of
4 familiarity with I think an analogist statute here,
5 the National Labor Relations Act.

6 COMMISSIONER YAKI: Yes?

7 MR. MAURO: Under the Act, there are so
8 many instances of conduct that can be -- that is
9 construed as intimidation during the voting process
10 when the people vote, and whether they want a union or
11 not.

12 COMMISSIONER YAKI: Sure.

13 MR. MAURO: Many of the items that you've
14 been -- you've been providing by way of illustration
15 would be considered violating Section 8(a)(1) of the
16 National Labor Relations Act.

17 COMMISSIONER YAKI: Sure.

18 MR. MAURO: And this also goes to
19 Commissioner Thernstrom's concerns about what is
20 intimidation under 11(b). Well, I think what is
21 illuminative is looking at what intimidation is under
22 the National Labor Relations Act, and it's fair to say
23 that you can draw an analogy because you're talking
24 about the right to vote, and whether it's to be part
25 of a union, or not to be part of a union, or to vote

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1 for whatever candidate is on the ballot.

2 COMMISSIONER YAKI: Sure. No, I
3 appreciate that. I was just -- it wasn't mean to -- I
4 just was asking.

5 CHAIRPERSON REYNOLDS: Commissioner Yaki,
6 thank you very much. Okay, Commissioner Melendez.

7 COMMISSIONER MELENDEZ: Yes. Thank you,
8 Mr. Chairman. Just one comment or anybody can add to
9 this. I know that the comment that we weren't really
10 talking about intimidation of a voter because we're
11 not really specific. We don't have a witness here of
12 a voter that's saying he was intimidated against. But
13 then even going to the poll watcher, of which Mr. Bull
14 talked about, we don't even have that person here, who
15 would speak for himself.

16 I've heard other people speak on his
17 behalf that he was shaking in his boots or whatever,
18 but it would be -- it would've been great if we
19 would've had that person here testifying on his own
20 behalf, since he was the person that was intimidated
21 against.

22 MR. HILL: My understanding is he lives in
23 that district.

24 COMMISSIONER MELENDEZ: Right.

25 MR. HILL: And testifying in front of this

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1 Commission when he lives in that district just didn't
2 seem to be in his best interests. Now, I don't know
3 if that's necessarily the case, but that's how it was
4 conveyed to me.

5 COMMISSIONER MELENDEZ: Unfortunately, in
6 courts, whether or not you are there to testify really
7 has a lot to do with whether or not --

8 MR. HILL: Sure.

9 COMMISSIONER MELENDEZ: With this whole
10 case. So, I just wanted to close with that. Thank
11 you.

12 CHAIRPERSON REYNOLDS: Okay, Commissioner
13 Heriot?

14 COMMISSIONER HERIOT: Mr. Hill, I just
15 wanted to clarify with regard to the Phoenix
16 hypothetical that Commissioner Yaki used.

17 MR. HILL: Right.

18 COMMISSIONER HERIOT: Do you regard it as
19 being equally intimidating to be in a suit with a
20 camera, as with in a paramilitary outfit with a --

21 MR. HILL: No. And that's what's --

22 COMMISSIONER HERIOT: Expand on that a
23 little.

24 MR. HILL: Well, yes, obviously I'm
25 sitting in a suit right now.

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1 VICE CHAIR THERNSTROM: And you look
2 intimidating to me.

3 MR. HILL: Yes, right.

4 COMMISSIONER HERIOT: But not to me.

5 MR. HILL: Army Infantry, ma'am. So,
6 absolutely not. The way the hypothetical was set up
7 though, I could see someone being intimidated, and
8 agree that yes, that could potentially be
9 intimidating.

10 COMMISSIONER HERIOT: So, there may be
11 circumstances.

12 MR. HILL: Right. Could be. What was not
13 a hypothetical is the fact that two men, standing
14 outside of a polling place in Philadelphia, wearing
15 paramilitary garb, one of them armed with a weapon
16 directly in front of a door that people have to pass
17 by to get into is intimidating to a lot of people.
18 And I mean we witnessed it personally.

19 COMMISSIONER HERIOT: Thank you.

20 CHAIRPERSON REYNOLDS: Commissioner
21 Gaziano?

22 COMMISSIONER GAZIANO: I want to thank the
23 witnesses again for your patience in testifying and
24 coming down today. And I will state for the record
25 that both Commissioner Yaki and I are also in dark

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1 suits, and we sometimes say things to each other that
2 aren't the most friendly. But I hope I don't
3 intimidate him. And whether he tries or not, he
4 doesn't intimidate me.

5 COMMISSIONER YAKI: You have never
6 intimidated me, Mr. Gaziano.

7 COMMISSIONER GAZIANO: Okay, thank you.
8 Now, may I ask for a point of personal privilege if we
9 could take a five minute break before the next
10 witness?

11 CHAIRPERSON REYNOLDS: Yes. That's the --
12 you've concluded your questions? Okay, gentlemen,
13 thank you very much. Your testimony is quite
14 important. We'll take a five-minute break.

15 (Whereupon, the above-entitled matter went
16 off the record at 12:25 p.m., and resumed at 12:39
17 p.m.)

18 **IX: TESTIMONY OF MR. KATSAS**

19 CHAIRPERSON REYNOLDS: Okay, we're back
20 from the break. We are pleased to have with us today
21 Gregory Katsas, who is the former Assistant Attorney
22 General at the Department of Justice. Mr. Katsas,
23 please raise your right hand. Do you swear and affirm
24 that the information you're about to provide is true,
25 and accurate to the best of your knowledge and belief?

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1 MR. KATSAS: I do.

2 CHAIRPERSON REYNOLDS: Very good. You may
3 proceed.

4 MR. KATSAS: Thank you, Mr. Chairman. My
5 name is Gregory Katsas. I'm a partner at the law firm
6 Jones Day. I served in the Justice Department between
7 2001 and 2009. As relevant to this proceeding, I
8 think my most relevant experience was at serving as
9 Principal Deputy Associate Attorney General, the top
10 advisor to the Associate Attorney General, for about
11 20 months, and for about eight months, I was the
12 Acting Associate Attorney General of the United
13 States.

14 I was not in the Associate's office during
15 any of the deliberations about this case. So, my
16 testimony doesn't implicate any privilege issues that
17 some of my successors might have. I've submitted
18 written testimony to you. I won't belabor that.

19 Just to summarize my conclusions, I was
20 asked by Chairman Reynolds to opine on the decision
21 making processes within DOJ, and the level within DOJ
22 that decisions to file or change course in this case
23 would've been made.

24 My conclusion was that the decision to
25 file the case and to change course could not have been

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1 made below the rank of Assistant Attorney General for
2 the Civil Rights Division, and would have been made
3 with at least consultation by one of the Department
4 leadership officers, most likely the Associate
5 Attorney General, if not someone higher up the chain
6 than that.

7 With respect to the merits of the case, I
8 was asked to evaluate the complaint and give an
9 opinion on the strength of the case, both in terms of
10 the decision to file at the outset, and in terms of
11 the decision to abandon most of the government's
12 claims in the case and narrow the requested
13 injunction, notwithstanding the default.

14 I did not have any independent knowledge
15 of facts of the case in the written testimony that I
16 gave you. I was asked to assume the truth of the
17 allegations in the complaint, which I did, and my
18 conclusions were that the complaint stated a strong
19 case of voter intimidation against all the defendants,
20 and that the decision to file was fully justified, and
21 that the decision to abandon most of the claims in the
22 case and narrow the requested injunction was not
23 justified.

24 I have -- I was asked to attend the entire
25 hearing and watch the evidentiary presentation that

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1 you all had heard. Based on that submission, my
2 opinions remain the same. Indeed, they are
3 reinforced. I think the evidence that you've adduced
4 today tends to confirm both the intimidating nature of
5 the conduct that took place in Philadelphia, and the
6 connection between the Philadelphia conduct and the
7 national party, and I'm happy to answer any questions.

8

9 CHAIRPERSON REYNOLDS: Thank you. Vice
10 Chair Thernstrom?

11 VICE CHAIR THERNSTROM: I'd like to pass
12 for the moment, but reserve the right to come back.

13 CHAIRPERSON REYNOLDS: Very well.
14 Commissioner Kirsanow?

15 COMMISSIONER KIRSANOW: Thank you, Mr.
16 Chairman. Mr. Katsas, is there a de minimis level of
17 voter intimidation or a number of intimidated voters
18 below which intimidation becomes acceptable under
19 11(b)?

20 MR. KATSAS: No.

21 COMMISSIONER KIRSANOW: Is there any
22 difference, in your mind, in terms of whether or not
23 there may be an actionable case of voter intimidation
24 under 11(b) if a defendant brandishes a weapon? In
25 other words, is a -- is a predicate to 11(b) violation

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1 a brandishing of a weapon?

2 MR. KATSAS: I think brandishing a weapon
3 would be certainly sufficient to establish
4 intimidation, but not necessary.

5 COMMISSIONER KIRSANOW: Okay. Is there a
6 heightened standard at all? There may not be any case
7 law with respect to this, but in terms of the manner
8 in which Justice would assess bringing a complaint
9 under 11(b) differ if one of the alleged defendants
10 was a credentialed poll watcher? Is he held to a
11 heightened standard?

12 MR. KATSAS: I -- my instinct is that if -
13 - I don't think that makes any difference on the law
14 in terms of Justice assessing the seriousness of the
15 violation. If it makes any difference at all, my
16 instinct is it would make it worse. Because here's --
17 on your question, here is someone charged with
18 furthering the integrity of the process who is
19 betraying that charge.

20 COMMISSIONER KIRSANOW: In this particular
21 case, DOJ decided not to pursue the case any further
22 and indeed dismissed the charges after there was a
23 default entered. If there is a default entered, is
24 there anything to preclude DOJ from nonetheless
25 proceeding forward in discovery, and maybe then filing

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1 under Rule 56, or for going for a full blown trial?

2 MR. KATSAS: I don't think so, but I think
3 the ordinary course would be to do exactly what the
4 Department did with respect to Minister Shabazz, which
5 is seek a default judgment on the ground that there's
6 a facially valid complaint, and the defendants have
7 chosen not to contest it. But I think as a lesser
8 alternative to that, I think they could pursue the
9 other options that you mentioned.

10 COMMISSIONER KIRSANOW: And just as a
11 final matter, this should not be held against Mr.
12 Katsas, but for Mr. Katsas' argument at the DC
13 Circuit, I probably would not be sitting here today.

14 MR. KATSAS: Brings back some fond
15 memories.

16 CHAIRPERSON REYNOLDS: Mr. Taylor?

17 COMMISSIONER TAYLOR: Mr. Katsas, my
18 questions relate to your view of the Commission and
19 the types of questions we have asked of this process.
20 As a former prosecutor, you have an appreciation of
21 the fact that the public will often ask questions
22 about prosecutorial discretion, internal process, et
23 cetera.

24 We have a unique roll to play, obviously,
25 but I'd like you to comment, if you could, on the

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1 types of questions we have asked. Putting yourself
2 back inside the Department for a moment, and try to
3 shed some light on both the process and our role in it
4 if you would.

5 MR. KATSAS: I guess I'm not frankly an
6 expert on the charge and role of this Commission, but
7 let me -- if it's responsive, let me --

8 COMMISSIONER TAYLOR: Or generally would
9 be fine.

10 MR. KATSAS: Let me try to sort of address
11 how I think the questions would have played out within
12 the Department for people who were charged with
13 enforcing this statute.

14 Okay, so the first question obviously is
15 is this a meritorious case or not? And it seems to me
16 the answer to that question, either based on the
17 allegations in the complaint or based on the evidence
18 that you saw today, would be yes. And then the
19 question would be, well, is there some discretionary
20 reason not to bring this case?

21 I would think the answer to that question
22 would be no. This seems like a particularly -- it
23 seems like a fairly clear case of intimidation. It
24 seems like a case that is plausibly linked up to the
25 broader agenda of a national entity.

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1 I don't know of any other cases that the
2 Civil Rights Division would have had to forego in
3 order to bring this case. So, there doesn't seem to
4 be an issue of scarce resources. The complaint -- the
5 investment of resources was pretty limited. It's a
6 nine-page complaint. It seems like it would have been
7 a fairly easy case to prosecute.

8 So, for all of those reasons, I think the
9 decision to go forward at the outset was perfectly
10 justified. Now, let's talk about what I view as the
11 very different decision whether to abandon the case,
12 or large parts of the case, mid-course.

13 I think there is a strong tradition within
14 the Justice Department recognized by career employees
15 and responsible political appointees of both sides,
16 both parties, that there is a sort of tradition of
17 stare decisis within the Department as it were, of not
18 changing course in the middle of a case.

19 The decision to abandon a case that was
20 filed should be a harder one than the decision to
21 bring the case in the first instance. I can't think
22 of anything that would have made the case weaker and
23 indeed this was a default. So, it's not a situation
24 where the government brings a claim in good faith, and
25 then the litigation goes badly, and the position

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1 erodes, and they abandon a claim for that reason.

2 I would think the case for the government
3 was no weaker when they abandoned it, where the only
4 intervening event was a default of the defendants,
5 than it was at the outset of the case.

6 So, there is no good reason apparent to me
7 for why the case would've been abandoned.

8 COMMISSIONER KIRSANOW: Did you -- one
9 final question. Could --

10 MR. KATSAS: Abandoned in substantial
11 part.

12 COMMISSIONER TAYLOR: Could you shed some
13 light on the lack of cases brought under 11(b)? We've
14 heard the fact that there are only a couple of cases
15 brought under that section. Could you shed some light
16 on that?

17 MR. KATSAS: I really think the short
18 answer is no. I was struck in just doing some very
19 quick research in preparing for my testimony at how
20 few cases there are.

21 I would think that the absence of a lot of
22 prior enforcement, if it affected this decision one
23 way or the other, would have cut in favor of enforcing
24 because the voter intimidation is presumably a serious
25 concern of the Department, and here was a pretty clear

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1 case of it that's caught on videotape.

2 I would think that this is a pretty good
3 case where you would want to ramp up enforcement.

4 COMMISSIONER TAYLOR: Thank you.

5 CHAIRPERSON REYNOLDS: Commissioner Yaki?

6 COMMISSIONER YAKI: Thank you. I'm
7 getting the hang of this round-by-round thing. I'm
8 only asking one question, and then I'll just keep on
9 going through the rounds. You said that this would --
10 just based on your thinking of this, this would not
11 have been an issue of scarce resources. This was
12 relatively easy to deal with.

13 MR. KATSAS: Right.

14 COMMISSIONER YAKI: Why would you ever
15 abandon course? You were at the Justice Department
16 for a long time, eight years.

17 MR. KATSAS: Yes.

18 COMMISSIONER YAKI: Approximately,
19 correct?

20 MR. KATSAS: Yes.

21 COMMISSIONER YAKI: Can you give -- can
22 you tell me were there not instances during that time
23 period where Justice Department abandoned litigation
24 in major civil cases during that period of time?

25 MR. KATSAS: I can't think of a single

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1 case where we did. Now, let me -- let me be clear
2 about something. My initial five or six years were on
3 the appellate staff of the Civil Division. So, until
4 2006, I would have had scant knowledge of anything
5 outside that --

6 COMMISSIONER YAKI: Okay.

7 MR. KATSAS: Within that universe, I can
8 tell you that -- and I would've been the official
9 responsible for defining the government position. I
10 can tell you with confidence that at the beginning of
11 the Bush Administration, I never once reversed a
12 position in a pending case taken by the prior
13 administration.

14 COMMISSIONER YAKI: Sure. But you were in
15 the appellate division, correct?

16 MR. KATSAS: Correct.

17 COMMISSIONER YAKI: The reason I ask is
18 that -- is that I seem to recall on more than one
19 occasion that there were pending investigations,
20 pending -- many sort of ongoing proceedings in which
21 the Bush Administration did reverse course from the
22 Clinton Administration. Not at the appellate level,
23 but everything is kind of cooked. I would agree at
24 that point.

25 But in -- but in the ground war litigation

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1 phase, I do seem to recall that, and that's actually
2 more applicable, wouldn't you say, than what you're
3 talking about at the appellate level?

4 MR. KATSAS: Now, when I say change in a
5 pending case, with respect in my experience at civil
6 appellant, what I mean is there's an appeal pending
7 the day I come in the door.

8 COMMISSIONER YAKI: Sure.

9 MR. KATSAS: I reach a judgment that, gee,
10 this isn't the position I would've taken, and I go to
11 the appellate court and say basically, "Never mind."

12 COMMISSIONER YAKI: Right.

13 MR. KATSAS: That seems to me analogous to
14 what we have here. It's different from the case where
15 a prior administration takes a position in a trial
16 court, loses and then the new administration has to
17 make a decision whether or not to take an appeal. I
18 think a new administration --

19 COMMISSIONER YAKI: On the other hand,
20 wouldn't you also say that in a default judgment,
21 there is no -- at that point, there really is no
22 investigation, no discovery, no reexamination of facts
23 that might've gone at that point? And wouldn't you
24 say that that's a slightly different situation than a
25 fully litigated and cooked appeal that you're talking

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1 about?

2 MR. KATSAS: Sure. But to me, the default
3 nature of this case cuts even more strongly against
4 changing course because the government, I assume, did
5 what every ethical lawyer plaintiff side has to do,
6 which is establish a factual basis for the allegations
7 made in the complaint when they made them, and nothing
8 would have happened. There's no action-forcing event
9 like adversary litigation to have the government
10 reassess that position.

11 COMMISSIONER YAKI: And you find that more
12 egregious than, say, an expenditure of millions of
13 dollars of government discovery and time on a case,
14 and then abruptly dropping it?

15 MR. KATSAS: Not saying it's -- I'm saying
16 it's unusual. More egregious? They're different
17 situations.

18 COMMISSIONER YAKI: Sure.

19 MR. KATSAS: In -- in your hypothetical
20 case, the concern would be on the one hand it might be
21 a worse case because the government has invested a lot
22 more resources. On the other hand, it might be a less
23 bad case because in the course of adversary testing,
24 the government's initial position might have been
25 eroded with further factual developments.

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1 So, it just strikes me that there are
2 different considerations in the two kinds of cases.

3 COMMISSIONER YAKI: Well, I'm going to let
4 go, but we'll follow up on that.

5 MR. KATSAS: Okay.

6 CHAIRPERSON REYNOLDS: Okay, Commissioner
7 Melendez?

8 COMMISSIONER MELENDEZ: Thank you, Mr.
9 Katsas. Just one question. What's your opinion as
10 far as the -- there were four parts to this that --

11 MR. KATSAS: Four defendants?

12 COMMISSIONER MELENDEZ: Four defendants,
13 and only one was basically upheld.

14 MR. KATSAS: One was pursued.

15 COMMISSIONER MELENDEZ: Is that because in
16 your opinion it's because there was a weapon used?
17 The night stick.

18 MR. KATSAS: I don't know what the
19 reasoning of DOJ was. That's the most plausible
20 explanation. To me, it is not -- it is not a very
21 convincing ground for distinguishing between the two
22 defendants who were on the scene.

23 COMMISSIONER MELENDEZ: So, but if there
24 was not a weapon used, then it would -- it would seem
25 that all four would've been the same situation, since

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1 there were two basically that were -- two people that
2 were at the polling place. So, I can't differentiate
3 between those two people as far as one having the
4 weapon, the night stick, and the other not, it just
5 seemed to most ordinary people that if it wasn't for
6 the night stick, everybody would've been basically
7 dismissed.

8 MR. KATSAS: That's probably right if
9 you're asking me for --

10 COMMISSIONER MELENDEZ: Just your opinion.

11 MR. KATSAS: -- DOJ -- I mean my opinion
12 is that the night stick shouldn't make a difference in
13 the treatment of the defendants for two reasons. One,
14 the sum total of the acts of the two defendants, minus
15 the night stick, still would have amounted to an
16 actionable case of intimidation. That's my first
17 point.

18 My second point is that the two defendants
19 at the scene were acting in concert together, so, it
20 is perfectly fair to attribute the acts of the one to
21 the other.

22 COMMISSIONER MELENDEZ: Okay, thank you.

23 CHAIRPERSON REYNOLDS: Vice Chair
24 Thernstrom?

25 COMMISSIONER GAZIANO: No, no.

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1 VICE CHAIR THERNSTROM: I pass.

2 CHAIRPERSON REYNOLDS: I told Vice Chair
3 Thernstrom that she would go after Commissioner
4 Melendez. There is no harm.

5 COMMISSIONER GAZIANO: There is, but I'll
6 yield.

7 CHAIRPERSON REYNOLDS: Thank you very
8 much, Vice Chair Thernstrom.

9 VICE CHAIR THERNSTROM: And I thank you
10 also. By the way, a good pal of mine, who I've worked
11 with closely on voting rights issues, is at Jones Day,
12 and somebody I'm recently very much in touch with over
13 the Kinston case, Mike Carvin.

14 MR. KATSAS: Pal of mine, too.

15 VICE CHAIR THERNSTROM: Yes, I'm sure.
16 Look, two things. One, I've focused here. I don't
17 know, have you been here all morning?

18 MR. KATSAS: Yes.

19 VICE CHAIR THERNSTROM: Okay, I've focused
20 here somewhat on the question of the legal definition
21 of 11(b), in part because I arrived at the Commission
22 just in time for the 2001 hearings in Florida. The
23 question of black disfranchisement in Florida in the
24 2000 elections.

25 And there were many charges of voter

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1 intimidation that were floated at the time that were
2 contested. I mean there were differing views on
3 whether it amounted to what happened that police cars
4 had parked at certain spots not far from a polling
5 place, and so forth, whether amounted to voter
6 intimidation. And there's nothing unique about
7 Florida. I mean this conversation occurs repeatedly
8 across the country because there's this huge spectrum
9 of events that one can label voter intimidation or
10 not.

11 And so, I am a bit troubled by -- by the
12 absence of a typed definition, legal definition,
13 rather than a common sense one here, and I wondered if
14 you had any thoughts. And the other question I have:
15 again, do you have any thoughts? This sparse record
16 of the enforcement of -- of 11(b) has meant it is a
17 most minor provision of the Voting Rights Act. I mean
18 I've written two books on this statute, and I haven't
19 mentioned 11(b) in either one of them because it's
20 played such a small role under Democratic and
21 Republican administrations.

22 I mean one case before the Bush
23 Administration, two during the Bush years. Got any
24 thoughts on that? So, two questions. Got any
25 thoughts on?

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1 MR. KATSAS: I'll try my best. On the
2 question of standards, the case law is sparse, but it
3 is not entirely without guidance. There are cases
4 that say the provision should be construed broadly
5 rather than narrowly. There are cases that say you
6 don't need a subjective intent on the part of the
7 perpetrator.

8 There are cases that say consistent with
9 that, you measure intimidation by the response of a
10 reasonable voter or poll watcher. And there is a
11 general legal principle that if you have -- you have a
12 somewhat open ended standard, you don't necessarily
13 need a precedent on all fours with the facts of your
14 case in order to figure out whether the standard
15 applies.

16 Now, I have no doubt that there are many
17 debatable cases, whether something would or would not
18 constitute voter intimidation, and I have no doubt
19 that in a close and debatable case, there could be a
20 proper exercise of enforcement discretion to say,
21 "It's a close case. We haven't enforced this statute
22 very much. There's kind of a rule of lenity
23 principle, even in a civil injunction context."

