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EDITORIAL: Black Panther battle intensifies

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The dispute between the U.S. Commission on Civil Rights and the Justice Department is starting to look like the legal equivalent of World War II's Anzio campaign, which represented a major escalation late in the war. The battleground is the controversy about the department's decision to drop voter-intimidation cases against members of the New Black Panther Party. The commission is mounting a massive legal assault; Justice is refusing to be budged; and the casualties could be high.

The shame of it is that the department itself would be well-served if it would merely cooperate. That's what it would do if it were confident its decision was correct.

For six months, various members of Congress and the commission have been asking for cooperation from the Justice Department. The basic questions are simple enough: On what legal basis did Justice drop these cases, which it effectively already had won? Who were all the officials at Justice (and possibly the White House) who were involved in the decision? And does the decision represent a shift in enforcement policy concerning voting rights?

The Justice Department stonewalled at almost every turn or provided false information. For instance, department official Portia Robinson wrongly claimed that New Black Panther defendant Jerry Jackson "was a resident of the apartment building where the polling place was located" (and thus presumably had more of a right to loiter there). If the department can't even figure out that Mr. Jackson, a visibly fit age 53, doesn't live in a senior assisted-living facility, its overall reliability surely is questionable.

Frustrated by the lack of cooperation, the commission finally resorted to subpoenas to force information from the Justice Department. The commission has specific statutory power to issue subpoenas, and executive departments are required statutorily to comply. The Justice

Department, however, claimed otherwise and ordered its lawyers to ignore the subpoenas.

That's when the commission went "Anzio" on Justice, with a letter Tuesday documenting the commission's legal authority and a legal-discovery request of breathtaking scope. The commission's letter notes that the department fully cooperated with a commission subpoena in 2004; the unuttered follow-up question is: So why not this time?

The commission bolstered its claims by citing court precedents and Congressional Research Service reports. It also said that by consulting on the matter with an outside group - the NAACP Legal Defense Fund - the department effectively waived its various claims of privilege.

The discovery request, meanwhile, is 26 pages long, with 49 interrogatories and 51 separate document demands. Among its key nuggets: The commission challenges the department to justify, at great length, any claim of legal privilege against disclosures; it hints that it suspects White House involvement in the decision; it asks for documentation that might show Attorney General Eric H. Holder Jr.'s involvement; it confidently asserts that the second-ranking member of the Justice Department, Deputy Attorney General David W. Ogden, took part in the decision; it challenges the department's tacit contention that the New Black Panthers (one of whom carried a nightstick) were merely exercising First Amendment speech rights; and its subtext suggests that the commission suspects all sorts of other shenanigans. (Mr. Ogden suddenly announced on Dec. 3 that he would soon leave his position)

All of this means the commission has substantially raised the stakes of this battle. Others can best adjudge the legal arguments, and important larger issues of constitutional separation of powers could be involved. Yet a far simpler observation is appropriate and increasingly obvious: The Justice Department would not force the Civil Rights Commission to instigate such a huge legal battle if it had nothing to hide.

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