

Hans A. von Spakovsky
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October 28, 2010

VIA FACSIMILE (202) 376-1163

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

Re: Investigation of New Black Panther Party - Misleading Affidavit filed by Robert Kengle

Dear Chairman Reynolds:

I am compelled to provide further information to the Commission relevant to the investigation of the New Black Panther Party case because of an intentionally misleading and inaccurate affidavit filed with the Commission by Robert Kengle.

Mr. Kengle denies that he expressed his disgust to former Civil Rights Division Voting Section Chief Christopher Coates about the election observer mission sent to Noxubee County, Mississippi, after the Division received complaints of widespread voter discrimination against white voters. Kengle admits he made the highly disturbing statement "Can you believe we are doing this" in reference to the observer mission, but lamely attempts to mischaracterize both the context and the import of his comment by, among other things, employing the tired technique of blaming the Bush administration. He now claims that he made that remark because he was upset that election observers were being sent to monitor elections in Noxubee County since he felt that the Division's front office was "rejecting" recommendations to monitor elections "based upon concerns of discrimination against minority voters" for "spurious" reasons. He further claims that there was a "double standard" in place for such complaints by minority voters.

That claim is a demonstrably false fabrication by Mr. Kengle to evade the condemnation he deserves for his racist statement. His claim is easily disproven by the history of extensive election monitoring that took place during the Bush administration. Contrary to the spurious

claims made by Mr. Kengle, the Bush administration broke all prior Justice Department records for the number of observers assigned to monitor elections on behalf of racial, ethnic, and language minorities. Moreover, Mr. Kengle knew this when he made his offensive comment, and he knows it now.

In 2004, for example, the Civil Rights Division conducted a record level of election monitoring: 162 elections were monitored in 105 political subdivisions in 29 states with a total of 1,463 federal observers and 533 Division personnel.

For the November 2, 2004, general election alone, the Division monitored elections in 86 jurisdictions located in 25 different states. More than 250 Division personnel and approximately 840 federal observers were involved in this effort. This was a dramatic increase of 773 monitors compared to the 2000 general election, when the Clinton administration only sent out 317 federal observers in 18 counties in nine states. Copies of the official DOJ press releases on the general elections in 2000 and 2004 documenting these numbers are enclosed.

The number of Division personnel who monitored the November 2004 election was by far the greatest number ever. This required a major recruitment effort from sections in the Division other than the Voting Section, as well as a thorough training program for these personnel. The Division-wide effort for this election was unprecedented in scope – the Civil Rights Division had *never* sent out that many employees and Justice Department staff to monitor elections.

With the exception of the handful of observers sent to Noxubee County in 2004 to monitor local elections, the almost 2,000 election monitors sent out in 2004 were all observing elections in which the Division was protecting the rights of racial, ethnic, and language minorities. The very idea that there was some type of “double standard” that prevented monitoring of elections where legitimate complaints had been made by minority voters is ridiculous – *and these numbers illustrate graphically the falsity of Mr. Kengle's claims.*

In 2006, the Bush administration sent out more than 500 federal observers and more than 350 Justice Department employees to 22 states to monitor the mid-term congressional elections. This was more than double the total sent out on election day in 2002, which was the previous record for a midterm election (324 federal observers and 108 Division personnel were sent out in 2002). Copies of the official press releases from the Justice Department for the 2002 and 2006 elections documenting these numbers are enclosed.

Almost all of these election monitors were protecting the rights of minority voters – again, only a tiny handful were sent to Noxubee County, Mississippi, as part of the investigation of voter discrimination against white voters. As you know, that investigation eventually resulted in a finding of blatant discrimination by the local defendants and a verdict in favor of the Justice Department, a judgment that was upheld by the Fifth Circuit Court of Appeals.

Apparently embarrassed by the verdict of history regarding his disturbing comments to Christopher Coates criticizing the Division's enforcement activity in Noxubee County, Mr. Kengle now seeks to put a new gloss on his statements. But Mr. Kengle's new story is squarely contradicted by the facts. Indeed, Mr. Coates has testified under oath that Kengle told him he did

not think they should be going to Mississippi to protect white voters, *no matter what type of discrimination had been committed against those voters*. As I explained in the affidavit I previously submitted to the Commission, Mr. Coates related that conversation to me immediately after it first occurred. Further, Mr. Kengle's claim that he was upset about the supposed "diversion" of resources to the Noxubee case as opposed to sending observers to other jurisdictions where minority voting rights were in danger is complete nonsense given the huge expansion in resources that the Bush administration dedicated to election monitoring, 99.9% of which was used to protect the voting rights of minority voters.