24 That would be a responsible decision.
25 This, I have to say, does not strike me as a close

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1 case for all of the reasons that -- that you heard
2 before.

3 On the question -- on your second question
4 about the relationship of Section 11(b) to the Voting
5 Rights Act more broadly, and DOJ's enforcement
6 history, I'm not sure I can shed much light on that.
7 I haven't looked at that in preparation for being
8 here. Just for what it's worth, I will give my gut
9 reaction that Section 11(b), whatever its enforcement
10 history in the past, seems to be directed at a fairly
11 serious problem, which is voter intimidation.

12 I don't think anyone would deny that
13 that's a minor problem, and that is the evil against
14 which this statute is directed.

15 CHAIRPERSON REYNOLDS: Okay, Commissioner
16 Heriot?

17 COMMISSIONER HERIOT: I think I pass.

18 CHAIRPERSON REYNOLDS: Commissioner
19 Gaziano.

20 COMMISSIONER GAZIANO: I may -- if it's
21 all right with you -- first of all, thank you for your
22 written and oral testimony. Your written testimony is
23 very well done, and I think very helpful to the
24 Commission. I hope you can remain with us for a round
25 or two because I have a few -- I don't know where to

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1 begin exactly.

2 I don't know if you're aware, so tell me
3 if you are aware, that there is a criminal provision,
4 18 USC Section 245(b), that makes it a crime to,
5 "Interfere or intimidate or interfere." And that's --
6 I'll paraphrase. A voter or a poll watcher. Are you
7 aware of that criminal provision?

8 MR. KATSAS: I'm aware that there are
9 parallel criminal provisions. I'm not aware with the
10 specific cites and exact statutes.

11 COMMISSIONER GAZIANO: You may or may not.
12 You don't have to trust me on my quote. But entered
13 into evidence today were the depositions or attempted
14 depositions of Mr. King Samir Shabazz and Jerry
15 Jackson, in which they pled the Fifth Amendment to --
16 to refuse to answer our questions.

17 Given your knowledge of the Fifth
18 Amendment right, can you assert the Fifth Amendment
19 right merely to avoid answering questions of a federal
20 agency in a civil matter? Can you invoke the Fifth in
21 a civil action?

22 MR. KATSAS: You can invoke the Fifth in a
23 civil action, but only --

24 COMMISSIONER GAZIANO: But only out of
25 fear?

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1 MR. KATSAS: But only out of fear of
2 criminal exposure.

3 COMMISSIONER GAZIANO: So, rightfully
4 invoke the Fifth? These defendants, and maybe they
5 didn't understand this, but to rightfully invoke the
6 Fifth, they believe that their answers in our
7 investigation or that the facts that we're
8 investigating might give rise to criminal liability.

9 MR. KATSAS: I think that's right.

10 COMMISSIONER GAZIANO: Okay, separate,
11 same line. Viewing the YouTube and the other facts,
12 do you think that there was at least possible grounds
13 on the facts of this case for the Department to have
14 at least considered a criminal investigation?

15 MR. KATSAS: Can you read the statute back
16 to me?

17 COMMISSIONER GAZIANO: It is a crime to --
18 and I only have a portion of it. I don't have it with
19 me. Quote, "Intimidate or interfere with." End
20 quote, and that's the only portion I have. "A person
21 attempting to vote or a poll watcher."

22 MR. KATSAS: I would think that -- I would
23 think that they faced the possibility of criminal
24 exposure.

25 COMMISSIONER GAZIANO: Yes. So, that's

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1 why I seem to agree with you. I don't know what all
2 this talk is of -- of 11(b) not being often invoked.
3 This was a rather outrageous factual pattern, wouldn't
4 you agree?

5 MR. KATSAS: Yes.

6 COMMISSIONER GAZIANO: Okay, now, with --

7 VICE CHAIR THERNSTROM: But the Justice
8 Department --

9 COMMISSIONER GAZIANO: I'm in my first
10 round. I'd like to concentrate on some of the points
11 in your written statement regarding the dismissal.
12 You said Office of Associate Attorney General would
13 have definitely had to play a bigger role. Here's one
14 quote. Speaking of the dismissal, you said, "They
15 amounted to nothing less than a decision by DOJ,
16 following a change in presidential administrations to
17 reverse legal positions asserted in a pending case."

18 "Such reversals are extremely rare, and
19 for good reason. They inevitably undermine DOJ's
20 credibility with the courts, and they inevitably raise
21 suspicion that DOJ's litigating position may be
22 influenced by political considerations."

23 That kind of speaks for itself, but do you
24 have any elaboration on whether that factor was an
25 additional reason not to dismiss the suit from the

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1 Department's Institutional standpoint?

2 MR. KATSAS: At a minimum, I think those
3 considerations would counsel the Department to be very
4 careful before it dismissed the suit. And if it were
5 going to dismiss the suit, to have a pretty plausible
6 non-political explanation that it was willing and able
7 to publicly articulate and stand behind.

8 COMMISSIONER GAZIANO: And if they didn't
9 articulate a plausible and credible explanation, do
10 you think reasonable people would draw the negative
11 inference that -- that you're saying is at risk?

12 MR. KATSAS: I think many people would.
13 I'm not prepared to reach that conclusion myself. But
14 when you serve in a leadership office like the
15 Associate Attorney General's, part of your job is to
16 avoid political messes for your department and your
17 administration.

18 I would think that they should've been
19 pretty careful with this one.

20 COMMISSIONER GAZIANO: Right. You also
21 point out in your written testimony, "Moreover," I'm
22 quoting you now. "Moreover, the New Black Panther
23 Party had endorsed President Obama in the 2008
24 Election, and Mr. Jackson, during the events at issue,
25 apparently was a registered poll watcher for the

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1 Democratic Party." Why is that relevant?

2 CHAIRPERSON REYNOLDS: Last question.

3 COMMISSIONER GAZIANO: Okay. Why is that
4 relevant?

5 MR. KATSAS: From a Department -- from the
6 Department's perspective, it's relevant because it
7 would have been quite foreseeable to them, given
8 everything that happened, and given the politics that
9 if they changed course, there would be the kind of
10 controversy that followed. And when you're in a
11 situation like that, you want to be very careful to
12 make sure that all of your decisions are fully
13 justified on fair, neutral grounds.

14 COMMISSIONER GAZIANO: Thank you.

15 CHAIRPERSON REYNOLDS: Okay. Vice Chair
16 Thernstrom?

17 VICE CHAIR THERNSTROM: Commissioner
18 Gaziano, just -- I'm slightly puzzled by your -- you
19 said, well, you're puzzled why it has been repeatedly
20 noted, especially by me, that 11(b) has so far
21 involved only three cases, and not four decades of --
22 since the passage of the Voting Rights Act.

23 But there was a criminal potential basis
24 for bringing criminal charges, but the Justice
25 Department did not bring criminal charges, so that

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1 issue is not before us, it seems to me. For whatever
2 reasons, that criminal statute, that criminal
3 provision, was not -- was not used. And that's
4 another question we'll never get the answer to, you
5 know, the why question, but I think it's irrelevant to
6 our inquiry.

7 CHAIRPERSON REYNOLDS: Commissioner
8 Gaziano?

9 COMMISSIONER GAZIANO: If the facts of the
10 case would give rise to a former official like this,
11 and to -- to us; potential criminal violations it
12 seems to me, potentially more important to maintain
13 the lesser suit than an ambiguous close case under
14 11(b) alone.

15 VICE CHAIR THERNSTROM: Well, but this is
16 the Obama Justice Department, and it didn't bring a
17 criminal -- it didn't bring criminal charges.

18 COMMISSIONER GAZIANO: I understand, but I
19 think it's -- the egregiousness of the conduct should
20 certainly affect the decision to maintain the civil
21 action. And if -- and if the Department has two
22 slings in its quiver, or two arrows in its quiver, and
23 it -- and it said that, you know, "Trust us. We could
24 use both, but we're going to use one." It's more --
25 it undermines respect for the rule of law even more

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1 that it doesn't use either of those arrows.

2 VICE CHAIR THERNSTROM: I don't see the
3 logic, but that's all right.

4 CHAIRPERSON REYNOLDS: Commission
5 Kirsanow?

6 COMMISSIONER KIRSANOW: One question. You
7 may have seen, if you were here, in the video, that
8 police had arrived on the scene. Apparently they
9 declined to either remove the individuals from the
10 polling place, or to arrest them. Is that in any
11 respect relevant to the decision to DOJ not to file --
12 or not to pursue default judgment in a civil action of
13 11(b)?

14 MR. KATSAS: I don't think so because the
15 police -- the local police would not have been charged
16 with enforcing this federal statute, and whatever
17 state and local laws they were enforcing would've
18 raised separate issues.

19 COMMISSIONER KIRSANOW: Thank you. No
20 further questions, Mr. Chairman.

21 CHAIRPERSON REYNOLDS: Commissioner
22 Taylor?

23 COMMISSIONER TAYLOR: None.

24 CHAIRPERSON REYNOLDS: Commissioner Yaki?

25 COMMISSIONER YAKI: Yes. Next question,

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1 round two. You were, again, at the Justice Department
2 a very long time. I'm wondering if you're at liberty
3 to comment on -- on Attorney General Mukasey's
4 referral to OPR of the US Attorney and Civil Rights
5 Division politicization issues?

6 MR. KATSAS: I'm just not familiar with
7 those issues. I didn't work on them in the
8 Department. So, I don't --

9 COMMISSIONER YAKI: You're unfamiliar with
10 the findings of -- of the report?

11 MR. KATSAS: I'm generally familiar. I
12 had no official-capacity involvement.

13 COMMISSIONER YAKI: Would it -- would it
14 have -- well, let me ask you this question. Given the
15 findings regarding the report that there was
16 substantial politicization in the hiring and
17 assignment of attorneys within the Civil Rights
18 Division of the Justice Department during the certain
19 portion of the -- of the Bush Administration, does
20 that not give you some pause as to whether or not the
21 incoming administration had a right to review
22 decisions made by that previous Civil Rights Division?

23 MR. KATSAS: Well, they had a right. I
24 guess -- I mean I start with -- I start with the case,
25 and I see what seems on the face of it a strong

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1 complaint. We've heard here evidence that tends to
2 corroborate the allegations in the complaint. I would
3 think that the Justice Department had at least some of
4 that evidence in its files.

5 COMMISSIONER YAKI: But let me ask you
6 this. To me, the evidence that has been presented
7 today, such as it is, and someone said we weren't
8 relitigating this, and I tend to disagree because
9 that's exactly what we've been doing all day today,
10 goes I think very strongly against Mr. Shabazz.

11 Mr. Jackson, I'm not prepared to make a
12 comment one way or the other, but clearly in terms of
13 some of the conduct and statements, Mr. Shabazz was --
14 was out there. But this -- this case was not simply
15 about Mr. Shabazz and Mr. Jackson. It was also about
16 a national organization by a -- by a national
17 defendant based in another city.

18 So, my question -- my question really -- I
19 mean are you telling me that -- that if you were -- if
20 you went into a department that you -- that a neutral
21 body, OPR, had said was rife with politicization that
22 hires and assignments had been made based on political
23 loyalty, your -- your willingness to be on their team
24 or not with regard to your political and ideological
25 viewpoints, that you -- it would not cross your mind

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1 perhaps to take a look at some of the petitions that
2 they had made if you were incoming?

3 Forget if it's left or right. Just say
4 you're the new guy coming in, Assistant Attorney
5 General Katsas, into a situation where you know this
6 department has had an OPR review that goes, "Things
7 were not going on very well in this department.
8 Decisions were being made that had nothing to do with
9 merit; had nothing to do with the integrity of the
10 division." Are you saying to me it would still be
11 hands off entirely on -- on this case or any other
12 case?

13 MR. KATSAS: No. I mean look, it's never
14 hands off entirely. In terms of the significance of
15 the OPR report, with respect to this case, I would
16 think there -- there may be -- now he's after me.

17 Look, if OPR reached an adverse conclusion
18 about the competence or integrity of the specific
19 lawyers on that case, maybe it would have relevance
20 and counsel the kind of fresh look you're suggesting.
21 To my knowledge, OPR did not make such findings.

22 So, if you're suggesting that based on
23 either generalized concerns about politicization, or
24 findings about other employees in the Department,
25 would that strongly support a de novo consideration of

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1 this issue? I think the answer to that question is
2 no.

3 COMMISSIONER YAKI: Okay, I'll follow up.
4 My time is up.

5 CHAIRPERSON REYNOLDS: Okay, Commissioner
6 Melendez?

7 COMMISSIONER MELENDEZ: I didn't have
8 anything.

9 CHAIRPERSON REYNOLDS: All right. That
10 was our second round?

11 COMMISSIONER YAKI: No. Commissioner
12 Heriot.

13 CHAIRPERSON REYNOLDS: Please don't take
14 it personally. I apologize. Commissioner Heriot?

15 COMMISSIONER HERIOT: It's okay because I
16 am going to pass anyway. I do, however, just want to
17 clarify the record. There are going to be stray
18 statements about some creature. There's a housefly
19 that is overly friendly. So, anyone reading this
20 transcript in the future will understand that.

21 COMMISSIONER YAKI: May I correct? It is
22 a large housefly. It's the 747 of houseflies flying
23 around.

24 CHAIRPERSON REYNOLDS: Thank you for that
25 clarification. Commissioner Gaziano?

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1 COMMISSIONER GAZIANO: Yes. This may help
2 pick up the line of questioning I was on. It seems to
3 me American people, or citizens of any nations respect
4 for the rule of law has to be cultivated by a long
5 train of proper enforcement of -- of the law by public
6 officials. But would you agree with me that it could
7 be undermined more rapidly by perhaps even a single,
8 wrongful but notorious action?

9 MR. KATSAS: Sure.

10 COMMISSIONER GAZIANO: So, it's -- so,
11 individual actions that are -- that are open notorious
12 well known have a greater impact. The implications of
13 them are -- are broader than even a train of rightful
14 conduct.

15 MR. KATSAS: Other things equal, yes.

16 COMMISSIONER GAZIANO: Okay. So, is it
17 worse -- if -- if you think the suit should not have
18 been dismissed, and that's been your written and oral
19 testimony, is it worse for the government to have
20 said, "Well, these were 11(b) violations by all four
21 defendants. But we just don't want to spend any more
22 money on them, and it's cheaper if we just get a
23 judgment against the most flagrant of them."

24 Or, is it worse for them to maintain to
25 the public and to the Commission and to members of

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1 Congress that, "No, those three other defendants did
2 not violate 11(b). We could not -- it was improper to
3 maintain a case against them."

4 MR. KATSAS: I think the latter position
5 is untenable.

6 COMMISSIONER GAZIANO: And why is that?

7 MR. KATSAS: Well, for the reasons I've
8 said. I mean you saw -- you saw the video tapes. The
9 two defendants at the scene in Philadelphia were
10 acting in concert, wearing military uniforms,
11 stationed right in front of the entrance, within arm's
12 length of people who had to enter, hurling racial
13 insults at people, and one of the two had a weapon.
14 That seems like a pretty clear case.

15 COMMISSIONER GAZIANO: So, it's --

16 MR. KATSAS: And as to the -- as to the
17 national party, some of the videotape evidence that
18 you presented suggests that these defendants were
19 acting pursuant to the national party and consistent
20 with its broader agenda of racial antagonism.

21 COMMISSIONER GAZIANO: So -- and I'll get
22 to that. I'm glad you mentioned it. But I just want
23 to talk about this one point. So, it's bad enough for
24 the Department to take a wrongful dismissal with all
25 these political overtones that you've mentioned, and

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1 give no reason, or to give a reason that it didn't
2 want to spend any more money, but that it's more
3 harmful to the public's respect for the rule of law if
4 it maintains wrongfully that the law cannot reach
5 those individuals?

6 MR. KATSAS: I suppose. I think none of
7 those are ideal.

8 COMMISSIONER GAZIANO: Certainly. Let me
9 ask you about the First Amendment defense that seems
10 to be raised in some of the responses from the
11 Department of Justice. You -- in your written
12 testimony, you said that a First Amendment defense
13 would not have been able to be invoked on behalf --
14 can you explain that?

15 MR. KATSAS: Sure. I have two basic
16 reasons for that conclusion. One is that there's no
17 First Amendment right to intimidate people anywhere at
18 any time. And two, particularly with respect to
19 polling places on Election Day, the government
20 interests in ensuring easy access to the polls and
21 preventing voter intimidation are so strong that the
22 Supreme Court upheld a statute prohibiting all
23 election related speech within a 100-foot area of a --
24 of a polling place.

25 So, here, you have both conduct that is

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1 intimidating and the particularly sensitive time and
2 place of the entrance to the polling place on Election
3 Day. To say that there's a First Amendment right to
4 intimidate voters at that time and place seems to me -
5 -

6 COMMISSIONER GAZIANO: Well, let me just
7 ask a quick question. My -- so, for these
8 individuals, if you -- who wore the paramilitary
9 uniform and engaged in racial slurs, and one of them
10 had a billy club, the original injunction that was
11 dropped that included a prohibition that they not
12 appear at the polls, at least these individuals who
13 violated the Voting Rights Act, not appear at the
14 polls wearing the paramilitary uniform.

15 Do you think that that part of the
16 original injunction would've or could've been
17 sustained?

18 CHAIRPERSON REYNOLDS: Last question.

19 COMMISSIONER GAZIANO: Yes.

20 MR. KATSAS: I think it could've been
21 sustained because the original injunction spoke of
22 wearing uniforms, but in the course of a deployment.

23 COMMISSIONER GAZIANO: Sure.

24 MR. KATSAS: And I think the word
25 deployment sort of captures the idea of going to the

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1 polling station, and in concert standing guard as if
2 in military display. That seems to be -- that seems
3 to be clearly defensible and quite different from an
4 injunction that would've just -- just prohibited
5 nothing more than wearing particular clothes.

6 COMMISSIONER GAZIANO: Thank you.

7 CHAIRPERSON REYNOLDS: Thank you.

8 Commissioners, do we need another round?

9 COMMISSIONER KIRSANOW: Yes.

10 CHAIRPERSON REYNOLDS: Okay, Vice Chair
11 Thernstrom?

12 VICE CHAIR THERNSTROM: No, I'm taking a
13 pass.

14 CHAIRPERSON REYNOLDS: A pass, okay.
15 Commissioner Kirsanow?

16 COMMISSIONER KIRSANOW: Yes, Mr. Katsas,
17 there is ongoing an OPR investigation related to the
18 disposition of this matter. At the outset of the
19 Commission's investigation of this matter, and also
20 that of Congressman Wolf, DOJ responded to inquiries
21 by indicating that there was an ongoing OPR
22 investigation.

23 At the conclusion of such investigation,
24 are you aware of any privileges that would attach to
25 any of the evidence that was considered or adduced

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1 during the course of such investigation, and if so,
2 that would preclude the release of any information
3 related to the investigation? And if so, what are
4 those privileges, and who has the privilege?

5 MR. KATSAS: All right, the evidence
6 submitted to OPR?

7 COMMISSIONER KIRSANOW: Yes, the evidence
8 and the -- the deliberative process that OPR engages
9 in.

10 MR. KATSAS: Yes. I don't think that the
11 mere fact of submission to OPR would itself create a
12 privilege that would extend past the life of the OPR
13 investigation. I do think that much of the evidence
14 likely to have been submitted to OPR would have
15 involved internal deliberations within the Department,
16 and that evidence probably would be subject to some
17 form of DOJ's deliberative process privilege.

18 I assume -- correct me if I'm wrong, I
19 assume that you all stand on the same footing vis a
20 vis the Department as Congress. And if that's true,
21 then there would presumably have to be some process of
22 negotiation to work out the competing claims of
23 deliberative process on the one hand. And I agree
24 with what Commissioner Thernstrom said earlier: that
25 those are important, but to balance those deliberative

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1 process claims on the one hand with your statutory
2 authority to investigate on the other hand.

3 COMMISSIONER KIRSANOW: Who within DOJ, or
4 is it the client, the President of the United States,
5 or who would invoke the privilege?

6 MR. KATSAS: Probably not the President
7 because there's a distinction in the law between the
8 presidential communications privilege for the
9 President and his immediate advisors and deliberative
10 process, which is typically the less absolute
11 privilege that governs those of us who served in
12 agencies in lower ranking positions.

13 On the question of who invokes it, I don't
14 know. Probably officially the attorney general, but
15 my instinct is that the authority to invoke it would
16 be delegable, and probably has been delegated.

17 COMMISSIONER KIRSANOW: Aside from the
18 deliberative process privilege, would then any other
19 privilege be the executive privilege?

20 MR. KATSAS: Deliberative process is a
21 subspecies of executive privilege.

22 COMMISSIONER KIRSANOW: Is there an over-
23 arching executive privilege that could be invoked at
24 the conclusion of this, outside of the deliberative
25 process?

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1 MR. KATSAS: If there is -- executive
2 privilege has two components. Deliberative process
3 privilege, which would cover internal deliberations
4 within DOJ and a presidential communications
5 privilege, which would cover any possible
6 communications about this matter involving either the
7 President or the President's immediate advisors
8 soliciting information on his behalf.

9 COMMISSIONER KIRSANOW: Thank you. No
10 further questions.

11 CHAIRPERSON REYNOLDS: Okay, Commissioner
12 Taylor?

13 COMMISSIONER TAYLOR: I have no further
14 questions?

15 CHAIRPERSON REYNOLDS: Commissioner Yaki?

16 COMMISSIONER YAKI: Ding round three. Mr.
17 Katsas, would it be fair to say that your knowledge of
18 the Civil Rights Division during your tenure at
19 Justice is pretty thin?

20 MR. KATSAS: It would be fair to say that
21 my knowledge of the Civil Rights Division was acquired
22 primarily during my year-and-a-half plus in the
23 Associate Attorney General's office, and the -- and
24 that the degree of intensiveness of review that one
25 can conduct from the associate's office about what a

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1 litigating division is doing is limited.

2 COMMISSIONER YAKI: So, it's pretty thin?

3 MR. KATSAS: That has a pejorative
4 connotation that I -- I might want to resist.

5 COMMISSIONER YAKI: Well, the reason I'm
6 asking --

7 MR. KATSAS: It's less extensive than,
8 say, an Assistant Attorney General for the Civil
9 Division -- for the Civil Rights Division.

10 COMMISSIONER YAKI: But for example, you
11 would not -- you would not know for example whether or
12 why Civil Rights Division decided to turn down
13 potential 11(b) cases, and you would never -- it would
14 never cross your desk?

15 MR. KATSAS: It may have. In theory, it
16 could've come up to the associate's office while I was
17 in the associate's office. But in fact, it didn't.

18 COMMISSIONER YAKI: But only during that
19 time period?

20 MR. KATSAS: Yes.

21 COMMISSIONER YAKI: And what time period
22 was that again?

23 MR. KATSAS: Let's see. August of 2006
24 until April of 2008, plus or minus a month.

25 COMMISSIONER YAKI: The reason I ask you

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1 that is the statement by one of the Commissioners was
2 kind of startling in terms of talking about how a
3 single instance can -- can be in an of itself
4 galvanizing. Although, I think to myself that this is
5 hardly -- hardly rise to the level of an Adam Walsh or
6 and Amber Hagerman in terms of its importance.

