



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" followed by a stylized flourish or initials.

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*.