Besides, Mr. Kengle knows that the greatest increase in election monitors was in jurisdictions other than Noxubee County. His obvious, real complaint to Mr. Coates about sending an observer mission to Noxubee County was that federal monitors were being sent to investigate voter fraud and intimidation by black officials, whether or not there was a net increase elsewhere in observer missions and whether or not the Noxubee observers constituted one percent or .0001% (or any percentage) of those sent out by the Civil Rights Division to protect voters on Election Day.

The Noxubee case was evaluated under the same standards that were applied to all other potential voting rights violations, with the focus being on whether there were credible, viable allegations of violations of the Voting Rights Act, the National Voter Registration Act, or the Uniformed and Overseas Citizen Absentee Voting Act. In fact, a review of the enforcement record of the Bush administration's Civil Rights Division will reveal that the Bush administration filed twice as many lawsuits (or obtained settlements) to enforce the various voting rights statutes under the Division's bailiwick then did the Clinton administration. This can easily be demonstrated by a review of the enforcement cases filed by the Voting Section, which is available at <http://www.justice.gov/crt/voting/litigation/caselist.php>.

For example, the Bush administration filed 29 cases to enforce Section 203 of the Voting Rights Act (42 U.S.C. § 1973aa-1a), which protects language minorities. This was the largest number of enforcement cases filed by *any* presidential administration and more than the entire number of cases filed since the passage of Section 203 in 1975. Only six such actions were filed by the Clinton administration.

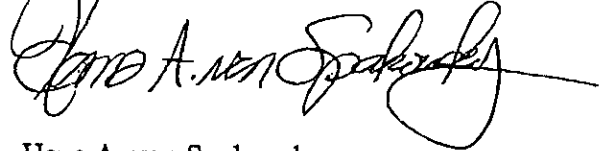
Similarly, Section 208 of the Voting Rights Act is a very important provision that guarantees the right of any voter to receive assistance from "a person of the voter's choice" if he is unable to vote because of "blindness, disability or inability to read or write." As the above-referenced website shows, prior to the Bush administration, only one lawsuit had ever been filed to enforce this provision. Yet the Bush administration filed ten lawsuits to enforce Section 8 – so the overwhelming majority of the Section 208 enforcement cases that have ever been filed were by the Bush administration.

The Bush administration also filed more suits to enforce the National Voter Registration Act and the Uniformed and Overseas Citizen Absentee Voting Act than the Clinton administration. The Bush administration filed 15 lawsuits to enforce Section 2 of the Voting Rights Act, all of which were on behalf of racial or ethnic minorities with only one exception – the Noxubee County case. By contrast, after two years, the Obama administration has filed only *one* Section 2 lawsuit – a

case filed on March 31, 2009, against the Town of Lake Park, Florida, on behalf of black voters. That case was initiated and all of the investigation was completed during the Bush administration. The lead lawyer was none other than J. Christian Adams, who testified before the Commission on the improper dismissal of the New Black Panther Party voter intimidation case.

In short, the claim that that there was "weak" enforcement of voting rights during the Bush administration or that there was a "double standard" for election monitoring is a patently false one that has been nurtured by ideological partisans such as Mr. Kengle. The record demonstrates emphatically that Mr. Kengle's representations are unworthy of credibility.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Hans A. von Spakovsky". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Hans A. von Spakovsky

Enclosures



FOR IMMEDIATE RELEASE

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MONDAY, NOVEMBER 6, 2000

(202) 514-2007

WWW.USDOJ.GOV

TDD (202) 514-1888

FEDERAL OBSERVERS DISPATCHED TO MONITOR
NOVEMBER GENERAL ELECTIONS IN NINE
STATES ACROSS THE NATION

WASHINGTON, D.C. -- The Justice Department will dispatch 317 federal observers to 18 counties in nine different states across the nation to monitor the general election on November 7, 2000. The nine states are Alabama, Arizona, California, Michigan, Mississippi, New Jersey, New Mexico, New York, and Utah.

Under the Voting Rights Act, which protects the rights of Americans to participate in the electoral process without discrimination, the Justice Department is authorized to ask the Office of Personnel Management (OPM) to send federal observers to areas that are specially covered in the Act.

Federal observers will be sent to:

- Hale and Lowndes Counties, Alabama and Grenada County, Mississippi to monitor the treatment of African American voters;
- Apache and Navajo Counties, Arizona; Neshoba and Newton Counties, Mississippi; Bernalillo, Cibola, McKinley, Sandoval, and Socorro Counties, New Mexico; and San Juan County, Utah to monitor the treatment of Native American voters;
- Alameda County, California and Kings (Brooklyn) and New York (Manhattan) Counties, New York to monitor the treatment of Chinese American voters;
- Wayne County (Hamtramck), Michigan to monitor the treatment of Arab American voters; and
- Passaic County, New Jersey to monitor the treatment of Hispanic voters.