7 But nevertheless, that being -- that being
8 the case, I know of at least three different -- three
9 different incidents that were -- four that were
10 brought up to the -- to the -- to the Justice
11 Department and for which we have yet to hear anything
12 with regard to why or what their disposition was.

13 One involved two instances during the 2006
14 national election cycle, where one congressional
15 candidate in Orange County sent out a letter to 14,000
16 registered Latino voters. Perhaps you're familiar
17 with that case?

18 MR. KATSAS: Only in very general terms.
19 I'm familiar with the allegations.

20 COMMISSIONER YAKI: And -- and then there
21 was the -- then during also that election, there were
22 allegations in Tucson, Arizona, involving people who
23 wore dark clothing, their own hand made badges, not
24 unlike other people who may wear handmade -- or design
25 their emblem with an open handgun in a holster, asking

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1 only Latino voters personal information and
2 videotaping them.

3 You don't recall that coming up to you for
4 -- for decision or review, do you?

5 MR. KATSAS: No.

6 COMMISSIONER YAKI: All right. In 2008,
7 do you recall whether or not it was referred to you
8 that a private investigator in New Mexico was visiting
9 the homes of newly registered Latino voters, telling
10 them that they could not vote; that they were here
11 illegally and he would report them to the INS. Did
12 that ever come up to your attention?

13 MR. KATSAS: Not that I recall.

14 COMMISSIONER YAKI: And certainly when you
15 were in the appellate division, you wouldn't have been
16 aware of -- during the mayoral election in
17 Philadelphia in 2003, that there was many reports
18 about folks in dark suits and dark vans and
19 clipboards, driving around in predominantly African-
20 American neighborhoods, telling people that they had
21 to have all sorts of ID with which to vote, and if
22 they didn't, they would go to jail.

23 MR. KATSAS: That would've been outside
24 the purview of the Civil -- I mean, look, you're
25 describing cases that --

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1 COMMISSIONER YAKI: I'm describing cases
2 that Justice never took, and some of them are -- to
3 me, are more egregious in that it involved serious
4 intimidation with threats of jail time and other sorts
5 of things, but apparently that is not enough for some
6 Commissioners in which to say it is a national issue,
7 but --

8 MR. KATSAS: I mean I can't speak to cases
9 that I haven't looked at.

10 COMMISSIONER YAKI: I understand. So,
11 that ends my next round. I have one more round left
12 to go.

13 CHAIRPERSON REYNOLDS: Commissioner
14 Melendez?

15 COMMISSIONER MELENDEZ: I'll pass.

16 CHAIRPERSON REYNOLDS: Commissioner
17 Heriot?

18 COMMISSIONER HERIOT: I'll pass.

19 COMMISSIONER GAZIANO: I may run out
20 before Commissioner Yaki, but in one of -- in your
21 written statement, you -- regarding the kind of
22 communications that were allowed under the then
23 Mukasey Memo, which we understand Attorney General
24 Holder has said he's keeping in place, but I'm asking
25 under the -- under your experience, you say, "Under

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1 these rules, I think it is unlikely that DOJ would
2 have consulted the White House regarding whether to
3 reverse course in the New Black Panther Litigation."

4 Your answer, first of all, is regarding
5 the kind of officials and the policy as you think it
6 should be implemented. Is that correct?

7 MR. KATSAS: It's based on my
8 understanding of the guidelines in the Mukasey memo.

9 COMMISSIONER GAZIANO: Sure. So, you
10 don't know one way or the other whether either Bush
11 Administration officials or Obama Administration
12 officials in the Department of Justice did in fact
13 communicate at either the filing stage or the
14 dismissal stage?

15 MR. KATSAS: With respect to Bush
16 Administration officials, I have a vague recollection
17 in some of the papers that I reviewed that there was a
18 communication telling I think it was the press office
19 of the White House that the complaint had been filed.

20 COMMISSIONER GAZIANO: Okay, then that
21 gets me to my next question. Do you think it would
22 have been likely appropriate or either for the Obama
23 Administration to have alerted the White House that
24 they were going to dismiss the case?

25 MR. KATSAS: I think under the Mukasey

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1 guidelines, it would have been quite appropriate and
2 indeed I think affirmatively good for the Department
3 to alert the White House that, "This is a decision we
4 have made. It's high profile. It's controversial.
5 You might be hearing about it. This is what we did."

6 COMMISSIONER GAZIANO: Okay.

7 MR. KATSAS: But that sort of informing
8 them of a decision already made, which seems to me
9 entirely appropriate and unproblematic is very
10 different from what the Mukasey memo is designed to
11 get at, which is the prior -- the deliberations about
12 what the decision should be.

13 COMMISSIONER GAZIANO: I understand. And
14 you think -- based on your testimony, I'm inferring
15 you think it's more likely, more appropriate that the
16 White House -- if the White House was alerted when the
17 case was filed, it's even more likely that the White
18 House should've been alerted when they were
19 considering dismissing it?

20 MR. KATSAS: Let me -- let me answer it
21 this way. If I were Acting Associate or Associate
22 Attorney General during the time of the dismissal
23 deliberations, I would not have contacted the White
24 House while the decision was ongoing, and that's
25 partly to protect the perception of impartiality, and

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1 it's also frankly partly to protect the White House
2 from any perception or misperception of political
3 interference.

4 COMMISSIONER GAZIANO: Okay. But you --

5 MR. KATSAS: But I would have -- after the
6 decision was made, I think I would have made a call,
7 saying, "This is what we've done. You may hear about
8 it."

9 COMMISSIONER GAZIANO: After the
10 dismissal, right before the dismissal?

11 MR. KATSAS: At a point in the process
12 where no one could misunderstand the communication to
13 be seeking advice with a nod and a wink.

14 COMMISSIONER GAZIANO: Okay, that's very
15 helpful just for our record of what you think the
16 proper procedure should've been. We may or may not
17 ever find out what happened in this case. But now, I
18 want to contrast that with communications to the
19 Attorney General.

20 Obviously, the Civil Rights Division was
21 supposed to raise significant matters with the
22 associate's office, you said generally once a week.

23 MR. KATSAS: Right.

24 COMMISSIONER GAZIANO: And obviously, you
25 were not a potted plant. So, anything that you were

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1 interested in, you could've inquired about further,
2 right?

3 MR. KATSAS: As the associate?

4 COMMISSIONER GAZIANO: Yes.

5 MR. KATSAS: Sure.

6 COMMISSIONER GAZIANO: And we have now
7 supplemental interrogatory answers just received last
8 week that we should've received ten months ago saying,
9 "The Attorney General was made generally aware." I
10 think it's not an exact quote, but pretty close, of
11 the dismissal -- Attorney General Holder was made
12 generally aware of -- of the consideration of
13 dismissal.

14 He could have made inquiries if he thought
15 that that raised concerns. Is that correct? He's not
16 a potted plant in other words.

17 MR. KATSAS: No, no.

18 COMMISSIONER GAZIANO: He has authority to
19 overrule.

20 MR. KATSAS: He has authority. He has
21 every prerogative to do that. The question for him
22 would be whether he wants to use his very limited time
23 to drill down into a case like that.

24 COMMISSIONER GAZIANO: Correct, but you
25 would not --

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1 CHAIRPERSON REYNOLDS: Next round. Vice
2 Chair Thernstrom?

3 VICE CHAIR THERNSTROM: No, but if -- I'm
4 happy to -- I'll just say no.

5 CHAIRPERSON REYNOLDS: Okay, Commissioner
6 Kirsanow.

7 COMMISSIONER KIRSANOW: No questions.

8 CHAIRPERSON REYNOLDS: Commissioner
9 Taylor?

10 COMMISSIONER TAYLOR: No questions.

11 CHAIRPERSON REYNOLDS: Commissioner Yaki?

12 COMMISSIONER YAKI: Yes. I was -- I was
13 curious about a statement that you made in your
14 statement, in which you say New Black Panther Party
15 endorsed President Obama for President. Where did you
16 get that information from?

17 MR. KATSAS: I don't recall the source. I
18 did some general quick and dirty -- quick and dirty
19 internet research in the course of preparing.

20 COMMISSIONER YAKI: Could you provide that
21 source? Because I'm not familiar with that?

22 MR. KATSAS: I'll look through my notes.

23 COMMISSIONER YAKI: And secondly, this --
24 there's some -- there's some -- there's a tautology
25 here, which I'm not quite getting. And maybe it's

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1 simply if you say it enough, it'll become true. Why
2 would you consider this particular case, which at most
3 involved two, maybe three individuals, of a pretty
4 small organization, that apparently only manifested
5 itself in one precinct in Philadelphia, despite
6 declarations, "I was going to try and do this a lot of
7 other places?"

8 Why would you consider this high-profile?

9 MR. KATSAS: High-profile because the
10 conduct was recorded on the videotapes that you saw,
11 and played in the national media immediately --

12 COMMISSIONER YAKI: So, absent YouTube,
13 you're saying this -- yes, that's okay. It would not
14 have been high-profile? I mean is that the definition
15 of high-profile? It's not how many people were
16 involved? It's not how many voters -- voters were
17 affected? It's not how many -- how many voters may
18 have been impacted? It's simply because it was on
19 YouTube? That's what makes it high-profile?

20 MR. KATSAS: All of those considerations
21 are relevant to the question whether or not you bring
22 the case.

23 COMMISSIONER YAKI: Well, let's leave
24 aside YouTube. You've heard the testimony today of
25 these two individuals behaving badly. I think -- I

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1 think engaging in 11(b) type behavior. Witnesses who
2 were there saw only two or three people actually turn
3 away. Testimony from inside -- deposition witnesses -
4 - deponents who were inside said people were kind of
5 chatting about it and joking about it in some ways,
6 but no one seemed to be overly concerned about it.

7 So, absent -- absent YouTube, how -- how
8 high-profile is this? Two people, one precinct, three
9 people maybe turned away.

10 MR. KATSAS: Look, I --

11 COMMISSIONER YAKI: We have no evidence
12 saying that turnout was affected one way or another;
13 if it was down or if it was up. Yes, it's an 11(b) as
14 to those individuals, but how does it become high-
15 profile other than the fact that someone was there
16 with a camcorder?

17 MR. KATSAS: The question -- maybe we're
18 quibbling about the term high-profile. To me, the
19 term high-profile means was there widespread general
20 knowledge about this incident, and that question does
21 turn on do the -- is it known on a nationwide basis,
22 or just in terms of the people who were there?

23 I don't think that's the same -- I don't
24 think that it is or should be a driver in the decision
25 whether or not to bring the case.

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1 COMMISSIONER YAKI: Well, I would hope
2 not. I would hope not. I would -- I would hope that
3 parts -- that to bring the case would depend on the
4 severity of the incident.

5 MR. KATSAS: Yes, absolutely.

6 COMMISSIONER YAKI: Certainly the number
7 of people who were affected.

8 MR. KATSAS: No question -- no question
9 about that. But I was asked which -- which way the
10 high-profile nature of the incident cuts.

11 COMMISSIONER YAKI: No, I understand.

12 MR. KATSAS: Okay.

13 COMMISSIONER YAKI: Yes, you can have I
14 don't know how many hits on YouTube, but if it's in
15 the paper with a circulation of 400,000-500,000, is
16 that high profile? I don't know.

17 MR. KATSAS: The other -- let me just make
18 one related point on the video. It seems to me it may
19 be relevant for the reasons Commissioner Gaziano
20 suggested. Not a driver but a consideration. It's
21 also relevant for another reason, which is it seems to
22 me in terms of the decision whether or not to pursue
23 the case, one obvious consideration the Department
24 would -- would always consider is is this going to be
25 an easy case or a hard case to prove. And that video,

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1 in my judgment makes it frankly an open and shut case
2 to prove, with no investment of Department resources.

3 So, I think it's relevant for that reason
4 as well.

5 COMMISSIONER YAKI: But then we could
6 argue that that's the easy way out --

7 CHAIRPERSON REYNOLDS: Last question.

8 COMMISSIONER YAKI: -- in determining
9 whether there's 11(b) violation because the fact of
10 the matter is there are a number of -- of cases that
11 were not brought under 11(b) that probably should've
12 by the Justice Department during this period of time
13 that had a much more egregious effect on many more
14 thousands -- hundreds and thousands of people than
15 these particular idiots with their baton.

16 MR. KATSAS: I can't speak to other cases
17 that I haven't looked at. All I can tell you is that
18 this case strikes me as a clear -- the clear violation
19 of law, linked up to the agenda of the national party,
20 and widely --

21 COMMISSIONER YAKI: So, this is policy by
22 --

23 CHAIRPERSON REYNOLDS: Commissioner,
24 Commissioner Yaki --

25 MR. KATSAS: No.

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1 COMMISSIONER YAKI: Sounds like it.
2 Sounds like what you're saying.

3 CHAIRPERSON REYNOLDS: Commissioner
4 Melendez?

5 COMMISSIONER MELENDEZ: I didn't have
6 anything.

7 CHAIRPERSON REYNOLDS: All right,
8 Commissioner Heriot?

9 COMMISSIONER HERIOT: Mr. Katsas, I assume
10 that you would agree that -- that one of the reasons
11 for laws like this, and one of the reasons that the
12 Department of Justice might undertake such an action
13 is to general deterrence: sending the message out to
14 people generally that intimidating voters is a bad
15 thing.

16 MR. KATSAS: Sure.

17 COMMISSIONER HERIOT: Am I also right that
18 the issue of general deterrence is linked up with is
19 it a high profile issue. And by that, I mean I think
20 what you mean as well.

21 MR. KATSAS: Yes.

22 COMMISSIONER HERIOT: You know, that a lot
23 of people know about it.

24 MR. KATSAS: And that's why I think that
25 is a fair and relevant consideration. I think in the

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1 last round of questioning, I was just resisting a
2 suggestion that you bring a prosecution for no other
3 reason than --

4 COMMISSIONER HERIOT: No other reason.
5 But it's --

6 MR. KATSAS: -- there's a video.

7 COMMISSIONER HERIOT: -- perfectly
8 appropriate to consider it in the bringing of the
9 case?

10 MR. KATSAS: Of course.

11 COMMISSIONER HERIOT: Okay.

12 CHAIRPERSON REYNOLDS: Let's finish up the
13 order. Commissioner Gaziano?

14 COMMISSIONER GAZIANO: Yes. This -- this
15 actually helps as a prelude to my final question to
16 you. Since the Justice Department in their
17 supplemental interrogatory answers, which we should've
18 gotten ten months ago, has admitted the Attorney
19 General was made generally aware of the -- the
20 dismissal notions, did you raise things to the
21 Attorney General level, or suggest things be raised to
22 the Attorney General level that were insignificant or
23 low profile?

24 MR. KATSAS: No.

25 COMMISSIONER GAZIANO: Okay, so what does

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1 it tell you about the Obama-Holder Justice Department
2 that this was raised to the Attorney General's level?

3 MR. KATSAS: I think it tends to confirm
4 what I said in my written testimony, which was that my
5 sense is that the decision to abandon most of this
6 litigation, given everything that we knew about it,
7 would have been a pretty sensitive one within DOJ.

8 COMMISSIONER GAZIANO: Certainly. Okay,
9 since you were very helpful on explaining some of the
10 permutations of executive privilege, I -- I can't
11 spend a lot of time, but you heard this morning that
12 we just got the witness statements that we've been
13 asking for for ten months.

14 And even now, they're redacted as to their
15 name. But I think the witnesses are going to
16 volunteer to tell us whose was whose. Is there --
17 does it raise any clear, deliberative process issue to
18 -- to have the witness statements that were on file?

19 MR. KATSAS: I wouldn't think so. Just
20 let me make sure I understand. These are statements
21 that DOJ took in the course of working up the case?

22 COMMISSIONER GAZIANO: Correct. Now, they
23 may implicate work product, which doesn't apply.
24 Which doesn't apply. So, does this --

25 MR. KATSAS: They wouldn't have been

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1 deliberative process by definition because they
2 involved a communication with someone outside the
3 Department. They may have -- they may have involved
4 something akin to a law enforcement-like privilege
5 while the case was pending, but I would think that
6 wouldn't apply after the case was over.

7 COMMISSIONER GAZIANO: We began our
8 investigation after the dismissal.

9 MR. KATSAS: Yes.

10 COMMISSIONER GAZIANO: And do you think
11 even to this day there's any justification for the
12 White House to have -- or the administration to have
13 redacted -- tried to keep from us the names of which
14 witnesses made which statements?

15 MR. KATSAS: I can't think of one.

16 COMMISSIONER GAZIANO: Thank you.

17 CHAIRPERSON REYNOLDS: I want to yield
18 half of my time to Vice Chair Thernstrom.

19 VICE CHAIR THERNSTROM: I just want to
20 push you a minute on this high-profile definition. I
21 mean there was hope on this Commission that this would
22 become a high-profile issue, but it seems to me
23 indisputably it has not become one. That is, yes, the
24 Washington Times, which is a paper nobody reads, is --
25 has been carrying stories on it, and Fox News did pick

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1 up from the Washington Times at one point. But in
2 terms of mainstream media?

3 COMMISSIONER GAZIANO: The Washington Post
4 is Twittering this very hearing.

5 VICE CHAIR THERNSTROM: Okay, today. But
6 up to now, this has not been -- maybe it will be as a
7 consequence of today, but up to now, it has not been a
8 high-profile issue. I just -- I mean I think that's
9 important to establish.

10 MR. KATSAS: Those are fair observations.
11 It has not been as high-profile as it might. But in
12 the context of a strong meritorious case, it does seem
13 to me fair for the reasons that we just discussed
14 about general deterrence for the Department to take
15 into consideration the dissemination of that
16 information.

17 I don't think that should be a driver, but
18 --

19 VICE CHAIR THERNSTROM: Look, I don't
20 think the Department should shrug its shoulders, but I
21 think given how low-profile it has been, what I would
22 expect is for the Department to say, "Ah, who's paying
23 attention?"

24 MR. KATSAS: I don't know. I would think
25 that most incidents like this are not captured on a

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1 video, put on the internet, and made the subject of
2 discussion on a national network.

3 VICE CHAIR THERNSTROM: And by the way,
4 I've talked to the Chairman about this, my last
5 sentence. The members of the New Black Panther Party
6 who were here before asked me if the Commission, at
7 some other time obviously, could see the section of
8 that YouTube video, which preceded what we do see.
9 And I think --

10 MR. BLACKWOOD: If I might, we saw the
11 complete YouTube video.

12 VICE CHAIR THERNSTROM: They think there
13 is something that --

14 MR. BLACKWOOD: I had that conversation
15 out in the hallway. I can tell you that's the
16 complete YouTube video we have seen.

17 CHAIRPERSON REYNOLDS: Okay, so to the
18 extent there's additional, we don't have it?

19 MR. BLACKWOOD: We do not have it.

20 COMMISSIONER GAZIANO: If they want to
21 supply it to us, I would like to see it.

22 VICE CHAIR THERNSTROM: Well, exactly.
23 If there is more, I'd like to see it.

24 CHAIRPERSON REYNOLDS: Okay. Any other
25 questions? Okay, hold on a moment. Other than

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1 Commissioner Yaki, do we have additional questions?

2 COMMISSIONER HERIOT: I have just one
3 question.

4 CHAIRPERSON REYNOLDS: Okay, Commissioner
5 Yaki?

6 COMMISSIONER YAKI: I'm just going to make
7 one little follow up on the high-profile issue. Would
8 it -- would it have been proper course to advise the
9 Attorney General, regardless of whether you thought it
10 was high-profile or not? But if you were reversing a
11 decision of a prior administration, would that be
12 something that you would advise the Attorney General's
13 office that is was action you were taking?

14 MR. KATSAS: Yes, probably.

15 COMMISSIONER YAKI: That's all. Thank
16 you.

17 MR. KATSAS: Because of the sensitivity of
18 that kind of decision.

19 COMMISSIONER YAKI: Exactly, yes.

20 MR. KATSAS: Yes.

21 CHAIRPERSON REYNOLDS: Commissioner
22 Heriot?

23 COMMISSIONER HERIOT: I just want to
24 establish that we understand that high-profile is a
25 matter of degree. Do you know of any other incident

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1 at a precinct during that election that was any higher
2 profile than this one?

3 MR. KATSAS: I'm not an expert, but no.

4 COMMISSIONER YAKI: I do.

5 CHAIRPERSON REYNOLDS: Okay.

6 COMMISSIONER YAKI: It depends on how you
7 define high-profile. It depends on the number of
8 people who were --

9 CHAIRPERSON REYNOLDS: Okay, we're going
10 to direct our questions to the witnesses. Folks, this
11 concludes our hearing for today. We will adjourn
12 until May 14th, 2010, at which time we will hear
13 testimony in the New Black Panther Party litigation
14 matter from Assistant Attorney General Thomas Perez,
15 and possibly a few other witnesses.

16 We will hold the record open for
17 additional evidence pursuant to 45 CFR Section 702.8.
18 Individuals who wish to submit items for consideration
19 to be included in the record may do so by sending them
20 to the General Counsel, David Blackwood, at the US
21 Commission on Civil Rights, at 624 9th Street
22 Northwest, Washington, D.C. 20425. Mr. Katsas, thank
23 you very much.

24 MR. KATSAS: Thank you.

25 (Whereupon, the above-entitled matter went

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1 off the record at 1:56 p.m.)

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DECLARATION OF ROBERT A. KENGLE

I, Robert A. Kengle, pursuant to 28 U.S.C. § 1746, declare as follows:


1. I am Acting Co-Director of the Voting Rights Project at the Lawyers' Committee for Civil Rights Under Law. From September 1984 through April 2005 I was an attorney in the Voting Section of Department of Justice's Civil Rights Division. I became a Deputy Chief of the Voting Section in 1999 and remained in that position until left the Department of Justice. I make the following declaration in response to the testimony of Christopher Coates before this Commission concerning the August 2003 primary election in Noxubee County, Mississippi.
2. In his written testimony Mr. Coates quotes an unnamed deputy chief as having asked him "Can you believe that we are going to Mississippi to protect white voters?" It is my understanding that, in response to a question by a member of this Commission, Mr. Coates identified me by name as the deputy chief in question. For the reasons described below, Mr. Coates' testimony about me was materially incomplete and misleading.
3. At the time of the election in question, I was a deputy chief in the Voting Section of the Civil Rights Division. I generally supervised litigation but handled other matters as required. Mr. Coates was a Special Counsel who focused primarily upon vote dilution litigation under Section 2 of the Voting Rights Act. The Voting Section was directed by the office of the Assistant Attorney General for Civil Rights to conduct attorney coverage of the August 2003 Noxubee County primary election. The specific concern was that Noxubee County Democratic Party Chairman Ike Brown had published a list of voters, along with a statement that he planned to challenge them if they attempted to vote on the Democratic Primary, on the ground that they supported non-Democratic candidates in violation of the Democratic Party loyalty requirement. I volunteered to lead the coverage and accompanied Mr. Coates and other Voting Section attorneys to Mississippi, meeting with state officials beforehand and visiting precincts on election day.
4. I do not recall making the statement to Mr. Coates "Can you believe that we are going to Mississippi to protect white voters". I certainly did express my dissatisfaction to Mr. Coates on several occasions during the trip and it is possible that during the multi-day coverage I said something to him along the lines of "Can you believe we're doing this?" However, I did not complain to Mr. Coates in sum or substance about "protect[ing] white voters" because I did not consider that to be the problem.
5. The sum and substance of the concerns that I definitely and specifically expressed to Mr. Coates during the 2003 Noxubee County coverage, as I did to other management-level career staff within the Voting Section, was that "I think it's ridiculous (or outrageous) that we are being ordered to cover this election when Hans [von Spakovsky] and [Bradley] Schlozman are rejecting our other recommendations." By this I referred to recommendations to monitor elections and open investigations based upon concerns of discrimination against minority voters, which had been rejected by those front office appointees for what I believed were spurious reasons. I believed that a double standard was being applied under which complaints by minority voters were subjected to excessive and unprecedentedly demanding standards, then

dismissed as not being credible, while on the other hand the Voting Section was being ordered to pursue the Noxubee complaints at face value – in a dispute over party loyalty -- as a top priority. I confided my view of this double-standard to Mr. Coates and to other management-level career staff. If I made the remark to Mr. Coates “Can you believe we’re doing this?” it was within this context. I did not protest this instance of what I perceived to be a double standard to Mr. Schlozman or Mr. von Spakovsky because I was certain that it would only prompt retaliation against Section Chief Joe Rich, myself or other career employees.

