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