The observers, who are supervised by OPM, will watch and record activities during voting hours at the polling locations. Forty five Department of Justice personnel will coordinate the federal activities and maintain contact with local election officials.

In addition, a Voting Section attorney will be present in Flint, Michigan and another will be available in Fort Worth, Texas, to respond to election day concerns.

To lodge complaints about discriminatory voting practices in this election, voters may call the federal examiner at 1-888-496-9455. At all times, complaints about discriminatory voting practices may be called in to the Voting Section of the Justice Department's Civil Rights Division at 1-800-253-3931.

More information about the Voting Rights Act and other federal voting laws is available on the Department of Justice Internet site at <http://www.usdoj.gov/crt/voting>.

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00-650



Department of Justice

FOR IMMEDIATE RELEASE
MONDAY, NOVEMBER 4, 2002
WWW.USDOJ.GOV

CRT
(202) 514-2008
TDD (202) 514-1888

FEDERAL OBSERVERS AND JUSTICE DEPARTMENT PERSONNEL TO MONITOR GENERAL ELECTION IN STATES ACROSS THE NATION

WASHINGTON, D.C. - The Justice Department today announced it will send 324 federal observers and 108 Justice Department personnel to 26 counties in 14 states to monitor the general election on Tuesday, November 5, 2002.

Under the Voting Rights Act, which protects the rights of Americans to participate in the electoral process without discrimination, the Department of Justice is authorized to ask the Office of Personnel Management (OPM) to send federal observers to areas that are specially covered in the Act itself or by a federal court order under the Act.

For seven counties, federal observer authority comes from court orders, and observers were assigned to another eight counties based on the special coverage provisions.

Federal observers will monitor polling place activities in:

§Apache and Navajo Counties, Arizona;

§Randolph County, Georgia;

§Wayne County (Hamtramck), Michigan;

§Adams and Amite Counties, Mississippi;

§Passaic County, New Jersey;

§Bernalillo, Cibola, Sandoval and Socorro Counties, New Mexico;

§Kings County (Brooklyn) and New York County (Manhattan), New York;

§Titus County, Texas; and,

§San Juan County, Utah.

The observers will watch and record activities during voting hours at select polling locations in the counties. Thirty-eight Department of Justice personnel will coordinate the federal activities and maintain contact with local election officials.

To file complaints about discriminatory voting practices in this election, voters in Arizona, New Mexico, Texas and Utah counties may call the federal examiner at 866-885-4122. Voters in Georgia, Michigan, Mississippi, New Jersey and New York may call the federal examiner at 888-496-9455.

In addition, 70 Justice Department personnel, most of whom are Civil Rights Division attorneys, will monitor the election in:

§San Francisco, California;

§Waterbury, Connecticut;

§Broward, Duval, Miami-Dade, Orange and Osceola Counties, Florida;

§St. Louis, Missouri;

§San Juan County, New Mexico;

§Queens County, New York; and,

§Reading, Pennsylvania.

The observers and Department personnel will monitor whether certain counties and localities are complying with federal voting laws, for example: complying with the minority language provisions of the Voting Rights Act; determining whether any voters are challenged improperly on the basis of their race, color, or membership in a language minority group; permitting voters who are blind, disabled or unable to read or write assistance by a person of their choice; and permitting all eligible voters to cast a ballot.

At all times, complaints about discriminatory voting practices may be called in to the Voting Section of the Justice Department's Civil Rights Division at 800-253-3931.

More information about the Voting Rights Act and other federal voting laws is available on the Department of Justice's website site at www.usdoj.gov/crt/voting.

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02-640



Department of Justice

FOR IMMEDIATE RELEASE
THURSDAY, OCTOBER 28, 2004
WWW.USDOJ.GOV

DOJ
(202) 514-2007
TDD (202) 514-1888

DEPARTMENT OF JUSTICE ANNOUNCES FEDERAL OBSERVERS TO MONITOR GENERAL ELECTION IN STATES ACROSS THE COUNTRY

WASHINGTON, D.C. - Since the passage of the Voting Rights Act of 1965, the Justice Department has regularly sent observers and monitors around the country to protect election-related civil rights. In addition, the Department has routinely deployed its own civil rights personnel to serve as civil rights monitors in jurisdictions not covered by the Voting Rights Act. Today, the Justice Department announced it will again send approximately 840 federal observers and more than 250 Civil Rights Division personnel to 86 jurisdictions in 25 states to monitor the general election on Tuesday, November 2, 2004. This list is not exhaustive, and other jurisdictions may be designated by election day.