6. I do not understand Mr. Coates to complain that I failed to deploy DOJ personnel properly during the election, restricted Mr. Coates in any way from pursuing whatever evidence he saw fit, or interfered with Mr. Coates reporting his findings verbatim. As a Special Counsel, Mr. Coates regularly received a great deal of deference and this occasion was no different.
7. It is my understanding that the DOJ Inspector General plans to undertake a long-term review of Voting Section enforcement. It is my recommendation that such a review include: a) changes in the standards under which political subdivisions were certified for federal examiner and observer coverage between 2001 and 2004; b) specific decisions that were made by staff in the Office of the Assistant Attorney General for Civil Rights between 2001 and 2004 to reject recommendations for election coverage and civil investigations by Voting Section career staff with respect to discrimination against minority citizens; and c) the decision-making process concerning how federal observers and Department of Justice attorneys were assigned to cover the 2004 Presidential election.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 18, 2010
Washington DC


Robert A. Kengle
1401 New York Avenue, NW, Suite 400
Washington DC 20005

National Office
99 Hudson Street, Suite 1600
New York, NY 10013

T 212.965.2200
F 212.226.7592

www.naacpldf.org



Washington, D.C. Office
1444 Eye Street, NW, 10th Floor
Washington, D.C. 20005

T 202.682.1300
F 202.682.1312

October 11, 2010

By Electronic and First-Class Mail

Gerald A. Reynolds
Chairman
United States Commission on Civil Rights
624 Ninth Street, NW
Washington, DC 20425

Re: New Black Panther Party Investigation

Dear Chairman Reynolds:

I write on behalf of the NAACP Legal Defense and Educational Fund, Inc. ("LDF") concerning comments made during the Commission's hearings conducted as part of its New Black Panther Party inquiry. During those hearings, it was stated that LDF encouraged or lobbied the Department of Justice ("DOJ") to drop or take some other action with respect to DOJ's New Black Panther Party litigation. These statements are absolutely untrue.

Neither LDF nor any of its staff ever urged DOJ to take any action with respect to the New Black Panther Party litigation. LDF played no role in, and conducted no advocacy around, DOJ's New Black Panther Party litigation. Statements that LDF, or any of its staff, sought to influence the matter or to limit the scope of the litigation in any respect are false.

LDF has long urged that DOJ increase, not decrease, its investigations of allegations of voter intimidation. We continue to urge DOJ to aggressively pursue voter intimidation. Doing so is an essential part of any meaningful strategy to ensure that the right to vote is a reality for all Americans.

I request that this letter be included in the official record of the Commission's New Black Panther Party Investigation.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jeff D. Robinson", is written over a white background.

Jeffrey D. Robinson
Associate Director-Counsel
Programs and Administration

DECLARATION OF JOSEPH D. RICH

I, Joseph D. Rich, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am Director of Fair Housing at the Lawyers' Committee for Civil Rights Under Law and have been in this position since May, 2005. From 1968 –April 2005 I was an attorney in the Department of Justice's Civil Rights Division and held career management positions from 1973- 2005 as Deputy Chief of the Educational Opportunities Section from 1973-1986, Deputy Chief of the Housing and Civil Enforcement Section from 1987-1999 and Chief of the Voting Section from 1999-2005.
2. This Declaration is submitted to correct false statements made about my role in the *United States v. Ike Brown* case in (1) an affidavit submitted to the United States Commission on Civil Rights by Mr. Hans von Spakovsky on July 15, 2010; (2) hearsay testimony given to the Commission by Mr. J. Christian Adams on July 6, 2010; and (3) in statements made by Commissioner Todd Gaziano at the July 6, 2010 hearing.
3. The following summarizes my activities related to the *United States v. Ike Brown* case:
 - In the summer of 2003 I was Chief of the Voting Section. In July 2003, the Section received complaints of wrongdoing by Mr. Brown before a primary election in Noxubee County, Mississippi that was scheduled for August 5, 2003. As a result of a pre-election investigation of these complaints, five attorneys from the Voting Section (one of whom was Mr. Chris Coates) and two attorneys from the office of United States Attorney for the Southern District of Mississippi were assigned to monitor the primary election. Before the election, the Voting Section prepared a memo concerning the planned monitoring for Mr. von Spakovsky. The memo was addressed to the Election Crimes Branch of the Criminal Division's Public Integrity Section, the Department of Justice office that enforces most of the federal election crimes laws.
 - During the election coverage, irregularities in the handling of absentee ballots were observed by the attorneys monitoring the election. I reported these irregularities to my supervisors (Mr. Bradley Schlozman and Mr. von Spakovsky) and to the appropriate officials in the Criminal Division. On August 19, 2003, per normal procedure, a twenty seven page report from all attorneys who monitored the election was completed and submitted to the same officials. After review of this memorandum and discussions with my supervisors and the Criminal Division, it was decided that the Criminal Division would investigate possible violations of federal election crime statutes. It is standard practice in the Department that any civil investigation of a matter is put on hold pending completion of a criminal investigation of the same matter.
 - In mid-2004, a meeting was held between officials of the Civil Rights Division and the Criminal Division about the status of the Ike Brown matter. At this meeting, it was decided that the Criminal Division would discontinue its investigation without

taking action and the Civil Rights Division would investigate whether there had been violations of the Voting Rights Act. Thereafter, an investigation of whether Mr. Brown and others had violated the Voting Rights Act was conducted by Mr. Coates under my supervision.

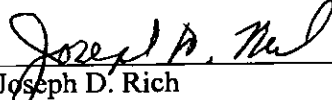
- Mr. Coates completed the investigation late in the in the summer or early in the fall of 2004. At that time, he drafted a memorandum recommending that a civil suit be initiated against Mr. Brown and others for violations of the Voting Rights Act. I reviewed this recommendation and forwarded it with my concurrence to Mr. Schlozman and Mr. von Spakovsky. No recommendation made by Mr. Coates was removed or deleted from this memo. Subsequently, this recommendation was approved by my supervisors (Mr. Schlozman and Mr. von Spakovsky) and on February 17, 2005 a complaint against Mr. Brown and others was filed by the Department in the United States District Court for the Southern District of Mississippi alleging violations of the Voting Rights Act. I am one of the attorneys who signed that complaint.
4. The claims in the affidavit, testimony and statement that I deleted a recommendation from a memo prepared by Mr. Chris Coates recommending the filing of a civil lawsuit against Mr. Ike Brown are false. I never deleted any recommendation from a memo prepared by Mr. Coates with respect to this case nor any other memo or document related to this case.
 5. The statement by Mr. von Spakovsky that I was ordered by my supervisors to “undelete Mr. Coates’ recommendation” is false. As noted above, I never deleted such a recommendation and thus could not have been ordered to “undelete” it.
 6. Similarly, in hearsay testimony of Mr. Adams (who was not in the Department at the time of the events surrounding the investigation and filing of *United States v. Ike Brown*) claimed that the “front office exploded” when it learned of the purported removal of a recommendation, and that the recommendation was then “repackaged.” These statements are false. Neither of the alleged events occurred, nor could they since I never removed a recommendation made by Mr. Coates.
 7. In violation of my privacy rights, Mr. von Spakovsky’s affidavit also discusses a reprimand and personal evaluation that I received while being supervised by Mr. Bradley Schlozman, then Deputy Assistant Attorney General. His statements about these personnel actions are also false. I was never reprimanded for actions connected to the *United States v. Ike Brown* case. I did receive a negative annual evaluation, but it was for several purported actions, all of which I challenged in an appeal.
 8. The context in which the negative personnel action occurred should be noted. In my previous thirty three years in the Division before the Bush Administration, I had consistent outstanding evaluation ratings, received several Division awards and never had received a reprimand or a negative annual evaluation. Starting early in the Bush Administration, and especially during the time that Mr. von Spakovsky was a Counsel in the Division’s front office reporting to Mr. Schlozman, there was an unrelenting hostility towards me which

included negative personnel actions. There was no justification for the actions taken by Mr. Schlozman and Mr. von Spakovsky. Rather, they were the result of the unprecedented level hostility toward career managers that permeated the leadership of the Civil Rights Division at that time. This hostility is reflected by the fact that during the years of the Bush Administration, four other long-time career section chiefs were removed from their positions and approximately 70% of career attorney staff present at the beginning of the Bush Administration had left the Division by the end of the Administration.

9. The hostility of the leadership of the Division at that time toward career management and staff is documented in a report prepared by the Department of Justice's Office of Inspector General and Office of Professional Responsibility dated July 2, 2008 and released publicly on January 13, 2009. The report is entitled "An Investigation of Allegations of Politicized Hiring and Other Improper Personnel Actions in the Civil Rights Division." See www.justice.gov/opr/oi-opr-iaph-crd.pdf. Quotes from two emails in that report written by Mr. Schlozman, (to whom Mr. von Spakovsky reported) especially exemplify the hostility toward the Voting Section staff. The first is dated July 15, 2003 in which Schlozman wrote: "I too get to work with mold spores, but here in Civil Rights, we call them Voting Section attorneys." As part of the same e-mail exchange, on July 16, 2003, Schlozman wrote, "My tentative plans are to gerrymander all of those crazy libs right out of the section." The second email is dated June 15, 2006, after he had left the Division, in which Schlozman wrote that ". . . bitchslapping a bunch of [Division] attorneys really did get the blood pumping and was even enjoyable once in a while. I think now it's all Good Cop for folks there. I much preferred the role of Bad Cop. . . . But perhaps the Division will name an award for me or something. How about the Brad Schlozman Award for Most Effectively Breaking the Will of Liberal Partisan Bureaucrats. I would be happy to come back for the awards ceremony." (pp. 20-21, n. 13)

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 23, 2010
Washington DC



Joseph D. Rich
1401 New York Avenue, NW, Suite 400
Washington DC 20005

STATEMENT OF ARNOLD S. TREBACH

To the U.S. Commission on Civil Rights
Regarding
Hearing on the Department of Justice's Actions Related to the New Black
Panther Party Litigation and its Enforcement of Section 11(b) of the Voting
Rights Act

July 19, 2010

This is a public comment on the situation regarding the New Black Panther Party as reflected primarily in the hearing held on July 6, 2010. I observed the entire hearing and have read most of the materials generally available to the public about this matter.

INTRODUCTION

The basic facts are relatively simple. Two members of the New Black Panther Party stood at a polling place on Election Day, November 4, 2008, in Philadelphia and proceeded to intimidate and threaten potential voters as they approached. One brandished a night stick and both uttered racial slurs such as "You are about to be ruled by a black man, cracker." After an investigation, the Civil Rights Division of the Department of Justice filed suit alleging a violation of the Voting Rights Act against three named defendants and the Party. When no response was forthcoming, a default occurred and the government had in effect won its case.

Then the career voting rights legal experts in the Division prepared a memorandum which, among other things, proposed seeking a default judgment and draft order for injunctive relief. These lawyers, led by Christopher Coates, a legendary voting rights expert, explained that they wanted a federal judge to enjoin the defendants from appearing within 200 feet of any polling place on any election day within the United States with weapons. The defendants would also be restrained from engaging in any action that might interfere with the right to vote.

This seemed a sensible, moderate approach to the case and had the Division allowed the career lawyers to obtain that judicial order, it might have been the end of it, with little publicity and angst. Remarkably, the leaders of the Division directed the lawyers to drop the case and to seek a

judicial slap on the wrist against only one defendant. It is a rarity indeed for any legal organization to drop a case that has already been won by a default judgment. I am an old lawyer and have never encountered such a case in my work. The order to drop the case came from political appointees at high levels in the Department of Justice, which was ruled by Attorney General Eric Holder as part of the Obama Administration. There is some speculation that the White House was involved.

Much of the general public agreed with the outraged career attorneys, some of whom claimed that this was blatant racial discrimination in favor of the black defendants. One of the career attorneys, J. Christian Adams, resigned and went public with complaints to this effect. He also claimed that the Civil Rights Division employed many lawyers and staff who openly stated that they did not ever want to see lawsuits started from the Division against black defendants when the victims were white. These were troubling claims in part because they occurred within the administration of the first African-American president and the first African-American attorney general in our history. Also troubling was the fact that apparently the National Association for the Advancement of Colored People had lobbied the DOJ to drop the case.

The Commission on Civil Rights was quite properly alarmed by these allegations and has been investigating them. On July 6, it held a hearing in Washington at which the only witness was J. Christian Adams. In my view Mr. Adams was a credible witness and his claims are deeply disturbing. The Commission is to be applauded for seeking the truth in this seemingly outrageous situation. Congress should also continue to get to the bottom of the matter.

MY CIVIL RIGHTS EXPERIENCE

I am an interested member of the public with no official status. However, I have a somewhat long history in the field of civil rights, starting with the fact that I was a civil rights protester myself for the cause of equal service in public facilities during the late 1950s. The protests in which I participated took place mainly on the streets and in restaurants in Knoxville, Tennessee. During the summer of 1960, approximately fifty years ago, I joined the staff of the Commission in Washington. I was assigned to the Administration of Justice Section, then headed by Christopher Edley. We rapidly became fast friends and I was disappointed when he left the

Commission shortly after I arrived. I was appointed the chief of the section upon his departure and remained in that position for the next three years. I left the Commission in 1963.

When I was completing my doctoral studies at Princeton during the late 50s, I researched the treatment of the poor and minority groups in the administration of justice. This led to a study of police brutality, a fact that in turn led to my employment by the Commission. My major specialty area at the Commission was police brutality to black people and I spent a great deal of time in the field investigating allegations of such harsh behavior. I also conducted an investigation at the Department of Justice in Washington as to the manner in which the Civil Rights Division and the FBI handled complaints of police brutality. In my work at DOJ, I was given access to hundreds of case files by the Civil Rights Division. One of the attorneys there, the late A. B. Caldwell, kindly allowed me to use his office for many weeks while reviewing those files.

There was no objection by any of the officials at the Civil Rights Division to my work in its offices. At least I do not recall any. To the best of my memory, it was generally felt that we in the Commission had the backing of the statute that set up the agency and empowered it to investigate and report on denials of equal protection of the laws. I do recall that the major concern was of a political nature: that J. Edgar Hoover would hear of my work and demand that it be stopped. He was powerful enough at the time to demand that work be stopped even if the work had the support of a congressional statute. He did not hear of it but did go ballistic when the 1961 Justice Report, of which I was the principal author, was later released. It contained some criticism of the FBI regarding the conduct of its own investigations of police brutality complaints. Soon I found that FBI agents often visited me at my CCR office. I liked them. We had interesting discussions on the civil rights laws.

Several years after I left the Commission, I became a professor at Howard University; I divided my time between the Institute for Youth Studies and the Law School, where I taught classes on criminal law and procedure. While there I was appointed the Chief Consultant on Administration of Justice at the White House Conference on Civil Rights. That work spanned several years, 1965-66.

MY STATE OF SHOCK AT THE HEARING

My purpose in mentioning my civil rights experience is to show that it has been considerable and involved contact with literally hundreds of officials, lawyers, policemen, academics, and citizens over a long period of time. Also I should mention that in recent years my attention has been on other subjects, especially drug policy reform. Thus I return to the civil rights arena after an absence of many years. I recall our attitudes many years ago, at virtually the beginning of the work of the Commission and of the Civil Rights Division. While it may seem naïve in the context of the turmoil of politics today, it is my memory that we truly believed in the purpose of the civil rights act and in the law setting up the Commission. We believed that we were ensuring the American dream by working for a color-blind society, one that sought justice for all, regardless of race, religion or national origin. (Now of course I would add gender to that list.) We believed we were carrying out the promise of America to the world, to be like a city on a transcendent hill, above petty politics and racial divisiveness.

Perhaps the recollection of this old man is failing but that is indeed my memory. We believed in the American dream, and for what it is worth I still do.

My beliefs were greatly influenced by the fact that, early on, I fell under the spell of Reverend Martin Luther King, Jr. He was and is my true, enduring civil rights hero. I met him in Birmingham, where I arranged to be on the streets to provide a federal presence in that lawless, violent city. King stood for the American dream in color-blind terms. If he were alive today, my guess is that he would sternly lecture those lawyers who advocate the racial application of the civil rights laws.

At no time in all of my work in the civil rights arena do I recall any comments like those related to the Commission by the only witness at the hearing, J. Christian Adams. By that I mean that I cannot recall any responsible federal official making statements to the effect that the laws promising racial equality were to be enforced only for one race and not for all people, regardless of race. At no time did I even hear mention of affirmative action; if I had, at that time I would not have known what it was. Now, I wish I had never heard of it. We believed in race-neutral application of all laws. That is why I was in a state of shock listening to Mr. Adams say that the Civil Rights Division of the United States Department of Justice

contained many lawyers who did not believe in a race-neutral vision for their work.

While I was previously aware of the allegations made by Mr. Adams, it was quite another experience to hear them while I was sitting just a few feet behind him as he testified at the hearing. His statements were powerful and believable. He was a credible witness. The Commission is to be applauded for putting him on the stand and for treating the charges he brought with great respect.

If this nation comes to believe that it is acceptable to have our civil rights laws enforced in a discriminatory fashion, then we as a nation are in danger of losing our soul. The civil rights laws guard a sacred place in our national being.

My hope is that the Commission continues following this case and demands more information, including by way of subpoenas and additional hearings on this matter. It is quite likely that I will continue to follow it also and may write articles or a book about the matter. It is shocking and outrageous.

WHITE AND BLACK

The abuse of black people by whites in America over the centuries has been an outrage and an embarrassment. In my work at the Commission and in other research I have documented horrible abuses of black people by white officials, especially by brutal police officers. It is understandable that many blacks still suffer from the memory of the discrimination and the abuse they have suffered. In some cases, that discrimination has been quite recent. There is no doubt that the civil rights laws were passed with the primary object of easing the burden of black citizens.

There is also no doubt that those laws were framed in a broad fashion and were meant to protect all people, regardless of race or color. When civil rights lawyers in the Department of Justice state that the laws will only be applied to help black people, they are both morally wrong and legally wrong. They are also unethical and in violation of their oaths of office.

Such actions only give the illusion of helping black people. At best the assistance is temporary and in the end hurtful. The officials and lawyers

now in power are always replaced in time by others and those others may decide that revenge is in order and they in turn may give preference to white and Asian parties to suits. It is, in any event, obscene to find that the lawyers in the inner sanctum of the civil rights legal structure defile that structure with discriminatory action.

In my long experience in the civil rights arena I found that when thugs, in or out of uniform, behaved in a discriminatory fashion toward one race, they were often harsh toward people of all races. This was the situation in the Screws case mentioned way back in the 1961 Justice Report and it also seems to be the situation recently in the Ike Brown case which was discussed by Mr. Adams in his testimony. To be sure, in both of these cases the focus of the miscreants was on people of one race but, as I said, in my work on the ground I usually found that an atmosphere of fear pervaded the communities where the lead thugs ruled. That was the case with Sheriff Screws and, while I was not there, it seems to be so in Noxubee County, Mississippi, where Mr. Brown, an African-American, was the head of the Democratic Party and was also the lead thug.

I encountered that pervading fear during my time in those communities. The fear affected whites as well as blacks. It was like a stifling fog that afflicted many citizens.

In my reading of the current attitudes of some DOJ lawyers and staff, it appears as if they are placing all white people in certain regions into one group deserving of bad treatment. While this may be the case with some white people in, say, the Deep South, I can testify on the basis of personal experience that it was not the case with many others. I could fill a book with my personal encounters with native-born, Southern white folks who courageously offered help to me in my official civil rights work even though they feared retribution from the violent elements of segregation and discrimination that dominated their communities.

One example comes to mind which I will discuss from memory, as is the case with this entire statement. In the fall of 1962 I was involved in seeking to aid and protect Reverend Thomas Johnson, a white member of Mississippi state advisory committee to the Commission, who had been arrested on bogus charges regarding the actions of some local white citizens in throwing garbage on his lawn.

This was a tense time because there were violent riots and federal troops in Oxford, Mississippi regarding the enrollment of James Meredith in the university. I had been in other parts of the state on an investigation with a colleague from the Commission. Somehow I got word of the Reverend Johnson's plight and was asked by our general counsel, Clarence Clyde Ferguson, to go to Jackson and help him.

Then my colleague and I proceeded to make the justice officials in Jackson aware of our presence and deep concern. I appeared in a local court on his behalf. Also we started an investigation into the area around Reverend Johnson's home and knocked on doors to speak to his neighbors. To be frank, we were somewhat scared because these were violent times in Mississippi and the Deep South, with leaders spouting defiance to federal court orders to integrate schools. People were dying in that area. We did not know who might answer a door in rural Hines County, especially when we said we were from the Commission on Civil Rights in Washington and showed our civil rights credentials. Of course, we were unarmed.

This gets to the main point of this particular story. At this very tense time in our history almost every time a neighbor came to the door we were greeted with politeness. If these white people had information on the garbage throwing incident, they gave it freely. Even knowing that it might be dangerous, they said they would testify truthfully if called to the stand in a trial. One old man, who was lying sick in bed, gave us some helpful information that was supportive of Reverend Johnson's case. I told him that he might be called to the stand and asked him if he was afraid to testify. He replied with words like: I might be afraid but if I put my hand on the bible, I will tell the truth in court.

Another white neighbor told me that he was a veteran of the army and of the Bataan death march. He was contemptuous of his bigoted neighbors who had tried to enlist him in their campaign of harassment. This grizzled little fellow said to me something like: If I don't like a man I'll go up to his face and shoot him, but I won't throw garbage on his lawn. It seemed to me at the time that he was surely joking about shooting someone.

