



U.S. Department of Justice

Civil Division

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November 12, 2010

VIA ELECTRONIC MAIL AND FIRST-CLASS U.S. MAIL

Mr. David P. Blackwood
General Counsel
United States Commission On Civil Rights
624 Ninth Street, N.W.
Washington, D.C. 20425

Re: United States Commission on Civil Rights'
Planned Statutory Enforcement Report

Dear Mr. Blackwood:

This responds to two letters from the United States Commission on Civil Rights ("Commission") of October 13, 2010, seeking additional information and documents related to the Department of Justice's enforcement of voter intimidation laws. (See Letters from Chairman Reynolds to the Attorney General, dated October 13, 2010.) This also responds to the requests of the Commission for deposition testimony from, and documents in the possession of, Department attorneys Loretta King, Steven Rosenbaum, Julie Fernandes, and Sam Hirsch, which requests came in the form of subpoenas that were received on November 2, 2010.

In a continuing spirit of cooperation with the Commission, the Department of Justice ("Department") would not object to allowing deposition testimony by Ms. King, Mr. Rosenbaum, and Ms. Fernandes, at a mutually agreeable date and format, provided that the Commission requires their testimony for the purpose of completing its statutory enforcement report for Fiscal Year 2010 and will reflect their testimony in that report. We request that the Commission provide the draft report to the Department for review and comment regarding any factual inaccuracies prior to your final action on the report.

Ms. King, as Acting Assistant Attorney General for Civil Rights at the time, and Mr. Rosenbaum, as Acting Deputy Assistant Attorney General for Civil Rights at the time, would be authorized to testify concerning certain litigation decisions they made with respect to the voter intimidation case, *United States v. New Black Panther Party for Self-Defense* ("NBPP"), and

concerning the Civil Rights Division's policies and practices with respect to enforcement of voting laws. Ms. Fernandes, who had no involvement in litigation decisions made with respect to *NBPP* (and thus would not have testimony to offer in that regard), would be authorized to testify concerning the Civil Rights Division's policies and practices with respect to enforcement of voting laws. These witnesses would not be authorized to testify with respect to the Department's internal deliberations or attorney work product. Thus, for example, they would not be authorized to testify regarding topic 6 of the Commission's request for testimony, which seeks information about confidential internal Department communications.

If the Commission has no intention of including the testimony from these three witnesses as part of its statutory enforcement report, however, their testimony would not further the Commission's stated purpose of completing that report, and, accordingly, the Department would not make them available to testify. We note from several news reports that the Commission already has prepared its final, statutory report and only needs to vote on whether to approve the report. Indeed, the Commission has scheduled a final vote on this report for Friday, November 19, 2010. It would be impossible, of course, for the Commission to actually consider and include information from the requested depositions – which the Commission proposes would take place from November 16 through November 19, 2010 – in its report when the Commission is scheduled to vote on the report on November 19, 2010. Accordingly, the Department would authorize the testimony of these Department witnesses only if it receives the Commission's written assurances that the Commission will postpone its vote on the statutory enforcement report to facilitate the incorporation of the witnesses' testimony in the report before the Commission takes action on the report. The Department also needs the Commission's assurance that transcripts will be provided to the Department for review and errata purposes by each witness, consistent with usual deposition practice.

Although the Department is prepared to authorize deposition testimony from Ms. King, Mr. Rosenbaum, and Ms. Fernandes upon such written assurances, it is not prepared to authorize deposition testimony from Mr. Hirsch. It appears that any information regarding the Commission's stated deposition topics that Mr. Hirsch might provide beyond the information already available from the other proposed witnesses, or beyond testimony and documents already in the Commission's possession, would be limited to confidential internal communications. Because we have long acknowledged the fact of communications between the Office of the Associate Attorney General and Civil Rights Division attorneys during the deliberations regarding this case, it does not appear that his deposition would add any new information regarding that fact. It seems that the only additional information he could provide would pertain to the content of those communications. Accordingly, consistent with Department regulations and the need to protect the Department's confidentiality interest in deliberative information, the Department does not authorize his testimony at this time.

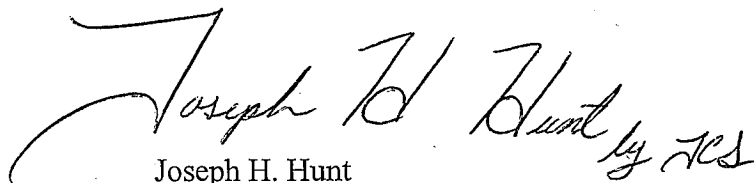
For more than a year now, the Department has expended considerable resources in seeking to satisfy the Commission's requests for information regarding the Department's enforcement of voting rights laws and the litigation of *NBPP*. The Department has produced over 4,000

documents, including interview notes from the Federal Bureau of Investigation and other internal documents; has provided answers and supplementary information in response to over 40 interrogatories, some of which requested information spanning several decades; answered numerous other written inquiries; and provided oral testimony from the Assistant Attorney General for Civil Rights. Throughout this process, the Department has sought in good faith to assist the Commission in its stated goal of achieving information for the Commission's Fiscal Year 2010 statutory enforcement report and remains willing to assist the Commission consistent with completing the Commission's report. Thus, if the Commission will not postpone the vote on the report in order to include information to be obtained from the proposed witnesses, the Department fails to see the utility of the requested testimony. To that end, please advise me as soon as possible in writing whether the Commission will reschedule the vote on the statutory enforcement report and will make use of the proposed deposition testimony in that report, so that we can discuss appropriate dates and other arrangements for the testimony.

As to the document requests that were included within the witness subpoenas, they are largely duplicative of the Commission's earlier document requests, and therefore the Department previously has provided to the Commission most of the non-confidential documents in the possession of the four individuals to whom the November 2, 2010 requests were directed. The proposed witnesses are nonetheless conducting a search to identify any additional documents that might be responsive to these requests. To the extent that we can provide additional documents consistent with the need to protect internal Department deliberations and other confidential information, we will do so as soon as possible. Consistent with that position, the Department is not providing copies of the internal communications from Messrs. Coates and Adams that the Commission requested in its letter dated October 13, 2010.

Finally, while the October 13, 2010 correspondence asks that the Department agree to forgo assertion of any confidentiality interests in information related to the Commission's expanding inquiry, the Commission's current undertaking does not warrant such an unprecedented waiver.

Sincerely,

A handwritten signature in cursive script that reads "Joseph H. Hunt by JCS". The signature is written in dark ink and is positioned above the typed name and title.

Joseph H. Hunt
Director
Federal Programs Branch
Civil Division