

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.