In my view, I evaluated these two folks, along with a number of other local white neighbors, as potentially good witnesses in the event of a trial. On several occasions, I met with the country prosecutor, Bill Waller, to protest the legal action against Reverend Johnson which I claimed was

racially discriminatory. Waller, who was white, replied that he was not biased and would look at all the facts. After reviewing all of the witness statements that my colleague and I had assembled, Waller later dropped the case with prejudice, a rare action because it meant that the matter could not be reopened. We won without going to trial in large part because of his principled action.

Prominent local white lawyers also were helpful by quietly volunteering to talk to their colleague, Bill Waller, and put in a good word for Reverend Johnson who they believed had been railroaded by the dominant segregationist ethos of the region.

There might have not been any need of that good word because Mr. Waller, a leading white official in a state dominated by racial hatred at times, later openly sought justice for black people. On two occasions, he prosecuted Byron De La Beckwith for the murder of Medgar Evers. Both were unsuccessful but the killer was eventually convicted in a later trial.

This phase of my statement has gone longer than I planned, for which I apologize. However, I hope that I have supported my main argument. It is immoral, illegal, and factually wrong to deny white people equality before the law simply because they reside in a state or a community dominated at a given time by racial bigots.

Moreover, that thought applies to all people, of any race, the good and the bad, who are not so worthy as Reverend Johnson, or those neighbors, or Mr. Waller. It is not possible to effectively operate a system of justice that is discriminatory at its core.

THE DOJ AND THE OTHER DISSENTERS

There is a wide range of opinion that comes out in opposition to the action of the Commission in this matter. Perhaps the most important is that of the Department of Justice, including of course the political attorneys in the Civil Rights Division. Their basic position is that good lawyers may have different views of the evidence in a case and that the leaders of the CRD listened carefully to all of these views and came down on the side of dropping the case against the Panthers. In my humble opinion, the explanation of these government lawyers for their actions does not pass the straight-face test. Nor is there any strong rebuttal to the overriding evidence

offered by Mr. Adams that lawyers in the inner sanctum of the Civil Rights Division openly espouse racially biased prosecutions. The treatment of voting rights giant, Christopher Coates, was simply barbaric in that he was dragged out of the Division and sent into exile in a U.S. Attorney's office in South Carolina.

It is difficult for me to support the government position that there can be no discussion before the Commission of internal deliberations by such witnesses as Mr. Adams, as if these were discussions in the Oval Office. It also does not pass the straight-face test. As a Commission official I had access to many internal discussions and documents within the Civil Rights Division. It was a long time ago, but it really happened.

The dissenting statements by two members of the Commission who were absent from the hearing deserve more comment. As to their allegations about scheduling conflicts within the Commission, I offer no opinion because I simply do not know the facts. I question the pejorative labeling by Commissioner Yaki of the majority of the Commission members as "far-right." In the minds of many today that is the equivalent of calling them ignorant nut cases. At least on this matter I agree with that majority, even though I am a life-long Democrat, and I resent being called an ignorant nut case.

Both Commissioner Yaki and Commissioner Abigail Thernstrom argue that the Panther case is small potatoes and that it does not deserve all of the attention it is getting from the Commission and others. The group, they argue, is a small lunatic fringe assemblage, and there is other fish to fry. In my view, the Panthers may well be small and lunatic but their actions deserve great attention. In this sense, they are not small potatoes.

However, the two dissenting commissioners did raise some important questions about the other alleged misdeeds of the Civil Rights Division. They deserve at least some attention from the Commission within the near future.

MY CONCLUSIONS

The Commission is correct in its approach to the actions of the New Black Panther Party and to the entire subject of racial discrimination in the enforcement of the civil rights laws by the Department of Justice. The Commission is carrying out the original intent of the statute setting up the

Commission decades ago as we saw it at the time: equal justice under law, which means justice blind to the personal qualities – including the race -- of the parties. To the majority of the Commission, I say please keep going. You are performing a vital public service in casting light on the facts of an embarrassing American scandal.

Arnold S. Trebach, J.D., Ph.D.
Professor Emeritus
American University
Box 185
5505 Connecticut Avenue, N.W.
Washington, D.C. 20015-2601
Tel. 301-526-1200 Fax 301-986-7815
arnold@trebach.com

7-19-10 usccr hearing

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

**SWORN STATEMENT OF
KARL S. BOWERS, JR.**

1. My name is Karl S. "Butch" Bowers, Jr., and I submit this sworn statement freely and without any mental reservation.
2. I am currently an attorney in private practice in Columbia, S.C. From 2007-2008, I served as Special Counsel for Voting Matters with the U.S. Department of Justice in Washington, D.C. As Voting Counsel, I oversaw the activities of the Voting Section of the Justice Department's Civil Rights Division, and I provided policy and legal counsel on voting and election law matters to senior officials in the Justice Department.
3. In my capacity as Voting Counsel, I worked with J. Christian Adams, who was a career attorney in the Voting Section during that time, on several matters involving the enforcement of voting rights laws.
4. At all times in my experience working with Mr. Adams, he demonstrated an unwavering commitment to the race-neutral enforcement of voting rights laws. Mr. Adams was dedicated to the vigorous enforcement of voting rights laws on behalf of all voters, without regard to race, ethnicity, or geographic location. It was clear that upholding the rule of law was more important to Mr. Adams than the outcome of any case or investigation, regardless of his political views or personal beliefs.
5. In 2008 I worked with Mr. Adams on the case of United States v. Georgetown County School District. This case involved an all-white school board in Georgetown County, S.C., a county which had an African American population of almost 40%. Mr. Adams recommended filing suit against the County for violations of Section 2 of the Voting Rights Act on the grounds that their at-large method of electing school board members impermissibly diluted the voting strength of African American citizens. Mr. Adams was a strong advocate for filing this suit and his recommendation was adopted, ultimately leading to the entry of a consent decree which incorporated a voting plan for Board elections that provided for seven single-member districts, three of which had majority-minority populations.
6. In addition, in 2008 I accompanied Mr. Adams and other career staff from the Voting Section to monitor the presidential primary election in Broward County, Florida. The Justice Department deployed us as monitors to Broward County to ensure the enforcement of voting rights laws on election day, particularly with regard to the rights of language minorities and African American voters. I monitored several polling places alongside Mr. Adams during this deployment, and at all times his conduct demonstrated his commitment to vigilant race-neutral enforcement of voting rights laws. Mr. Adams' professionalism, expertise, and hard work resulted in a direct and immediate positive impact on the protection of voting rights of language minorities and African American voters,

which in turn ensured them the free and unencumbered opportunity to exercise their franchise.

7. In my role as Voting Counsel, I quickly became familiar with the politically charged atmosphere among many of the career attorneys in the Civil Rights Division generally, and in the Voting Section in particular. While I had the privilege to work with many dedicated and responsible career attorneys in the Civil Rights Division during my tenure, it was apparent that many other career attorneys in the Division made decisions and recommendations that were driven not by the rule of law but by personal political and/or racial agendas designed to engineer specific results.

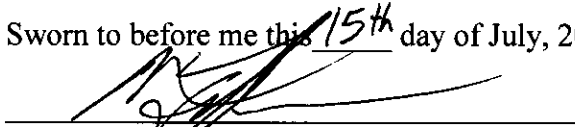
8. In my experience, there was a pervasive culture in the Civil Rights Division and within the Voting Section of apathy, and in some cases outright hostility, towards race-neutral enforcement of voting rights laws among large segments of career attorneys. On the other hand, there was at times almost rabid support for enforcement or appellate recommendations that lacked strong substantive legal support but happened to coincide with the political agendas of career attorneys and private activist advocacy groups.

This concludes my sworn personal statement.

July 15, 2010


KARL S. BOWERS, JR.

Sworn to before me this 15th day of July, 2010.



Notary Public for South Carolina
My Commission Expires: 10/13/15

MATTHEW TODD CARROLL
Notary Public
State of South Carolina
Commission Expires Oct. 13, 2015

AFFIDAVIT OF HANS A. von SPAKOVSKY

Commonwealth of Virginia
County of Fairfax

I, Hans A. von Spakovsky, do hereby state the following based on my own personal knowledge:

1. I submit this sworn affidavit to the U.S. Commission on Civil Rights freely and without any mental reservations.
2. I have been a lawyer for twenty-six years and am licensed to practice law in Georgia, Tennessee, and the District of Columbia.
3. I am a graduate of the Vanderbilt University School of Law (1984) and the Massachusetts Institute of Technology (1981).
4. I am a former Commissioner on the Federal Election Commission (2006-2007) and am currently a Senior Legal Fellow in the Center for Legal & Judicial Studies at the Heritage Foundation.
5. I was employed as a career lawyer in the Civil Rights Division ("Division") of the U.S. Department of Justice from December 2001 through December 2005.
6. From December 2001 through December 2002, I was a trial attorney in the Voting Section of the Division.
7. From January 2003 through December 2005, I was a Counsel to the Assistant Attorney General for Civil Rights. My specific responsibility was to monitor and review all activities of the Voting Section on behalf of the Assistant Attorney General and to provide recommendations to the Assistant Attorney General and senior officials of the Justice Department on all voting and election law matters.
8. I have reviewed the testimony presented by J. Christian Adams, a former career lawyer in the Voting Section of the Division, before the U.S. Commission on Civil Rights on July 6, 2010.
9. I was at the Division when Mr. Adams was hired as a career attorney in the Voting Section. In my capacity as a Counsel, I worked with Mr. Adams, as well as other attorneys in the Voting Section, on various cases, and reviewed his work product.
10. In my judgment, Mr. Adams was an outstanding lawyer and an experienced professional. During my tenure in the Division, Adams was one of the most productive lawyers in the Voting Section and always received the highest performance reviews from his supervisors (all of whom were career employees) for his work.

11. During my tenure in the Division, Mr. Adams never exhibited any bias or partisanship in his handling of cases or his relationships with other lawyers and staff. To the contrary, he always acted in a completely professional manner. Moreover, he handled numerous cases and other matters in which the Voting Section was acting to protect black, Hispanic, and other minority voters and was clearly dedicated to enforcing the law on behalf of all voters.
12. I can confirm a number of facts stated by Mr. Adams in his testimony before the U.S. Commission on Civil Rights about the voter intimidation lawsuit filed against the New Black Panther Party and several individual defendants. In my four years in the Division, I do not recall a single instance of the Appellate Section ever being asked to review the merits of a Voting Section case that was in default status because the defendants had failed to answer the complaint. Nor do I recall any case ever being dismissed by the Voting Section (or any other Section within the Division) without obtaining either a judgment or a settlement with the defendants. To the best of my knowledge, the actions of the Division's leadership in the *New Black Panther Party* case were unprecedented.
13. Kristen Clarke of the NAACP Legal Defense Fund – who according to Adams' testimony initiated a conversation with Laura Coates, a line attorney in the Voting Section, in which Clarke asked when the *New Black Panther Party* case was going to be dismissed – was actually a trial attorney in the Voting Section during part of the time that I was employed in the Division. During the course of Clarke's employment in the Voting Section, I was forced to recommend changes in her annual performance review after I discovered that she had provided incomplete and inaccurate information about a voting rights lawsuit in an apparent effort to convince the Division to intervene in the litigation.
14. During my time in the Division, I also worked closely with Christopher Coates, the former Chief of the Voting Section, although he was not yet the Chief when I worked with him. Mr. Coates was the most experienced and knowledgeable voting rights litigator in the Voting Section. He had more experience in the courtroom by far than any other lawyer in the Section. He was also an outstanding professional and one of the best litigators I have ever worked with in my legal career.
15. I can also confirm that while the Voting Section has filed hundreds of cases in its history against white defendants to protect minority voters, it has only ever filed two cases against black defendants (both of which were filed to protect white voters, black voters and black poll watchers). These two cases were *U.S. v. New Black Panther Party* and *U.S. v. Ike Brown*. I was at the Division when the *Brown* case first arose and I personally reviewed the legal memoranda prepared for that case. The Bush administration filed or settled almost 60 cases to enforce various provisions of the Voting Rights Act (the Clinton administration filed less than 30).
16. Mr. Coates told me directly while I was still at the Division that other lawyers within the Voting Section were harassing him over his work on the *Brown* case because they did not believe that the Justice Department should file any lawsuit under the Voting Rights Act

against black defendants, no matter how egregious their violations of the law. Mr. Coates further advised me that other lawyers in the Voting Section were refusing to work on the case. The then-Deputy Chief of the Voting Section, Robert Kengle, expressed his disgust to Mr. Coates that lawyers from the Voting Section were going down to Mississippi to help white voters who were being discriminated against by local black officials.

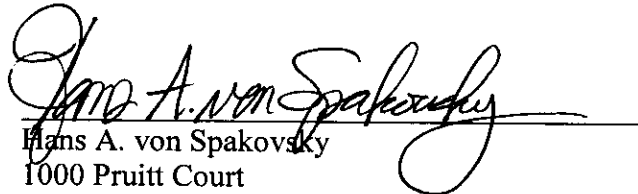
17. Consistent with the testimony provided by Mr. Adams to the Commission, I called Mr. Coates directly when I received a legal memorandum from Joseph Rich, who was at that time the Chief of the Voting Section, about the *Brown* investigation because the memorandum did not have the usual recommendation on whether a lawsuit should be commenced. Mr. Coates was very surprised because the memorandum he had prepared for the Voting Section Chief had contained an extensive discussion as to why a civil case should be brought under the Voting Rights Act to remedy the serious (and ongoing) violations of the law that had been uncovered during the investigation. Mr. Rich, without informing Mr. Coates, had entirely deleted the recommendation to file suit. Apparently, Mr. Rich wanted to mislead his political supervisors about the nature of the case and prevent a lawsuit from being filed, and then misrepresented that the attorney investigating the case, Mr. Coates, shared his position.
18. Only after the Office of the Assistant Attorney General for Civil Rights (the "front office") ordered Mr. Rich to undelete Mr. Coates' recommended disposition of the *Brown* matter was a lawsuit able to be commenced and the case litigated. This eventually resulted in a judgment against the defendants for violating the Voting Rights Act by engaging in intentional and blatant racial discrimination and voter fraud to deny and dilute the ballots of white voters. *U.S. v. Brown*, 494 F.Supp.2d 440 (S.D. Miss. 2007), *affirmed*, 561 F.3d 420 (5th Cir. 2009).
19. Following this incident, Mr. Rich was reprimanded by the Division's front office for engaging in unprofessional and politically motivated conduct. He also received a highly negative annual performance review based on his misconduct in the *Brown* matter. (Mr. Rich appealed this performance review, but it was affirmed by then-Principal Deputy Assistant Attorney General Sheldon Bradshaw.) It is ironic that Mr. Rich has been one of the most outspoken defenders of the dismissal of the New Black Panther Party case by the Division's new political leadership, and that he has been treated by the media as nothing more than a long-time apolitical career civil servant. The reality, in my experience, is that Mr. Rich was always one of the most partisan individuals in the Division. His wrongful handling of the *Brown* matter only underscores that point.
20. Mr. Adams was assigned to the *Brown* case in addition to Mr. Coates. I was informed directly by Mr. Adams while I was still at the Division about harassment being directed towards him from other staff in the Voting Section over his work on the *Brown* case.
21. Another employee assigned to the *Brown* case also informed me that he was harassed by an attorney colleague over his Christian religious views because of his past work on the *Brown* case and another matter he investigated in Hale County, Alabama, involving white victims of political violence. The colleague engaging in this harassment was named

Avner Shapiro, who is married to Julie Fernandes, the current Deputy Assistant Attorney General for Civil Rights. Mr. Adams testified that Ms. Fernandes told Voting Section management that no cases were going to be brought by the Voting Section against any black or other minority defendants.

22. While I was not at the Division when the *New Black Panther Party* case arose, I can confirm from my own experience as a career lawyer that there was a dominant attitude within the Division and the Voting Section of hostility towards the race-neutral enforcement of voting rights law by many of the career lawyers and other staff.
23. When I was at the Division, I discovered that while different lawsuits had been filed to enforce various sections of the National Voter Registration Act (“NVRA”) during the Clinton administration when Ms. Fernandez was a political appointee in the front office, no case had *ever* been filed to enforce Section 8 of the NVRA. I further discovered that the Voting Section had an unwritten but understood policy that no resources would be devoted to enforcing this provision. Section 8 requires state and local election officials to implement “a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voter by reason of...the death of the registrant; or...a change in the residence of the registrant.” 42 U.S.C. 1973gg-6(a)(4).
24. Instead of continuing this intentionally unlawful policy of non-enforcement of federal voting rights law, once Mr. Rich finally retired from the Division, Voting Section employees were directed to investigate whether any states were violating Section 8 by failing to regularly maintain their voter registration lists. I was told by some lawyers working on this project that other lawyers within the Voting Section had told them that Section 8 should not be enforced and that no resources should be devoted to such cases. These lawyers wanted the Voting Section to continue its prior policy of ignoring this provision of the NVRA and turning a blind eye to those states (such as Indiana and Missouri) that were in blatant violation of the statute’s requirements.
25. Notwithstanding this hostility to even-handed enforcement of the voting rights laws, a lawsuit was filed by the Division in 2006 against Indiana for its failure to comply with Section 8. It was settled by the Secretary of State (Todd Rokita – R) after he agreed to implement a voter registration list maintenance program that complied with Section 8. Another lawsuit was filed by the Division against Missouri in 2005 for its failure to comply with Section 8; however, this lawsuit was voluntarily dismissed – without explanation – by the Division in 2009 after the Obama administration took control of the Justice Department. The dismissal occurred shortly after the defendant in the lawsuit, the Secretary of State (Robin Carnahan – D), announced that she would be running for the U.S. Senate seat as a Democratic candidate.
26. The testimony of Mr. Adams that Julie Fernandes told employees of the Voting Section that the Obama administration had “no interest in enforcing this provision of the law [because] it has nothing to do with increasing turnout” is fully in accord with the general attitude I found among many of the career staff within the Voting Section of the Division.

27. While the Clinton administration filed eight lawsuits to enforce the NVRA, with the exception of Section 8, the Bush administration filed or settled twelve lawsuits to enforce all of the requirements of the NVRA, including Section 8.

Signed as true and correct under pain and penalty of perjury this 15th day of July, 2010


Hans A. von Spakovsky
1000 Pruitt Court
Vienna, Virginia 22180

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

THE UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 NEW BLACK PANTHER PARTY)
 FOR SELF-DEFENSE, an)
 unincorporated association, MALIK ZULU)
 SHABAZZ, MINISTER KING SAMIR)
 SHABAZZ aka MAURICE HEATH, and)
 JERRY JACKSON,)
)
 Defendants.)
)
 _____)

CIVIL ACTION NO.:

COMPLAINT

The United States of America, Plaintiff, alleges:

1. The Attorney General files this action seeking injunctive and declaratory relief pursuant to Section 11(b) of the Voting Rights Act of 1965, as amended, 42 U.S.C. §§ 1973, 1973i(b) (2000).
2. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1345 and 42 U.S.C. § 1973j(f).
3. The Attorney General of the United States has standing to bring this action on behalf of the United States pursuant to 42 U.S.C. § 1973(j)(d).
4. Defendant New Black Panther Party for Self-Defense is an unincorporated association with operations and members throughout the United States, including in Philadelphia, Pennsylvania.

4. Defendant Malik Zulu Shabazz is an individual residing in Washington, D.C. He is the self-styled "Attorney at War" of the Defendant New Black Panther Party for Self-Defense, and exercises organizational control as head, or chairman, of the Defendant New Black Panther Party for Self-Defense.

5. Defendant Minister King Samir Shabazz a.k.a. Maurice Heath is a resident of Philadelphia, Pennsylvania. He is leader of the Philadelphia chapter of the Defendant New Black Panther Party for Self-Defense.

6. Defendant Jerry Jackson is a resident of Philadelphia, Pennsylvania. He is a member of the Philadelphia chapter of the Defendant New Black Panther Party for Self-Defense.

7. Defendants New Black Panther Party for Self-Defense, Malik Zulu Shabazz, Samir Shabazz, and Jerry Jackson have engaged in coercion, threats, and intimidation, and attempted coercion, threats, and intimidation of voters, and those aiding voters, in violation of Section 11(b) of the Voting Rights Act of 1965, 42 U.S.C. § 1973i(b).

8. On November 4, 2008, during the federal general election, the Defendants Samir Shabazz and Jerry Jackson deployed at the entrance of a polling location at 1221 Fairmount Street in the City of Philadelphia. The Defendants wore military style uniforms associated with the Defendant New Black Panther Party for Self-Defense. These uniforms included black berets, combat boots, bloused battle dress pants, rank insignia, Defendant New Black Panther Party for Self-Defense insignia, and black jackets.

9. During his deployment at the polls on November 4, 2008, at the entrance to the polling location at 1221 Fairmount Street, and in the presence of voters, Defendant Samir Shabazz brandished a deadly weapon. The weapon deployed was a nightstick, or baton. The

baton included a contoured grip and wrist lanyard. Throughout the course of this deployment at the polling location, and while the polls were open for voting, Defendant Samir Shabazz pointed the weapon at individuals, menacingly tapped it his other hand, or menacingly tapped it elsewhere. This activity occurred approximately eight to fifteen feet from the entrance to the polling location. Defendant Samir Shabazz was accompanied by Defendant Jerry Jackson during this activity, and the two men stood side by side, in apparent formation, throughout most of this deployment.

10. Defendants Samir Shabazz and Jackson made statements containing racial threats and racial insults at both black and white individuals at 1221 Fairmount Street on November 4, 2008, while the polls were open for voting.

11. At the polling place at 1221 Fairmount Street on November 4, 2008, Defendants Samir Shabazz and Jackson made menacing and intimidating gestures, statements and movements directed at individuals who were present to aid voters.

12. Defendants New Black Panther Party for Self-Defense and Malik Zulu Shabazz managed, directed, and endorsed the behavior, actions and statements of Defendants Samir Shabazz and Jackson at 1221 Fairmount Street on November 4, 2008, alleged in this Complaint. Prior to the election, Defendant New Black Panther Party for Self-Defense made statements and posted notice that over 300 members of the New Black Panther Party for Self-Defense would be deployed at polling locations during voting on November 4, 2008, throughout the United States. After the election, Defendant Malik Zulu Shabazz made statements adopting and endorsing the deployment, behavior, and statements of Defendants Samir Shabazz and Jackson at 1221 Fairmount Street in Philadelphia, Pennsylvania.

13. Defendant New Black Panther Party for Self-Defense and Defendant Samir Shabazz avowedly endorse and support racially-motivated violence. Defendant Samir Shabazz has made statements attributed to him in various newspapers supporting violence against non-black individuals and violence directed toward non-blacks and Jews. Defendant New Black Panther Party for Self-Defense is a black-supremacist organization which uses military-style uniforms, has auxiliary groups such as the "Panther Youth," and is explicitly hostile toward non-black and Jewish individuals in both rhetoric and practice. Defendant New Black Panther Party for Self-Defense has an active presence in Philadelphia, Pennsylvania, in part through the efforts of Defendant Samir Shabazz.

**FIRST CAUSE OF ACTION:
INTIMIDATION OF VOTERS**

14. Plaintiff hereby realleges and incorporates by reference ¶¶ 1 - 13 above.

15. Section 11(b) of the Voting Rights Act provides that: "No person, . . . shall intimidate, threaten, or coerce . . . any person for voting or attempting to vote." § 1973i(b).