Under the Voting Rights Act, which protects the rights of Americans to participate in the electoral process without discrimination, the Department of Justice is authorized to ask the Office of Personnel Management (OPM) to send federal observers to areas that are specially covered in the Act itself or by a federal court order under the Act.

Federal observers will monitor polling place activities in 27 jurisdictions:

- Apache, Navajo and Yuma Counties, Arizona;
- San Benito, San Diego, and Ventura Counties, California;
- Cook County (Cicero), Illinois;
- Lake County (East Chicago), Indiana;
- Wayne County (Hamtramck), Michigan;
- Jones, Kemper, Leake, Neshoba, Newton, and Winston Counties, Mississippi;
- Passaic County, New Jersey;
- Bernalillo, Cibola, Sandoval, and Socorro Counties, New Mexico;
- Kings County (Brooklyn), New York County (Manhattan), and Suffolk County, New York;
- Berks County (Reading), Pennsylvania;
- Buffalo County, South Dakota;
- Dallas County, Texas; and,
- Yakima County, Washington.

The observers will watch and record activities during voting hours at select polling locations in the counties. Civil Rights Division personnel will coordinate the federal activities and maintain contact with local election officials.

In addition, Justice Department personnel, all of whom are Civil Rights Division attorneys and staff, will monitor the election in an additional 58 jurisdictions:

- Kodiak Island, Alaska;
- Pulaski County, Arkansas;
- Cochise, Gila, Graham, Maricopa, Pima, and Santa Cruz Counties, Arizona;
- Imperial and Orange Counties, California;
- Broward, Duval, Gadsden, Hillsborough, Miami-Dade, Orange, Osceola, and Palm Beach Counties, Florida;
- Atkinson, Henry and Long Counties, Georgia;
- Polk County, Iowa;
- Jefferson County, Kentucky;
- Wayne County (Detroit) and Oakland County (Pontiac), Michigan;
- Hennepin County, Minnesota;
- City of St. Louis, Missouri;
- Alamance, Scotland and Wake Counties, North Carolina;
- Chaves, Rio Arriba and San Juan Counties, New Mexico;
- Clark and Washoe Counties, Nevada;
- Nassau, Queens, Richmond, and Westchester Counties, New York;
- Cuyahoga, Franklin and Hamilton Counties, Ohio;
- Philadelphia County, Pennsylvania;
- Bennett, Corson, Dewey, Jackson, Mellette, Shannon, Todd, Tripp and Ziebach Counties, South Dakota;
- Harris, Hidalgo, Tarrant and Waller Counties, Texas;
- Chesterfield County, Virginia; and,
- Franklin County, Washington.

The OPM observers and Department personnel will monitor whether certain counties and localities are complying with federal voting laws, for example: determining whether any voters are challenged improperly on the basis of their race, color, or membership in a language minority group; complying with the minority language provisions of the Voting Rights Act; permitting voters who are blind, disabled, or unable to read or write assistance by a person of their choice; and permitting all eligible voters to cast a ballot.

At all times, complaints about discriminatory voting practices may be called in to the Voting Section of the Justice Department's Civil Rights Division at 800-253-3931.

Voters in the counties in which federal observers serve in Arizona, California, Illinois, New Mexico, South Dakota, Texas, and Washington may also file complaints about discriminatory voting practices in this election by calling the federal examiner at 866-885-4122. Voters in such counties in Indiana, Michigan, Mississippi, Pennsylvania, New Jersey, and New York may call the federal examiner at 888-496-9455.

More information about the Voting Rights Act and other federal voting laws is available on the Department of Justice's website site at www.usdoj.gov/crt/voting <<http://www.usdoj.gov/crt/voting>>.

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REMINDER: In addition to the foregoing, the Justice Department's Criminal Division and 93 United States Attorneys will also be working on November 2 to fulfill their responsibility to enforce federal voter fraud laws. The Criminal Division's Public Integrity Section in Washington will have senior prosecutors available to handle complaints from the public and to provide guidance to 93

United States Attorneys' Offices concerning allegations of election fraud and other election abuses. Each United States Attorney's Office will have a District Election Officer on duty while the polls are open in their State to receive complaints from the public, and to coordinate the handling of these matters with the Public Integrity Section. Public Integrity lawyers will be on duty from the time polls first open on the East Coast until they close on the West Coast. The Public Integrity Section can be reached at (202) 514-1412.

The FBI will also have Special Agents available at Headquarters in Washington and in each field office and resident agency to receive allegations of election fraud and other election abuses. The FBI can be contacted either through one of its local field officers or through each United States Attorney's Office's District Election Officer.

