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 we[2] 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.

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