16. Defendants have violated Section 11(b) by the deployment of armed and uniformed personnel at the entrance to the polling location at 1221 Fairmount Street in Philadelphia, Pennsylvania, on November 4, 2008. The loud and open use of racial slurs and insults at this polling location, directed at both black and white individuals, enhanced the intimidating and threatening presence at the polling location. The behavior and statements of the Defendants intimidated and threatened voters and potential voters, in violation of Section 11(b) of the Voting Rights Act.

17. Unless enjoined by this Court, Defendants and those acting in concert with them, will continue to violate Section 11(b) of the Voting Rights Act by continuing to direct

intimidation, threats, and coercion at voters and potential voters, by again deploying uniformed and armed members at the entrance to polling locations in future elections, both in Philadelphia, and throughout the United States.

18. “Whenever any person has engaged” in a violation of Section 11(b) by intimidating or threatening voters, the Attorney General may seek “an action for preventive relief.” § 1973j(d).

**SECOND CAUSE OF ACTION:
ATTEMPTED INTIMIDATION OF VOTERS**

19. Plaintiff hereby realleges and incorporates by reference ¶¶ 1 - 18 above.

20. Section 11(b) of the Voting Rights Act provides that: “No person . . . shall . . . attempt to intimidate, threaten, or coerce” any voter. § 1973i(b). Attempts to intimidate, threaten or coerce voters, violate Section 11(b), even if such attempts are unsuccessful.

21. Defendants have violated Section 11(b) by attempting to intimidate, threaten, or coerce voters by the deployment of armed and uniformed personnel at the entrance to the polling location at 1221 Fairmount Street in Philadelphia, Pennsylvania, on November 4, 2008. The deployment, and the accompanying behavior, was an attempt to intimidate, threaten, and coerce voters. The brandishing of a weapon at the very entrance of a polling location on November 4, 2008, demonstrates that the Defendants’ reliance on the potential use of force was an attempt to have an effect of certain voters. The behavior and statements of the Defendants intimidated and threatened voters and potential voters, in violation of Section 11(b) of the Voting Rights Act. The deployment of armed and uniformed individuals at the entrance to a polling location represents an attempt to have an intimidating and threatening effect on certain voters.

22. Unless enjoined by this Court, Defendants and those acting in concert with them,

will continue to violate Section 11(b) of the Voting Rights Act by continuing to attempt to intimidate, threaten and coerce voters and potential voters, by again deploying uniformed and armed members at the entrance to polling locations in future elections, both in Philadelphia, and throughout the United States.

23. “Whenever any person has engaged” in a violation of Section 11(b) by attempting to intimidate or threaten voters, the Attorney General may seek “an action for preventive relief.” § 1973j(d).

**THIRD CAUSE OF ACTION:
INTIMIDATION OF INDIVIDUALS AIDING VOTERS**

24. Plaintiff hereby realleges and incorporates by reference ¶¶ 1 - 23 above.

25. Section 11(b) also protects those who aid voters or urge them to vote. Section 11(b) of the Voting Rights Act provides that: “No person . . . shall . . . intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote.” § 1973i(b).

26. The Defendants intimidated and threatened those urging or aiding persons to vote at 1221 Fairmount Street on November 4, 2008 and thereby violated § 1973i(b). These efforts included, but were not limited to, doing the following to protected individuals: brandishing a deadly weapon toward them, directing racial slurs and insults at them, and attempting to prevent their authorized ingress and egress at the polling location through blockage of the entrance and the threat of force.

27. Unless enjoined by this Court, Defendants and those acting in concert with them, will continue to violate Section 11(b) of the Voting Rights Act by continuing to intimidate, threaten, and coerce individuals urging and aiding voters, by again deploying uniformed and armed members at the entrance to polling locations in future elections, both in Philadelphia, and

throughout the United States.

28. “Whenever any person has engaged” in a violation of Section 11(b) by intimidating or threatening those urging and aiding voters, the Attorney General may seek “an action for preventive relief.” § 1973j(d).

**FOURTH CAUSE OF ACTION:
ATTEMPTED INTIMIDATION OF INDIVIDUALS AIDING VOTERS**

29. Plaintiff hereby realleges and incorporates by reference ¶¶ 1 - 28 above.

30. Section 11(b) protects those who aid voters or urge them to vote. Section 11(b) of the Voting Rights Act provides that: “No person . . . shall . . . attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote.” § 1973i(b).

31. The Defendants attempted to intimidate and threaten those urging or aiding persons to vote at 1221 Fairmount Street on November 4, 2008 and violated § 1973i(b). These efforts included, but were not limited to, doing the following to protected individuals: brandishing a deadly weapon toward them, directing racial slurs and insults at them, and attempting to prevent their authorized ingress and egress at the polling location through blockage of the entrance and the threat of force. These statements and actions evidence an attempt to intimidate or threaten those who were present at the polling place to aid voters.

32. Unless enjoined by this Court, Defendants and those acting in concert with them, will continue to violate Section 11(b) of the Voting Rights Act by again attempting to intimidate, threaten, and coerce individuals urging and aiding voters, and by again deploying uniformed and armed members at the entrance to polling locations in future elections, both in Philadelphia, and throughout the United States.

33. "Whenever person has engaged" in a violation of Section 11(b) by attempting to intimidate or threaten those urging and aiding voters, the Attorney General may seek "an action for preventive relief." § 1973j(d).


WHEREFORE, the Plaintiff, United States of America, prays for an order that:

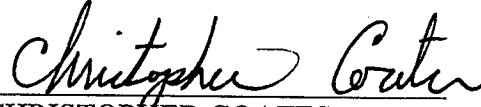
- (a) Declares that Defendants have violated Section 11(b) of the Voting Rights Act, 42 U.S.C. § 1973i(b), by coercing, threatening, and intimidating voters;
- (b) Declares that Defendants have violated Section 11(b) of the Voting Rights Act, 42 U.S.C. § 1973i(b), by attempting to coerce, threaten, and intimidate voters;
- (c) Declares that Defendants have violated Section 11(b) of the Voting Rights Act, 42 U.S.C. § 1973i(b), by coercing, threatening, and intimidating those urging or aiding voters to vote;
- (d) Declares that Defendants have violated Section 11(b) of the Voting Rights Act, 42 U.S.C. § 1973i(b), by attempting to coerce, threaten, and intimidate those urging or aiding voters to vote;
- (e) Permanently enjoins Defendants, their agents and successors in office, and all persons acting in concert with them, from deploying athwart the entrance to polling locations either with weapons or in the uniform of the Defendant New Black Panther Party, or both, and from otherwise engaging in coercing, threatening, or intimidating, behavior at polling locations during elections.
- (f) Plaintiff further requests that this Court:
 - (1) Award Plaintiff the costs and disbursements associated with the filing and maintenance of this action;

- (2) Award such other equitable and further relief as the Court deems just and proper.

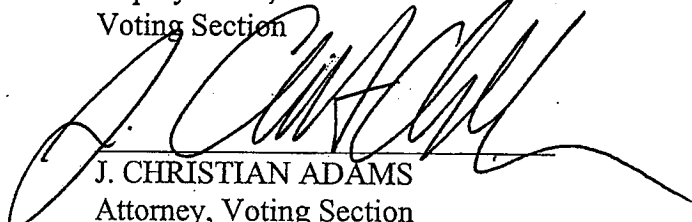
Respectfully Submitted,

MICHAEL B. MUKASEY
Attorney General of the United States


GRACE CHUNG BECKER
Acting Assistant Attorney General
Civil Rights Division


CHRISTOPHER COATES
Chief, Voting Section

ROBERT POPPER
Deputy Chief,
Voting Section


J. CHRISTIAN ADAMS
Attorney, Voting Section
South Carolina Bar #: 7146
Department of Justice
Civil Rights Division
Voting Section
950 Pennsylvania Ave. NW
Room 7124 - NWB
Washington, D.C. 20530
J.christian.adams@usdoj.gov
(202) 616-4227

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE UNITED STATES OF AMERICA,)
)
Plaintiff,)

v.)

NEW BLACK PANTHER PARTY)
FOR SELF-DEFENSE, an)
unincorporated association, MALIK ZULU)
SHABAZZ, MINISTER KING SAMIR)
SHABAZZ aka MAURICE HEATH, and)
JERRY JACKSON,)
)
Defendants.)

Civil Action No. 2:09-cv-0065
REQUEST TO ENTER DEFAULT OF
MINISTER KING SAMIR SHABAZZ
(Fed. R. Civ. P. 55(a))

REQUEST FOR ENTRY OF DEFAULT

TO: Michael E. Kunz, Clerk of Court
United States District Court for the Eastern District of Pennsylvania

The United States requests that the Clerk of this Court enter the default of Defendant Minister King Samir Shabazz for failure to plead or otherwise defend in a timely manner, as provided by Federal Rule of Civil Procedure 55(a).

This request is based on the attached Declaration of J. Christian Adams which shows:

1. Defendant Minister King Samir Shabazz was served with the Summons and Complaint on February 10, 2009.
2. The Affidavit of Service filed with this Court on February 12, 2009, establishes that service was proper under Federal Rule of Civil Procedure 4(e)(2)(A).
3. Defendant Minister King Samir Shabazz has failed to plead or otherwise respond to the Complaint.

4. The applicable time limit for responding has expired.
5. Defendant Minster King Samir Shabazz is not an infant, nor an incompetent person, nor in the military service of the United States.

Dated: April 1, 2009.

Respectfully submitted,

s/ Spencer R. Fisher

SPENCER R. FISHER

Trial Attorney

United States Department of Justice

Civil Rights Division, Voting Section

950 Pennsylvania Avenue, N.W.

NWB - Room 7146

Washington, D.C. 20530

202-305-0015 phone

202-307-3961 fax

spencer.fisher@usdoj.gov

CERTIFICATE OF SERVICE

I certify that, prior to 5:00 p.m. on April 1, 2009, a true and correct copy of the foregoing Request to Enter Default of Minister King Samir Shabazz and attached Declaration of J. Christian Adams, was placed in the United States mail, in a properly-addressed envelope, with first-class postage duly paid and affixed to the envelope, and with the envelope addressed to the following non-CM/ECF participants:

1. Malik Zulu Shabazz
Defendant
Chairman, New Black Panther Party for Self-Defense, an unincorporated association
4043 Clay Place
Washington, DC 20019
2. Jerry Jackson
Defendant
813 N. Parks St.
Philadelphia, PA 19123
3. Minister King Samir Shabazz a/k/a Maurice Heath
Defendant
1522 S. 20th Street
Philadelphia, PA 19146

This Certificate was executed on April 1, 2009 at Washington, DC.

s/ Spencer R. Fisher
SPENCER R. FISHER
Trial Attorney
United States Department of Justice
Civil Rights Division, Voting Section
950 Pennsylvania Avenue, N.W.
NWB - Room 7146
Washington, D.C. 20530
202-305-0015 phone
202-307-3961 fax
spencer.fisher@usdoj.gov

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE UNITED STATES OF AMERICA,)
)
Plaintiff,)

v.)

NEW BLACK PANTHER PARTY)
FOR SELF-DEFENSE, an)
unincorporated association, MALIK ZULU)
SHABAZZ, MINISTER KING SAMIR)
SHABAZZ aka MAURICE HEATH, and)
JERRY JACKSON,)
)
Defendants.)

Civil Action No. 2:09-cv-0065
DECLARATION IN SUPPORT OF
REQUEST TO ENTER DEFAULT OF
MINISTER KING SAMIR SHABAZZ
(Fed. R. Civ. P. 55(a))

DECLARATION OF J. CHRISTIAN ADAMS

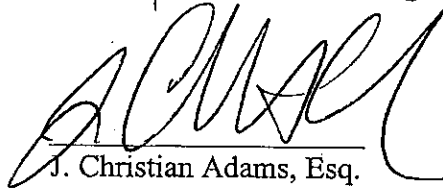
I, J. Christian Adams, declare as follows:

1. I am an attorney for the plaintiff in the above action and have been personally responsible for the conduct of this civil action since filing the Complaint.
2. The Summons and Complaint in this action were delivered to Dudley G. Brown. Dudley G. Brown properly served the Summons and Complaint on Minister King Samir Shabazz on February 10, 2009, by personal service under the provisions of Federal Rule of Civil Procedure 4(e)(2)(A) and certified that fact to this Court in an Affidavit of Service. The Affidavit of Service was duly entered by this Court on February 12, 2009.
3. Defendant Minister King Samir Shabazz has not answered or otherwise appeared in this action. The time limit for responding to the Complaint, as extended by this Court to March 30, 2009, has now expired.

4. On information and belief, Defendant Minister King Samir Shabazz is not an infant, nor is he an incompetent person as he appears capable of managing his own affairs, nor is he in the military service of the United States.

I declare under penalty of perjury that the foregoing is true and correct.

Signed by me on this 30 day of March, 2009, at Washington, DC


J. Christian Adams, Esq.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 NEW BLACK PANTHER PARTY)
 FOR SELF-DEFENSE, an)
 unincorporated association, MALIK ZULU)
 SHABAZZ, MINISTER KING SAMIR)
 SHABAZZ aka MAURICE HEATH, and)
 JERRY JACKSON,)
)
 Defendants.)

Civil Action No. 2:09-cv-0065
REQUEST TO ENTER DEFAULT OF
MALIK ZULU SHABAZZ
(Fed. R. Civ. P. 55(a))

REQUEST FOR ENTRY OF DEFAULT

TO: Michael E. Kunz, Clerk of Court
United States District Court for the Eastern District of Pennsylvania

The United States requests that the Clerk of this Court enter the default of Defendant Malik Zulu Shabazz for failure to plead or otherwise defend in a timely manner, as provided by Federal Rule of Civil Procedure 55(a).

This request is based on the attached Declaration of J. Christian Adams which shows:

1. Defendant Malik Zulu Shabazz was served with the Summons and Complaint on January 28, 2009.
2. The Affidavit of Service filed with this Court on January 29, 2009, establishes that service was proper under Federal Rule of Civil Procedure 4(e)(2)(A).
3. Defendant Malik Zulu Shabazz has failed to plead or otherwise respond to the Complaint.

4. The applicable time limit for responding has expired.
5. Defendant Malik Zulu Shabazz is not an infant, nor an incompetent person, nor in the military service of the United States.

Dated: April 1, 2009.

Respectfully submitted,

s/ Spencer R. Fisher

SPENCER R. FISHER

Trial Attorney

United States Department of Justice

Civil Rights Division, Voting Section

950 Pennsylvania Avenue, N.W.

NWB - Room 7146

Washington, D.C. 20530

202-305-0015 phone

202-307-3961 fax

spencer.fisher@usdoj.gov

CERTIFICATE OF SERVICE

I certify that, prior to 5:00 p.m. on April 1, 2009, a true and correct copy of the foregoing Request to Enter Default of Malik Zulu Shabazz and attached Declaration of J. Christian Adams, was placed in the United States mail, in a properly-addressed envelope, with first-class postage duly paid and affixed to the envelope, and with the envelope addressed to the following non-CM/ECF participants:

1. Malik Zulu Shabazz
Defendant
Chairman, New Black Panther Party for Self-Defense, an unincorporated association
4043 Clay Place
Washington, DC 20019
2. Jerry Jackson
Defendant
813 N. Parks St.
Philadelphia, PA 19123
3. Minister King Samir Shabazz a/k/a Maurice Heath
Defendant
1522 S. 20th Street
Philadelphia, PA 19146

This Certificate was executed on April 1, 2009 at Washington, DC.

s/ Spencer R. Fisher
SPENCER R. FISHER
Trial Attorney
United States Department of Justice
Civil Rights Division, Voting Section
950 Pennsylvania Avenue, N.W.
NWB - Room 7146
Washington, D.C. 20530
202-305-0015 phone
202-307-3961 fax
spencer.fisher@usdoj.gov

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE UNITED STATES OF AMERICA,)
)
Plaintiff,)

v.)

NEW BLACK PANTHER PARTY)
FOR SELF-DEFENSE, an)
unincorporated association, MALIK ZULU)
SHABAZZ, MINISTER KING SAMIR)
SHABAZZ aka MAURICE HEATH, and)
JERRY JACKSON,)
Defendants.)

Civil Action No. 2:09-cv-0065
DECLARATION IN SUPPORT OF
REQUEST TO ENTER DEFAULT OF
MALIK ZULU SHABAZZ
(Fed. R. Civ. P. 55(a))

DECLARATION OF J. CHRISTIAN ADAMS

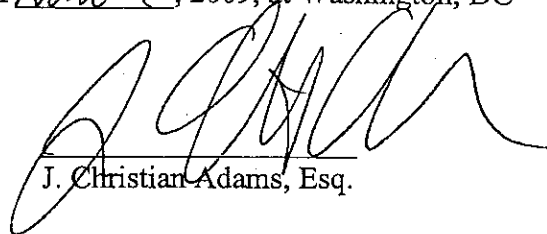
I, J. Christian Adams, declare as follows:

1. I am an attorney for the plaintiff in the above action and have been personally responsible for the conduct of this civil action since filing the Complaint.
2. The Summons and Complaint in this action were delivered to B. Tony Snesko. B. Tony Snesko properly served the Summons and Complaint on Malik Zulu Shabazz on January 28, 2009, by personal service under the provisions of Federal Rule of Civil Procedure 4(e)(2)(A) and certified that fact to this Court in an Affidavit of Service. The Affidavit of Service was duly entered by this Court on January 29, 2009.
3. Defendant Malik Zulu Shabazz has not answered or otherwise appeared in this action. The time limit for responding to the Complaint, as extended by this Court to March 30, 2009, has now expired.

4. On information and belief, Defendant Malik Zulu Shabazz is not an infant, nor is he an incompetent person as he appears capable of managing his own affairs, nor is he in the military service of the United States.

I declare under penalty of perjury that the foregoing is true and correct.

Signed by me on this 30 day of March, 2009, at Washington, DC



J. Christian Adams, Esq.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
)
NEW BLACK PANTHER PARTY)
FOR SELF-DEFENSE, an)
unincorporated association, MALIK ZULU)
SHABAZZ, MINISTER KING SAMIR)
SHABAZZ aka MAURICE HEATH, and)
JERRY JACKSON,)
)
Defendants.)

Civil Action No. 2:09-cv-0065
REQUEST TO ENTER DEFAULT OF
NEW BLACK PANTHER PARTY FOR
SELF-DEFENSE
(Fed. R. Civ. P. 55(a))

REQUEST FOR ENTRY OF DEFAULT

TO: Michael E. Kunz, Clerk of Court
United States District Court for the Eastern District of Pennsylvania

The United States requests that the Clerk of this Court enter the default of Defendant New Black Panther Party for Self-Defense for failure to plead or otherwise defend in a timely manner, as provided by Federal Rule of Civil Procedure 55(a).

This request is based on the attached Declaration of J. Christian Adams which shows:

1. Defendant New Black Panther Party for Self-Defense was served with the Summons and Complaint on January 28, 2009.
2. The Affidavit of Service filed with this Court on January 29, 2009, establishes that service was proper under Federal Rule of Civil Procedure 4(h)(1)(B).
3. Defendant New Black Panther Party for Self-Defense has failed to plead or

otherwise respond to the Complaint.

4. The applicable time limit for responding has expired.
5. Defendant New Black Panther Party for Self-Defense could not be an infant, nor an incompetent person, nor in the military service of the United States.

Dated: April 1, 2009.

Respectfully submitted,

s/ Spencer R. Fisher
SPENCER R. FISHER
Trial Attorney
United States Department of Justice
Civil Rights Division, Voting Section
950 Pennsylvania Avenue, N.W.
NWB - Room 7146
Washington, D.C. 20530
202-305-0015 phone
202-307-3961 fax
spencer.fisher@usdoj.gov

CERTIFICATE OF SERVICE

I certify that, prior to 5:00 p.m. on April 1, 2009, a true and correct copy of the foregoing Request to Enter Default of New Black Panther Party for Self-Defense and attached Declaration of J. Christian Adams, was placed in the United States mail, in a properly-addressed envelope, with first-class postage duly paid and affixed to the envelope, and with the envelope addressed to the following non-CM/ECF participants:

1. Malik Zulu Shabazz
Defendant
Chairman, New Black Panther Party for Self-Defense, an unincorporated association
4043 Clay Place
Washington, DC 20019
2. Jerry Jackson
Defendant
813 N. Parks St.
Philadelphia, PA 19123
3. Minister King Samir Shabazz a/k/a Maurice Heath
Defendant
1522 S. 20th Street
Philadelphia, PA 19146

This Certificate was executed on April 1, 2009 at Washington, DC.

s/ Spencer R. Fisher
SPENCER R. FISHER
Trial Attorney
United States Department of Justice
Civil Rights Division, Voting Section
950 Pennsylvania Avenue, N.W.
NWB - Room 7146
Washington, D.C. 20530
202-305-0015 phone
202-307-3961 fax
spencer.fisher@usdoj.gov

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE UNITED STATES OF AMERICA,)
)
Plaintiff,)

v.)

NEW BLACK PANTHER PARTY)
FOR SELF-DEFENSE, an)
unincorporated association, MALIK ZULU)
SHABAZZ, MINISTER KING SAMIR)
SHABAZZ aka MAURICE HEATH, and)
JERRY JACKSON,)
)
Defendants.)

Civil Action No. 2:09-cv-0065
DECLARATION IN SUPPORT OF
REQUEST TO ENTER DEFAULT OF
NEW BLACK PANTHER PARTY FOR
SELF-DEFENSE
(Fed. R. Civ. P. 55(a))

DECLARATION OF J. CHRISTIAN ADAMS

I, J. Christian Adams, declare as follows:

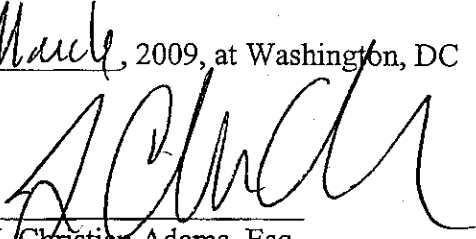
1. I am an attorney for the plaintiff in the above action and have been personally responsible for the conduct of this Civil Action since filing the Complaint.
2. The Summons and Complaint in this action were delivered to B. Tony Snesko. B. Tony Snesko properly served the Summons and Complaint on the New Black Panther Party for Self-Defense on January 28, 2009, by personal service under the provisions of Federal Rule of Civil Procedure 4(h)(1)(B) and certified that fact to this Court in an Affidavit of Service. The Affidavit of Service was duly entered by this Court on January 29, 2009.
3. Defendant New Black Panther Party for Self-Defense has not answered or otherwise appeared in this action. The time limit for responding to the Complaint, as extended

by this Court to March 30, 2009, has now expired.

4. Defendant New Black Panther Party for Self-Defense could not be an infant, nor an incompetent person, nor in the military service of the United States because it is an unincorporated association.

I declare under penalty of perjury that the foregoing is true and correct.

Signed by me on this 30 day of March, 2009, at Washington, DC



J. Christian Adams, Esq.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 2:09-cv-0065
)	REQUEST TO ENTER DEFAULT OF
)	JERRY JACKSON
NEW BLACK PANTHER PARTY)	(Fed. R. Civ. P. 55(a))
FOR SELF-DEFENSE, an)	
unincorporated association, MALIK ZULU)	
SHABAZZ, MINISTER KING SAMIR)	
SHABAZZ aka MAURICE HEATH, and)	
JERRY JACKSON,)	
)	
Defendants.)	