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04-725



Department of Justice

FOR IMMEDIATE RELEASE
 Monday, November 6, 2006
WWW.USDOJ.GOV

CRT
 (202) 514-2007
 TDD (202) 514-1888

Justice Department Sends Election Observers to 22 States Across the Country in Unprecedented Monitoring Effort for a Midterm Election

WASHINGTON — The Justice Department today announced that it is deploying an unprecedented number of federal personnel to monitor tomorrow's midterm election, sending more than 500 federal observers and more than 350 Justice Department personnel to 69 jurisdictions in 22 states — more than double the total sent on election day in 2002, which was the previous record for a midterm election.

Since the passage of the Voting Rights Act of 1965, the Justice Department has regularly sent observers and monitors around the country to protect election-related civil rights. This summer, President Bush signed the reauthorized Voting Rights Act, which protects the rights of Americans to participate in the electoral process without discrimination. Under the law, the Department of Justice is authorized to ask the Office of Personnel Management (OPM) to send federal observers to areas that have been certified for coverage by a federal court, or the Attorney General, pursuant to the Act. Federal OPM observers and/or Justice Department personnel will monitor polling place activities in 69 jurisdictions in 22 states throughout the country:

- Chambers County, Ala.
- Lee County, Ala.
- Tuscaloosa County, Ala.
- Apache County, Ariz.
- Cochise County, Ariz.
- Maricopa County, Ariz.
- Navajo County, Ariz.
- Pima County, Ariz.
- Pulaski County, Ark.
- Alameda County, Calif.
- Orange County, Calif.
- San Benito County, Calif.
- San Diego County, Calif.
- San Francisco, Calif.
- San Mateo County, Calif.
- Santa Clara County, Calif.
- Ventura County, Calif.
- Adams County, Colo.
- Arapahoe County, Colo.
- Denver County, Colo.
- Broward County, Fla.
- Duval County, Fla.
- Hillsborough County, Fla.
- Osceola County, Fla.
- Palm Beach County, Fla.
- Cook County, Ill.

- Chicago, Ill.
- Ford County, Kan.
- Concordia Parish, La.
- New Orleans, La.
- St. Landry Parish, La.
- Boston, Mass.
- Springfield, Mass.
- Hamtramck, Mich.
- Noxubee County, Miss.
- Rosebud County, Mont.
- Colfax County, Neb.
- Bergen County, N.J.
- Essex County, N.J.
- Hudson County, N.J.
- Middlesex County, N.J.
- Salem County, N.J.
- Cibola County, N.M.
- Sandoval County, N.M.
- Kings County, N.Y.
- Queens County, N.Y.
- Richmond County, N.Y.
- Westchester County, N.Y.
- Cuyahoga County, Ohio
- Berks County, Pa.
- Bennett County, S.D.
- Buffalo County, S.D.
- Charles Mix County, S.D.
- Dewey County, S.D.
- Mellette County, S.D.
- Shannon County, S.D.
- Todd County, S.D.
- Ziebach County, S.D.
- Brazos County, Texas
- Ector County, Texas
- Fort Bend County, Texas
- Galveston County, Texas
- Hale County, Texas
- Medina County, Texas
- Travis County, Texas
- Williamson County, Texas
- Wilson County, Texas
- King County, Wash.
- Pierce County, Wash.

The observers and monitors will watch and record activities during voting hours at select polling locations in the aforementioned cities and counties. Civil Rights Division personnel will coordinate the federal activities and maintain contact with local election officials. In addition, the Department has deployed observers and monitors who speak Spanish, as well as Arabic, and a variety of Asian and Native American languages.

The OPM observers and Department personnel will monitor whether certain counties and localities are complying with federal voting laws by, for example, determining whether any voters are challenged improperly on the basis of their race, color, or membership in a language minority group; complying with the language minority provisions of the Voting Rights Act; permitting voters who are blind, have disabilities, or unable to read or write assistance by a person of their choice; and permitting all eligible voters to cast a ballot, or at least a provisional ballot.

#06-752: Justice Department Sends Election Observers to 22 States Across the Country in... Page 3 of 3

Voters will be able to file complaints online on the Voting Section home page at <http://www.usdoj.gov/crt/voting/index.htm>. Civil Rights Division personnel will be available at a specially staffed toll free number, 1-800-253-3931, to receive complaints, and on a dedicated TTY line for the hearing impaired, 1-888-305-3228.

More information about the Voting Rights Act and other federal voting laws is available on the Department of Justice's Web site at <http://www.usdoj.gov/crt/voting>.

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06-752