REQUEST FOR ENTRY OF DEFAULT

TO: Michael E. Kunz, Clerk of Court
United States District Court for the Eastern District of Pennsylvania

The United States requests that the Clerk of this Court enter the default of Defendant Jerry Jackson for failure to plead or otherwise defend in a timely manner, as provided by Federal Rule of Civil Procedure 55(a).

This request is based on the attached Declaration of J. Christian Adams which shows:

1. Defendant Jerry Jackson was served with the Summons and Complaint on January 24, 2009.
2. The Affidavit of Service entered by this Court on January 26, 2009, establishes that service was proper under Federal Rule of Civil Procedure 4(e)(2)(A).
3. Defendant Jerry Jackson has failed to plead or otherwise respond to the Complaint.

4. The applicable time limit for responding has expired.
5. Defendant Jerry Jackson is not an infant, nor an incompetent person, nor in the military service of the United States.

Dated: April 1, 2009.

Respectfully submitted,

s/ Spencer R. Fisher

SPENCER R. FISHER

Trial Attorney

United States Department of Justice

Civil Rights Division, Voting Section

950 Pennsylvania Avenue, N.W.

NWB - Room 7146

Washington, D.C. 20530

202-305-0015 phone

202-307-3961 fax

spencer.fisher@usdoj.gov

CERTIFICATE OF SERVICE

I certify that, prior to 5:00 p.m. on April 1, 2009, a true and correct copy of the foregoing Request to Enter Default of Jerry Jackson and attached Declaration of J. Christian Adams, was placed in the United States mail, in a properly-addressed envelope, with first-class postage duly paid and affixed to the envelope, and with the envelope addressed to the following non-CM/ECF participants:

1. Malik Zulu Shabazz
Defendant
Chairman, New Black Panther Party for Self-Defense, an unincorporated association
4043 Clay Place
Washington, DC 20019
2. Jerry Jackson
Defendant
813 N. Parks St.
Philadelphia, PA 19123
3. Minister King Samir Shabazz a/k/a Maurice Heath
Defendant
1522 S. 20th Street
Philadelphia, PA 19146

This Certificate was executed on April 1, 2009 at Washington, DC.

s/ Spencer R. Fisher
SPENCER R. FISHER
Trial Attorney
United States Department of Justice
Civil Rights Division, Voting Section
950 Pennsylvania Avenue, N.W.
NWB - Room 7146
Washington, D.C. 20530
202-305-0015 phone
202-307-3961 fax
spencer.fisher@usdoj.gov

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 NEW BLACK PANTHER PARTY)
 FOR SELF-DEFENSE, an)
 unincorporated association, MALIK ZULU)
 SHABAZZ, MINISTER KING SAMIR)
 SHABAZZ aka MAURICE HEATH, and)
 JERRY JACKSON,)
)
 Defendants.)

Civil Action No. 2:09-cv-0065
DECLARATION IN SUPPORT OF
REQUEST TO ENTER DEFAULT OF
JERRY JACKSON
(Fed. R. Civ. P. 55(a))

DECLARATION OF J. CHRISTIAN ADAMS

I, J. Christian Adams, declare as follows:

1. I am an attorney for the plaintiff in the above action and have been personally responsible for the conduct of this civil action since filing the Complaint.

2. The Summons and Complaint in this action were delivered to Dudley G. Brown. Dudley G. Brown properly served the Summons and Complaint on Jerry Jackson on January 24, 2009, by personal service under the provisions of Federal Rule of Civil Procedure 4(e)(2)(A) and certified that fact to this Court in an Affidavit of Service. The Affidavit of Service was duly entered by this Court on January 26, 2009.

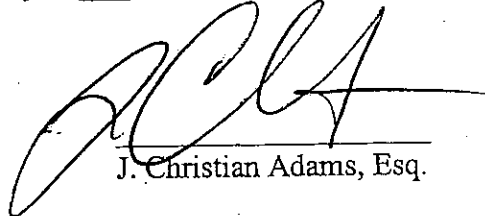
3. Defendant Jerry Jackson has not answered or otherwise appeared in this action. The time limit for responding to the Complaint, as extended by this Court to March 30, 2009, has now expired.

4. Defendant Jerry Jackson indicated to counsel for the United States that he has retained counsel. On March 13, 2009, I contacted this individual, Michael Coard, Esq. He informed me that he intended to enter an appearance on behalf of Jerry Jackson. He indicated that he agreed to represent Defendant Jerry Jackson, but that he needed "to get some homicide cases out of the way." I informed Attorney Coard that Jerry Jackson had not responded to the Complaint, and was therefore in default. Further, Attorney Coard was informed that the United States was considering seeking an entry of default against Jerry Jackson if a response to the Complaint was not forthcoming. Attorney Coard has not provided any notices, pleadings, communication, or other instruments to the United States or to the Court since that telephone conversation on March 13, 2009. The United States did not have any conversations with Attorney Coard prior to March 13, 2009, and has not had any further conversations with Attorney Coard since March 13, 2009.

5. On information and belief, Defendant Jerry Jackson is not an infant, nor is he an incompetent person as he appears capable of managing his own affairs, nor is he in the military service of the United States.

I declare under penalty of perjury that the foregoing is true and correct.

Signed by me on this 30 day of March, 2009, at Washington, DC


J. Christian Adams, Esq.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CIVIL ACTION
 :
 :
 :
 :
THE NEW BLACK PANTHER PARTY :
FOR SELF-DEFENSE, et al. :
 : NO. 09-65

ORDER

AND NOW, this 17th day of April, 2009, upon consideration of the Clerk's entry of default in this case against all of the defendants, it is hereby ORDERED that the Government shall FILE its motion for default judgment by May 1, 2009.

BY THE COURT:

/s/ Stewart Dalzell, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 NEW BLACK PANTHER PARTY)
 FOR SELF-DEFENSE, an)
 unincorporated association, MALIK ZULU)
 SHABAZZ, MINISTER KING SAMIR)
 SHABAZZ aka MAURICE HEATH, and)
 JERRY JACKSON,)
)
 Defendants.)
)

Civil Action No. 2:09-cv-0065 SD

**MOTION FOR EXTENSION OF TIME TO COMPLY WITH THIS COURT'S ORDER
OF APRIL 20, 2009**

Plaintiff, United States of America, moves this Court for a two-week extension of time to comply with the Court's order of April 20, 2009.

1. The default of Defendants, New Black Panther Party for Self-Defense, an unincorporated association, Malik Zulu Shabazz, Minister King Samir Shabazz, and Jerry Jackson was entered by the Clerk of the Court on April 2, 2009.

2. This Court entered an Order on April 20, 2009 requiring the United States to file a Motion for Default Judgment by May 1, 2009.

3. On April 28, 2009, the United States provided notice to the Defendants that a motion for default judgment would be filed after at least three days.

4. The United States seeks an extension until May 15, 2009, to file a motion to respond to the Court's order. The United States recognizes that extensions of time are

particularly disfavored by this Court, but believes the interest of justice warrants a short extension.

5. There are two principal reasons the United States seeks this extension. First, the United States seeks to craft an appropriate equitable remedy based on current circumstances and seeks additional time to draft and submit a proposed order that contains appropriate final equitable relief. Because the United States did not anticipate that the Defendants would make no showing whatsoever, careful consideration of appropriate final relief in the interest of justice warrants additional time. Secondly, the United States has not had the benefit of discovery in this matter. The United States' crafting of appropriate final equitable relief does not have the benefit of a developed factual record. Accordingly, the United States is forced to rely on the facts and circumstances it has developed to date, and its responsibility to craft appropriate relief requires a careful and searching assessment.

6. Therefore, the United States seeks an extension until May 15, 2009, to respond to the Court's order of April 20, 2009.

Respectfully submitted,

LORETTA KING
Acting Assistant Attorney General

CHRISTOPHER COATES
Chief, Voting Section

ROBERT D. POPPER
Deputy Chief

s/ J. Christian Adams
J. CHRISTIAN ADAMS
SPENCER R. FISHER

Attorneys
United States Department of Justice
Civil Rights Division, Voting Section
950 Pennsylvania Avenue, N.W.
NWB - Room 7146
Washington, D.C. 20006
202-305-0015 phone
202-307-3961 fax
J.christian.adams@usdoj.gov

CERTIFICATE OF SERVICE

I certify that, prior to 5:00 p.m. on May 1, 2009 a true and correct copy of the foregoing Motion for Default Judgment was placed in the United States mail, in a properly-addressed envelope, with first-class postage duly paid and affixed to the envelope, and with the envelope addressed to the following non-CM/ECF participants:

1. Malik Zulu Shabazz
Defendant
Chairman, New Black Panther Party for Self-Defense, an unincorporated association
4043 Clay Place, NE
Washington, DC 20019
2. Jerry Jackson
Defendant
813 N. Parks St.
Philadelphia, PA 19123
3. Minister King Samir Shabazz a/k/a Maurice Heath
Defendant
1522 S. 20th Street
Philadelphia, PA 19146
4. Michael Coard, Esq.
1 Liberty Place
1650 Market Street
Suite 3652
Philadelphia, PA 19107

This Certificate was executed on May 1, 2009 at Washington, DC.

s/ J. Christian Adams
J. Christian Adams
Attorney
United States Department of Justice
Civil Rights Division, Voting Section
950 Pennsylvania Avenue, N.W.
NWB - Room 7146
Washington, D.C. 20006
202-616-4227 phone
202-307-3961 fax
J.christian.adams@usdoj.gov

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CIVIL ACTION
: :
v. : :
: :
THE NEW BLACK PANTHER PARTY :
FOR SELF-DEFENSE, et al. : NO. 09-65

ORDER

AND NOW, this 4th day of May, 2009, upon
consideration of the Government's motion for extension of time to
file its motion for default judgment (docket entry #15), it is
hereby ORDERED that:

1. The Government's motion is GRANTED; and
2. The Government shall FILE its motion for default
judgment by May 15, 2009.

BY THE COURT:


Stewart Dalzell, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

Civil Action No. 2:09-cv-0065

NEW BLACK PANTHER PARTY)

FOR SELF-DEFENSE, an)

unincorporated association, MALIK ZULU)

SHABAZZ, MINISTER KING SAMIR)

SHABAZZ aka MAURICE HEATH, and)

JERRY JACKSON,)

Defendants.)

RULE 41(a)(1)(A) NOTICE OF DISMISSAL

NOW COMES the Plaintiff, the United States, pursuant to Fed. R. Civ. P. 41(a)(1)(A) and files this Notice of Dismissal of the above action and states as follows:

1. The Defendants New Black Panther Party for Self Defense, Malik Zulu Shabazz, and Jerry Jackson have not filed an answer or motion for summary judgment. These same Defendants have made no appearance and have filed no pleadings with the Court. Nor have they otherwise raised any other defenses to this action. Therefore, the United State has the right under Fed. R. Civ. P. 41(a)(1)(A) to dismiss voluntarily this action against the Defendants: New Black Panther Party for Self Defense, Malik Zulu Shabazz, and Jerry Jackson.
2. The United States dismisses the claims against these Defendants without prejudice.
3. This dismissal does not extend to Defendant Minister King Samir Shabazz.

WHEREFORE, the United States, pursuant to Fed. R. Civ. P. 41(a)(1)(A), files this voluntary dismissal and hereby dismisses the instant action against the Defendants New Black Panther Party for Self Defense, Malik Zulu Shabazz, and Jerry Jackson, without prejudice.

Respectfully submitted,
LORETTA KING
Acting Assistant Attorney General

CHRISTOPHER COATES
Chief, Voting Section

ROBERT D. POPPER
Deputy Chief

s/ Spencer R. Fisher

J. CHRISTIAN ADAMS

SPENCER R. FISHER

Attorneys

United States Department of Justice
Civil Rights Division, Voting Section
950 Pennsylvania Avenue, N.W.

NWB - Room 7146

Washington, D.C. 20006

202-305-0015 phone

202-307-3961 fax

spencer.fisher@usdoj.gov

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
MINISTER KING SAMIR)
SHABAZZ aka MAURICE HEATH,)
)
Defendant.)
_____)

Civil Action No. 2:09-cv-0065 SD

MOTION FOR DEFAULT JUDGMENT

Plaintiff, United States of America, moves this Court for entry of a default judgment pursuant to Federal Rule of Civil Procedure 55(b)(2) against Defendant Minister King Samir Shabazz. The United States requests that the judgment be as further set forth in the attached Proposed Default Judgment Order.

Grounds for Relief

For the following reasons, this Court should enter the judgment requested against Minister King Samir Shabazz and in favor of the United States:

1. The default of Defendant Minister King Samir Shabazz was entered by the Clerk of the Court on April 2, 2009.
2. Defendant Minister King Samir Shabazz has not appeared in this action. Defendant was provided notice of this Motion for Default Judgment in a letter dated April 28, 2009, and sent by United States mail on the same day.
3. The Complaint in this action sets out a valid claim for a violation of Section 11(b)

of the Voting Rights Act, 42 U.S.C. § 1973i(b), by Defendant. In consequence of the Clerk's entry of default, the factual allegations of the Complaint regarding the Defendant are taken as true.

4. The terms of relief sought in the requested judgment are further justified by the the attached Memorandum of Law in Support.

5. Defendant is not a minor, nor an incompetent person, nor in the military service of the United States.

WHEREFORE, the United States respectfully requests that the Court enter the attached Proposed Default Judgment Order.

Respectfully submitted,

LORETTA KING
Acting Assistant Attorney General

CHRISTOPHER COATES
Chief, Voting Section

ROBERT D. POPPER
Deputy Chief

s/ Spencer R. Fisher
J. CHRISTIAN ADAMS
SPENCER R. FISHER
Attorneys
United States Department of Justice
Civil Rights Division, Voting Section
950 Pennsylvania Avenue, N.W.
NWB - Room 7146
Washington, D.C. 20006
202-305-0015 phone
202-307-3961 fax
spencer.fisher@usdoj.gov

CERTIFICATE OF SERVICE

I certify that, on May 15, 2009, a true and correct copy of the foregoing Motion for Default Judgment was placed in the United States mail, in a properly-addressed envelope, with first-class postage duly paid and affixed to the envelope, and with the envelope addressed to the following non-CM/ECF participants:

1. Malik Zulu Shabazz
Defendant
Chairman, New Black Panther Party for Self-Defense, an unincorporated association
4043 Clay Place, NE
Washington, DC 20019
2. Jerry Jackson
Defendant
813 N. Parks St.
Philadelphia, PA 19123
3. Minister King Samir Shabazz a/k/a Maurice Heath
Defendant
1522 S. 20th Street
Philadelphia, PA 19146
4. Michael Coard, Esq.
1 Liberty Place
1650 Market Street
Suite 3652
Philadelphia, PA 19107

This Certificate was executed on May 15, 2009, at Washington, DC.

s/ Spencer R. Fisher
SPENCER R. FISHER
Trial Attorney
United States Department of Justice
Civil Rights Division, Voting Section
950 Pennsylvania Avenue, N.W.
NWB - Room 7146
Washington, D.C. 20006
202-305-0015 phone
202-307-3961 fax
spencer.fisher@usdoj.gov

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 MINISTER KING SAMIR)
 SHABAZZ aka MAURICE HEATH,)
)
 Defendant.)
)
 _____)

Civil Action No. 2:09-cv-0065 SD

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR DEFAULT JUDGMENT**

I. Introduction

Plaintiff, United States of America, filed the Complaint in this action on January 7, 2009, alleging violations of Section 11(b) of the Voting Rights Act of 1965, 42 U.S.C. § 1973i(b) (2000). Section 11(b) prohibits intimidating, threatening, or coercing voters or those who aid voters. Section 11(b) also prohibits an attempt to do any of these.

Pursuant to Fed. R. Civ. P. 4, Defendant Minister King Samir Shabazz ("Shabazz") was personally and properly served with a copy of the Summons and Complaint. Copies of the accompanying Affidavits of Service were also timely filed with this Court. The Clerk of the Court entered a default judgment against Shabazz on April 2, 2009. Shabazz has not appeared. The United States now respectfully requests that this Court enter a default judgment against Shabazz in the form attached, enjoining future violations of Section 11(b) of the Voting Rights Act.

Simultaneously with this motion, the United States is submitting a notice of dismissal

pursuant to Rule 41(a)(1)(A)(i) with respect to Defendants Jerry Jackson, Malik Zulu Shabazz, and New Black Panther Party for Self-Defense.

II. Allegations in the Complaint.

The Complaint, in pertinent part, alleges the following:

5. Defendant Minister King Samir Shabazz a.k.a Maurice Heath is a resident of Philadelphia, Pennsylvania. He is the leader of the Philadelphia chapter of the . . . New Black Panther Party for Self-defense.

* * *

8. On November 4, 2008, during the federal general election, the Defendant[] Samir Shabazz . . . deployed at the entrance of a polling location at 1221 Fairmont Street in the City of Philadelphia. The Defendant[] wore [a] military style uniform[] associated with the . . . New Black Panther Party for Self-Defense. [This] uniform included black beret[], combat boots, bloused dress pants, rank insignia . . . New Black Panther Party for Self-Defense insignia, and black jacket[].

9. During his deployment at the polls on November 4, 2008, at the entrance to the polling location at 1221 Fairmont Street, and in the presence of voters, Defendant Samir Shabazz brandished a deadly weapon. The weapon deployed was a nightstick, or baton. The baton included a contoured grip and wrist lanyard. Throughout the course of the deployment at the polling location, and while the polls were open for voting, Defendant Samir Shabazz pointed the weapon at individuals, menacingly tapped it [in] his oother hadn, or menacingly tapped it elsewhere. This activity occurred approximately eight to fifteen feet from the entrance to the polling location

10. Defendant[] Samir Shabazz . . . made statements containing racial threats and racial insults at both black and white individuals at 1221 Fairmount Street on November 4, 2008, wile the polls were open for voting.

11. At the polling place at 1221 Fairmount Street on November 4, 2008, Defendant[] Samir Shabazz . . . made menacing and intimidating gestures, statement and movements directed at individuals who were present to aid voters.

III. A Default Judgment is Warranted.

A default judgment should issue against Shabazz. Default may be entered against a party that has "failed to plead or otherwise defend." Fed. R. Civ. P. 55(a). Fed. R. Civ. P. 55(b)(2)

provides that a district court may enter default judgment against a party when default has been previously entered by the Clerk of Court.

Even when a party has defaulted and all of the procedural requirements for a default judgment are satisfied, the decision to render default judgment rests in the sound discretion of the district court. See United States v. \$55,518.05 in U.S. Currency, 728 F.2d 192, 194 (3d Cir. 1984); Hritz v. Woma Corp., 732 F.2d 1178, 1180 (3d Cir. 1984). Further, “[b]efore granting a default judgment, the court must first ascertain whether ‘the unchallenged facts constitute a legitimate cause of action, since the party in default does not admit mere conclusions of law.’” Broad. Music, Inc. v. Spring Mount Area Bavarian Resort, Ltd., 555 F. Supp. 2d 537, 541 (E.D. Pa. 2008).

The legal test applied to granting a default judgment favors granting the United States’ Motion. The Third Circuit has enumerated three factors that govern a district court’s determination as to whether a default judgment is proper: “(1) prejudice to the plaintiff if default is denied, (2) whether the defendant appears to have a litigable defense, and (3) whether defendant’s delay is due to culpable conduct.” Chamberlain v. Giampapa, 210 F.3d 154, 164 (3d Cir. 2000) (citing \$55,518.05 in U.S. Currency, 728 F.2d at 195). Application of this test amply demonstrates that a default judgment against Shabazz is now warranted here.

1. The United States will be prejudiced by a decision denying a default judgment.

The United States will be prejudiced if a default judgment is denied for two reasons. First, the United States has an interest in ensuring that voters attempting to exercise the franchise in Philadelphia are not subject to coercion, threats, or intimidation. The United States will be

prejudiced because in the absence of a default judgment and injunctive relief, Shabazz may commit further violations of Section 11(b) of the Voting Rights Act. Second, as more time passes between the events of November 4, 2008, and the resolution of the claims against Shabazz, witness recollections, an important component of this case, may fade with time. Accordingly, considerations of prejudice to the plaintiff weigh in favor of granting a default judgment for the United States at this time.

2. Shabazz failed to assert any defenses to the United States' claims and any anticipated defenses would be wholly without merit.

The second factor in the Chamberlain analysis also favors granting a default judgment in favor of the United States for two reasons: First, Shabazz has presented no defenses, litigable or otherwise. Second, even assuming that Shabazz presented defenses in a responsive pleading or otherwise (and assuming as well the accuracy of the United States' speculations as to what these defenses might be), these defenses are without merit.

A. Shabazz has presented no defenses in this case.

To meet their burden under Chamberlain of showing litigable defenses, defendants are not required "to prove beyond a shadow of a doubt that [they] will win at trial, but merely to show that [they have] a defense to the action which at least has merit on its face." Emcasco Ins. Co. v. Sambrick, 834 F.2d 71, 74 (3d Cir. 1987). In fact, the second factor is the "threshold issue in opening a default judgment." Nationwide Mut. Ins. Co. v. Starlight Ballroom Dance Club, Inc., 175 F. App'x 519, 522 (3d Cir. 2006) (emphasis added). Thus, the second factor is primarily focused on what defenses are raised after a default judgment is challenged, and seemingly has little relevance at this stage of the proceedings because Shabazz has made no

appearance and has provided no indication of what defenses he might present. As Judge Rendell noted in her concurring opinion in Hill v. Williamsport Police Department, “it makes little sense for a plaintiff to be required to demonstrate that the defendant does not have meritorious defenses when the defendant has failed to respond.” 69 F. App’x 49, 53 (3d Cir. 2003).

Precisely because Shabazz has not answered or otherwise appeared in this case, this Court is at present likely unable to determine whether he has any litigable defenses. Cf. Prismatic Dev. Corp. v. I.R.S., No.08-2818, 2008 WL 5377764, at *2 (D.N.J. Dec. 18, 2008) (“because [Defendant] has not answered or otherwise appeared, the Court is unable to determine whether [Defendant] has any litigable defenses”); Bd. of Trs. of the Constr. Indus. Pension Laborers’ Dist. Council Fund v. ABC, No. 04-2295, 2004 U.S. Dist. LEXIS 22945, at *6-7 (E.D. Pa. Nov. 4, 2004) (finding that because the defendant failed to file a responsive pleading the court was not in a position to determine whether the defendant had a meritorious defense).

B. Shabazz’s anticipated defenses have no merit.

Assuming that Shabazz were to mount a First Amendment challenge to the United States’ claim for injunctive relief, that challenge would fail. The United States’ proposed order is carefully crafted to avoid such concerns. The proposed order, pertinent part, provides:

Defendant Minster King Samir Shabazz is enjoined from displaying a weapon within 100 feet of any open polling location on any election day in Philadelphia, Pennsylvania, or from otherwise engaging in coercing, threatening, or intimidating behavior in violation of Section 11(b) of the Voting Rights Act, 42 U.S.C. § 1973i(b).

Shabazz’s conduct can be restricted in the manner set out in the United States’ proposed order as a viewpoint-neutral and content-neutral time, place, and manner restriction because the

order “burdens no more speech than necessary to serve a significant government interest.”¹

Madsen v. Women’s Health Ctr., 512 U.S. 753, 765 (1994) (upholding a 36-foot buffer zone as applied to the street, sidewalks, and driveways “as a way of ensuring access to the clinic” where throngs of protesters would congregate in close proximity to the clinic); see also Schenk v. Pro-Choice Network of W. N.Y., 519 U.S. 357, 380 (1997) (upholding 15-foot fixed buffer zones necessary to ensure access, but striking down floating buffer zones around people entering and leaving abortion clinics). Here, the significant governmental interests are many, including: ensuring the right of individuals to vote freely for the candidate of their choice without being threatened, intimidated, or coerced and, more generally, providing access to polling places and ensuring the public safety of polling sites. Cf. Mills v. Alabama, 384 U.S. 214, 218 (1966) (striking down a law which prohibited election day endorsements by newspapers and noting that the challenged statute “in no way involve[d] the extent of a State’s power to regulate conduct in and around the polls in order to maintain peace, order and decorum there.”); United States v. Dickens, 695 F.2d 765, 772 (3d Cir. 1982) (“[t]he First Amendment, which guarantees individuals freedom of conscience and prohibits governmental interference with religious beliefs, does not shield from government scrutiny practices which imperil public safety, peace or order.”)

The proposed injunction is appropriately tailored to this end with the goal of preventing coercing, threatening, or intimidating behavior at open polling locations during elections, closely tracking

¹ Shabazz was not engaged on election day in an activity deserving of First Amendment protections. Simply put, there is no First Amendment right to violate the law by engaging in voter intimidation in front of a polling place on election day. Similarly, it is permissible to punish “fighting words” because they amount to an assault rather than communication of ideas. See Chaplinsky v. New Hampshire, 315 U.S. 568, 572 (1942) (characterizing fighting words as “personal abuse”).

the requirements of federal law under Section 11(b).

The proposed injunction prohibits Shabazz from appearing with a weapon within 100 feet of an open Philadelphia polling locations during election days. This restriction, unlike floating buffer zones around individuals struck down by the Supreme Court in Schenk, is fixed at open polling locations in Philadelphia during the conduct of elections only and would burden no more speech than necessary to ensure that federal law, under Section 11(b), is not violated.

A proposed injunction need not be the least restrictive or the least intrusive means of furthering the government's interests. See Ward v. Rock Against Racism, 491 U.S. 781, 798-99 (1989). The proposed injunctive relief here is circumscribed to promote the United States' interests. It has no application outside of Philadelphia, or on a day that is not an election day, or more than 100 feet from a polling place, or to conduct not involving a weapon, and so does not "burden substantially more speech than is necessary to further the government's legitimate interests." Id. at 799. Further, it does not improperly restrict expressive conduct as the United States has asserted interests wholly unrelated to the suppression of expressive conduct. Cf. Texas v. Johnson, 491 U.S. 397, 406 (1988) (stating that the "government generally has a freer hand in restricting expressive conduct that it has in restricting the written or spoken word.") Absent the proposed limitations, it is reasonably likely that Shabazz's activities would continue to include prohibited voter intimidation. Thus, the limited scope of the restrictions constitute a proper fit to remedy the violations alleged.² See United States v. Brown, 561 F.3d 420 (5th Cir.

² Indeed, the Supreme Court has upheld even content-based restrictions on electioneering in close proximity to the polls. See Burson v. Freeman, 504 U.S. 191, 193 (1992). The Burson Court held that, even where the establishment of a 100-foot zone in which no political campaigning could occur was not a content-neutral time, place, and manner restriction, Tennessee had a compelling interest in protecting the right of citizens to vote freely for

2009) (upholding injunction applying to election-day activities at polling locations).

3. Shabazz has exhibited dilatory behavior.

The third factor of the three-part Chamberlain test is demonstrated by Shabazz's unwillingness to respond to the United States' allegations despite numerous opportunities to do so. Culpable conduct in the Third Circuit is dilatory behavior that is willful or in bad faith. See Gross v. Stereo Component Sys., Inc., 700 F.2d 120, 124 (3d Cir. 1983). "Reckless disregard for repeated communications from plaintiffs and the court . . . can satisfy the culpable conduct standard." Hritz, 732 F.2d at 1183.

In this case, Shabazz has demonstrated willful dilatory behavior and reckless disregard of communications from the United States. He was properly served, by personal service. On March 10, 2009, the United States voluntarily sent a letter to Shabazz advising him of his impending default and encouraging him to seek counsel and have that counsel contact the United States to discuss the case. The United States also sent him a copy of the default entered against him. Despite these efforts, Shabazz has not appeared and defended in this case.³

This Court should therefore exercise its discretion to enter a default judgment against Defendant.

candidates of their choice, and a compelling interest in election integrity. Id. at 197-99. The campaign-free zone was narrowly tailored to achieve the compelling interest of preventing the harassment of voters. "This Court has recognized that the right to vote freely for the candidate of one's choice is of the essence of a democratic society." Burson, 504 at 199 (internal citation omitted). Thus, electioneering restrictions were upheld because they helped ensure the right to vote freely. The Court noted "[t]oday, all 50 States limit access to the areas in or around polling places In sum, an examination of the history of election regulation in this country reveals a persistent battle against two evils: voter intimidation and election fraud." Id. at 206.

³ The United States also provided Shabazz with notice this Motion would be filed and with this Motion.

IV. The Defendant's Conduct Violated Section 11(b) of the Voting Rights Act.

1. The unchallenged facts in this case constitute a violation of Section 11(b) of the Voting Rights Act.

Section 11(b) of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973i(b) states:

No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person.

Section 11(b) does not require the plaintiff to prove a specific purpose to intimidate, threaten or coerce, which had been a bar to judgments in plaintiffs' favor in a number of pre-1965 cases. E.g., United States v. Edwards, 333 F.2d 575, 578-579 (5th Cir. 1964) (physical attack on individuals attempting to register to vote). In House hearings on Section 11(b) in 1965, Attorney General Nicholas Katzenbach testified that the most "serious inadequacy" of the predecessor statute, 42 U.S.C. § 1971(b), was "the practice of district courts to require the Government to carry a very onerous burden of proof of 'purpose.'" Hearings on H.R. 6400 Before Subcomm. No. 5 of the H. Comm. On the Judiciary, 89th Cong. 11 (1965) (Statement of Nicholas Katzenbach, Att'y Gen. of the United States). The Attorney General further stated that under the new Section 11(b) "defendants would be deemed to intend the natural consequences of their acts [which would represent] a deliberate and . . . constructive departure from the language and construction of the present law (42 U.S.C. § 1971(b))." Id. Thus, Section 11(b) shifted the evidentiary focus away from the perpetrator's state of mind to what the victims or potential victims might reasonably conclude. See Willingham v. County of Albany, 593 F. Supp. 2d 446, 462 (N.D.N.Y. 2006) ("unlike 42 U.S.C. § 1971(b) (which requires proof of a 'purpose' to

interfere with the right to vote), no subjective purpose or intent need be shown,” citing H.R. Rep. No. 89-439 at 30 (1965), reprinted in 1965 U.S.C.C.A.N. 2462).

The few district court opinions pertaining to Section 11(b) have not provided much guidance as to what constitutes a violation.⁴ It has been noted generally that Section 11(b) “is to be given an expansive meaning.” Jackson v. Riddell, 476 F. Supp. 849, 859-60 (N.D. Miss. 1979); Whatley v. City of Vidalia, 399 F.2d 521, 525-26 (5th Cir. 1968) (Section 11(b) was intended to expand rights protected by § 1971(b)). “We assume that ‘Congress expresses its intent through the ordinary meaning of its language’ and therefore begin ‘with an examination of the plain language of the statute.’ If the language is unambiguous, our inquiry is at an end.” Disabled in Action of Penn. v. Se. Penn. Trans Auth., 539 F.3d 199, 210 (3d Cir. 2008) (citations omitted).

In United States v. McLeod, 385 F.2d 734 (5th Cir. 1967), the court did appear to give the phrase “intimidate, threaten, or coerce” the ordinary meaning suggested by its plain words. While McLeod was an action brought under the 1957 Civil Rights Act, rather than Section 11(b),

⁴ The extant cases perhaps provide better guidance as to what does not constitute threats, intimidation, or coercion under Section 11(b), though even in that regard there is little consistency in the case law. See United States v. Harvey, 250 F. Supp. 219, 231-7 (E.D. La. 1966) (firing black tenant-farmers because they had registered to vote, evicting them from rental homes, and discharging them from salaried jobs was not intimidation under Section 11(b), but was instead the termination of a business relationship); Gremillion v. Rinaudo, 325 F. Supp. 375, 376-78 (E.D. La. 1971) (dismissing claim of intimidation based on assistance from a uniformed officer, holding that the officer’s presence, without more, did not establish a violation); Pincham v. Il. Judicial Inquiry Bd., 681 F. Supp. 1309, 1312-17 (N.D. Ill. 1988) (refusing to allow plaintiff to amend his complaint to include a claim under Section 11(b) alleging the defendants brought a retaliatory disciplinary action, finding in part an absence of intent); United States v. Brown, 494 F. Supp. 2d 440, 472 (S.D. Miss. 2007) (Section 11(b) was not violated by a public official who threatened to arrest voters, as the threat may have been based on a mistaken application of state law; nor by a published threat to challenge particular voters). In any event, none of these cases concerned the kind of behaviour at issue here.

both statutes use the same phrase, “intimidate, threaten, or coerce,” pertaining to voting.

Compare 42 U.S.C. § 1971(b) with 42 U.S.C. § 1973i(b).

In McLeod, the Fifth Circuit reversed the district court’s dismissal of an action seeking to enjoin the mass arrest of African Americans seeking to vote or register to vote, as well as police surveillance of private associations active in registering voters. 385 F.2d at 739. The Fifth Circuit, examining whether the statutory standard of “coercion” was satisfied, said its “first task, then, is to determine whether the record required the district court to find that the arrests, prosecutions and other acts complained of had a coercive effect and were for the purpose of interfering with the right to register and to vote.” Id. at 740. Noting that “[i]t is difficult to imagine anything short of physical violence which would have a more chilling effect on a voter registration drive than the pattern of baseless arrests and prosecutions revealed in this record,” the Court found that the district court “clearly erred in failing to find that the defendants’ acts threatened, intimidated, and coerced” prospective voters. Id. at 740-41; cf. NAACP v. Thompson, 357 F.2d 831, 838 (5th Cir. 1966) (characterizing “arrest[s] en masse on frivolous or unfounded charges” as intimidation).

Applying the plain language of the statute to the facts of this case, as well as the principal that defendants are “deemed to intend the natural consequences of their acts,” it is amply clear that Shabazz’s conduct on election day (1) was objectively the kind of conduct that would intimidate, threaten, or coerce voters and those assisting voters, and (2) was, a fortiori, an attempt to intimidate, threaten, or coerce voters and those assisting voters, in violation of Section 11(b) of the Voting Rights Act.

In addition to attempting to physically interfere with the rights of protected voters and the

brandishing or use of a weapon, Shabazz violated Section 11(b) because a reasonable person would find his actions to be objectively intimidating to voters or those aiding voters. Moreover, Shabazz shouted racial slurs in the presence of voters and assistants protected by Section 11(b).

2. Shabazz's conduct is not disputed in this case and can also be established by other witnesses.

The allegations in the Complaint are sufficient to warrant a default judgment against Shabazz. Furthermore, several eyewitnesses who observed Shabazz's conduct on election day at the polling place at 1221 Fairmount Street in Philadelphia can testify about a video recording of the event. Shabazz brandished a weapon, pointed it at individuals, tapped it in his hand in a menacing fashion while engaging people, and shouted racial slurs. Shabazz attempted to block physical access to the polls to one individual authorized to aid voters.

V. Issuance of an injunction against Shabazz is warranted.

For injunctive relief obtained through a default judgment, a district court "must still consider the four factors governing issuance of" an injunction. Broad. Music, Inc., 555 F. Supp. 2d at 543. These are: "(1) whether the moving party has shown actual success on the merits; (2) whether denial of injunctive relief will result in irreparable harm to [movant]; (3) whether granting of the [] injunction will result in even greater harm to the defendant; and (4) whether the injunction serves the public interest." Id.

First, as to the "actual success on the merits" factor, the default posture "prevents [a court] from reaching the merits of Plaintiffs' claims through an adversarial fact-finding process." Broad. Music, 555 F. Supp. 2d at 543.

Second, denial of an injunction that prohibits Shabazz from bringing a weapon within

100 feet of a Philadelphia polling location on election day would result in irreparable harm to the United States. Potential future statutory violations of the Voting Rights Act constitute irreparable harm to the United States. See, e.g., United States v. Berks County, 277 F. Supp. 2d 570, 578 (E.D. Pa. 2003) (violation of the Voting Rights Act constituted irreparable harm to plaintiff); United States v. Metro. Dade County, 815 F. Supp. 1475, 1478 (S.D. Fla. 1993) (granting temporary restraining order to stop violation of the Voting Rights Act); Dillard v. Crenshaw County, 640 F. Supp. 1347, 1363 (M.D. Ala. 1986) (granting preliminary injunction to stop violation of the Voting Rights Act); PROPA v. Kusper, 350 F. Supp. 606, 611 (D.C. Ill. 1973) (granting preliminary injunction to stop violation of Voting Rights Act). In addition to the statutory violation causing irreparable harm, voters in Philadelphia could face Shabazz again in future elections brandishing a weapon at the entrance to polling places. The United States, as well as the voting citizens, would be irreparably harmed if future violations of Section 11(b) by Shabazz are not enjoined.

Third, Shabazz will incur no unjustified harm if the requested injunction were to issue. There is no justification for Shabazz appearing at the entrance to a polling location in Philadelphia while brandishing a weapon. He cannot claim an injunction against continued violations of the Voting Rights Act constitutes a harm. See Brown, 561 F.3d at 436 (affirming injunction stripping election official of power to run elections when “defendants’ own conduct has rendered the remedial order’s terms necessary to right” violations of the Voting Rights Act). Further, as noted, any First Amendment defense would be without merit. Even on election days, Shabazz would remain free to engage in all manner of lawful, politically-motivated activities.

Fourth, an injunction against future violations of the Voting Rights Act serves the public

interest and thereby satisfies the fourth prong of Shields. In Berks County, this Court required the defendants to comply with the Voting Rights Act and provide equal access to the electoral process to Spanish speakers in Berks County. “Ordering Defendants to conduct elections in compliance with the Voting Rights Act so that all citizens may participate equally in the electoral process serves the public interest by reinforcing the core principles of our democracy.” 277 F. Supp. 2d at 582. Similarly, ordering Shabazz to stop violating Section 11(b) by preventing him from intimidating voters or those aiding voters, or attempting to do so, serves the public interest in free elections. The right to vote without any measure of fear of physical attack is a highly treasured and unique characteristic of the American electoral process. An injunction that protects this valued heritage serves the public interest.

Thus, the United States has satisfied the four elements justifying injunctive relief.

VI. Conclusion

For these reasons, Plaintiff requests that the Motion for Default Judgment be granted, and the proposed order be entered.

Respectfully submitted,

LORETTA KING
Acting Assistant Attorney General

CHRISTOPHER COATES
Chief, Voting Section

ROBERT D. POPPER
Deputy Chief

s/ Spencer R. Fisher
J. CHRISTIAN ADAMS
SPENCER R. FISHER
Attorneys

United States Department of Justice
Civil Rights Division, Voting Section
950 Pennsylvania Avenue, N.W.
NWB - Room 7146
Washington, D.C. 20006
202-305-0015 phone
202-307-3961 fax
spencer.fisher@usdoj.gov

CERTIFICATE OF SERVICE

I certify that, on May 15, 2009, a true and correct copy of the foregoing Memorandum of Law in Support of Motion For Default Judgment was placed in the United States mail, was placed in a properly-addressed envelope, with first-class postage duly paid and affixed to the envelope, and with the envelope addressed to the following non-CM/ECF participants:

1. Malik Zulu Shabazz
Defendant
Chairman, New Black Panther Party for Self-Defense, an unincorporated association
4043 Clay Place, NE
Washington, DC 20019
2. Jerry Jackson
Defendant
813 N. Parks St.
Philadelphia, PA 19123
3. Minister King Samir Shabazz a/k/a Maurice Heath
Defendant
1522 S. 20th Street
Philadelphia, PA 19146
4. Michael Coard, Esq.
1 Liberty Place
1650 Market Street
Suite 3652
Philadelphia, PA 19107

This Certificate was executed on May 15, 2009 at Washington, DC.

s/ Spencer R. Fisher
SPENCER R. FISHER
Trial Attorney
United States Department of Justice
Civil Rights Division, Voting Section
950 Pennsylvania Avenue, N.W.
NWB - Room 7146
Washington, D.C. 20006
202-305-0015 phone
202-307-3961 fax
spencer.fisher@usdoj.gov

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CIVIL ACTION
:
v. :
:
THE NEW BLACK PANTHER PARTY :
FOR SELF-DEFENSE, et al. : NO. 09-65

ORDER

AND NOW, this 18th day of May, 2009, upon consideration of the Government's motion for default judgment against defendant Minister King Samir Shabazz a/k/a Maurice Heath¹ (docket entry #18), and the Court finding that:

(a) The Government alleged that the defendant stood in front of the polling location at 1221 Fairmount Street in Philadelphia, wearing a military-style uniform, wielding a nightstick, and making intimidating statements and gestures to various individuals, all in violation of 42 U.S.C. § 1973i(b)²;

(b) The Government properly served a copy of the

¹The Government has voluntarily dismissed all of the other defendants in this case pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i).

²No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 1973a(a), 1973d, 1973f, 1973g, 1973h, or 1973j(e) of this title.

complaint on the defendant; the Clerk of Court entered default against the defendant;

(c) Default judgment is appropriate if (1) there is prejudice to the plaintiff if default is denied, (2) the defendant does not appear to have any litigable defense, and (3) the delay is due to defendant's culpable conduct, Chamberlain v. Giampapa, 210 F.3d 154, 164 (3d Cir. 2000);

(d) The Government satisfies all three of these requirements: (1) without an injunction against such behavior the defendant escapes all consequences of his acts and is free to act in this manner during the next election; (2) no defense to the claim that the defendant intimidated people in and around a polling center is apparent from the facts alleged; and (3) the defendant was personally served with the complaint, provided a notice by the Government that it would seek default, and sent a copy of the entry of default; and thus any delay is due to the defendant's informed lack of action;

(e) Here, the Government seeks an injunction; in order for an injunction to be warranted, the moving party must show (1) a likelihood of success on the merits, (2) irreparable harm to the movant if the injunction is not granted, (3) that the injunction would not cause greater harm to the other party than

that which the movant seeks to avoid, and (4) the injunction serves the public interest, Shields v. Zuccarini, 254 F.3d 476, 482 (3d Cir. 2001);

(f) We cannot properly address the likelihood of success on the merits because by definition a defaulted defendant means the adversarial process is absent, but when a defendant defaults we accept the allegations of the plaintiff when we shape relief, see Broadcast Music, Inc. v. Spring Mount Area Bavarian Resort, 555 F. Supp. 2d 537, 543 (E.D. Pa. 2008), and so the Government has sufficiently alleged a violation of 42 U.S.C. § 1973i(b);

(g) The Government seeks to prevent potential future violations of 42 U.S.C. § 1973i(b) by preventing the defendant from displaying a weapon within 100 feet of a polling location;³ without such an injunction nothing other than the promise of future litigation prevents the defendant from repeating his conduct, and such repeated behavior would palpably constitute

³Preventing such future statutory violations can justify issuance of an injunction. See, e.g., United States v. Berks County, 277 F. Supp. 2d 570, 578 (E.D. Pa. 2003); United States v. Metro. Dade County, 815 F. Supp. 1475, 1478 (S.D. Fla. 1993); Dillard v. Crenshaw County, 640 F. Supp. 1347, 1363 (M.D. Ala. 1986); PROPA v. Kusper, 350 F. Supp. 606, 611 (D.C. Ill. 1973).

irreparable harm;

(h) The scope of the injunction sought -- i.e., prohibiting the defendant from displaying a weapon within 100 feet of a polling location -- provides the Government with the appropriate, prophylactic protection against another violation of 42 U.S.C. § 1973i(b), and only prohibits the defendant from displaying a specific type of object at a focused area, and thus the defendant suffers no material harm if we grant the Government the injunction it seeks;

(i) Finally, preventing people from intimidating others at the polls always serves the public interest, and there is no reason we can find to distinguish the present injunction from any other issued for the purpose of preserving the order and dignity of a polling location;

It is hereby ORDERED that:

1. The Government's motion is GRANTED;
2. The defendant Minister King Samir Shabazz is ENJOINED from displaying a weapon within 100 feet of any open polling location on any election day in the City of Philadelphia, or from otherwise violating 42 U.S.C. § 1973i(b);
3. This Court shall maintain jurisdiction over this matter until November 15, 2012 to enforce this Order as

necessary; and

4. The Clerk of Court shall CLOSE this case statistically.

BY THE COURT:

/s/ Stewart Dalzell, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CIVIL ACTION
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THE NEW BLACK PANTHER PARTY :
FOR SELF-DEFENSE, et al. : NO. 09-65

_____ JUDGMENT

AND NOW, this 18th day of May, 2009, in accordance with the accompanying Order, and the Court having this day granted the Government's motion for default judgment, JUDGMENT IS ENTERED in favor of the United States of America and against Minister King Samir Shabazz, enjoining Minister King Samir Shabazz from displaying a weapon within 100 feet of any open polling location on any election day in the City of Philadelphia, or from otherwise violating 42 U.S.C. § 1973i(b).

BY THE COURT:

/s/ Stewart Dalzell, J.



FEDERAL PROCESS SERVER
Commonwealth of Pennsylvania
COUNTY OF PHILADELPHIA

FILED

MAY 26 2009

MICHAEL E. KUNZ, Clerk
By PKR Dep. Clerk

In the matter of:

The United States of America

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

vs.

New Black Panther Party For Self Defense, et al

Case No. #: CA-09-0065

AFFIDAVIT OF SERVICE

I declare that I am a citizen of the United States and a competent adult, over the age of eighteen and not a party to this action. And that within the boundaries of the state where service was effected, I was authorized by law to perform said service.

Service: I served Minister King Samir Shabazz a/k/a Maurice Heath
NAME OF PERSON / ENTITY BEING SERVED PROCESS

with the (documents) A True Copy of Default Judgment Order.

At Home 1522 South 20th Street, Philadelphia, PA

Place of Business _____

Other _____

ON Sat 5/23/09 at 9:50 P:M No: _____
Date Time

Manner of Service:

Served personally upon the defendant at home

I declare under penalty of perjury that the information contained herein is true and correct and this affidavit was executed on

5/23/09 at PHILA. PA
DATE CITY STATE

Dudley G. Brown
SIGNATURE OF PROCESS SERVER

Dudley G, Brown
Print Name

State of Pennsylvania
County of Philadelphia