



U.S. Department of Justice

Civil Division

Joseph H. Hunt
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May 13, 2010

VIA FACSIMILE AND U.S. MAIL

Chairman Gerald Reynolds
United States Commission on Civil Rights
624 Ninth Street, NW
Washington, D.C. 20425

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

Dear Mr. Reynolds:

I have been asked to respond to your letter to the Attorney General dated May 9, 2010, and am also herein addressing issues raised in correspondence from the Commission's General Counsel, including his letter of May 13, 2010 to Department staff with respect to the above-referenced matter. At the outset, please know that the Department has accommodated the Commission's interests in additional information consistent with our institutional needs, including the need to protect individual privacy interests and attorney work product. As you probably know, Department staff has had several discussions and a meeting on May 12, 2010 with the Commission's General Counsel since the Department's April 16, 2010 completion of its response to the Commission's requests for testimony, documents, and other information. In our recent communications and in yesterday's meeting, the Department has addressed a number of the issues raised in your letter, including Assistant Attorney General Thomas E. Perez's availability, the provision of any additional Department witnesses, and the nature of the information not provided to the Commission.

As I think you know, the Department has designated Assistant Attorney General for Civil Rights Thomas E. Perez as the only Department witness to testify on its behalf before the Commission. As agreed between the Commission and the Department, Mr. Perez will testify tomorrow from 9:30 a.m. to 11:00 a.m. Mr. Perez will testify regarding issues that the Commission has indicated are at the core of its inquiry -- the reasons for the United States' dismissal of certain claims and request for relief in *United States v. New Black Panther Party for*

Self-Defense, and the Department's enforcement of voting rights laws, particularly those prohibiting voter intimidation. In addition, Mr. Perez is prepared to respond to the additional subjects enumerated in your letter, except to the extent they seek information concerning internal deliberations or other confidential matters; as we previously have advised, Mr. Perez is not at liberty to discuss such matters.

With respect to your questions about the Commission's document requests, the Department already has addressed a number of the issues raised in your letter. The Department previously produced to the Commission incident reports and reports of third parties concerning the events in question (at Bates No. range DOJ 002246 through DOJ 002276). The Department also has responded to Document Request Nos. 4, 5, and 7 by virtue of responding to Document Request Nos. 3 and 20, which seek similar information. At yesterday's meeting, the Department provided unredacted copies of executed declarations that were not filed in court, which Commission staff has agreed not to publish until we have informed the declarants of their provision to you. The Department also reproduced documents previously provided in response to Document Request Nos. 12, 14, 29, and 32 in a form that can be published on the Commission's website consistent with our mutual interest in protecting individual privacy.

In responding to the Commission's requests for documents, the Department carefully reviewed the information yielded by its search for responsive information and, where possible, produced partially redacted documents in an effort to provide the Commission with as much information as possible consistent with the Department's protection of its confidentiality interests. As we have explained in our various communications, the Department has withheld information that is quintessential attorney work product, such as emails about strategy, assessments of the law and the evidence, and other routine litigation-related deliberations, or information that implicates individual privacy interests.¹ Certain of the Commission's requests seek only information that constitutes attorney work product, specifically, Interrogatory Nos. 2, 5, 8, 10, 11, 21, 42, 44, and 45, Document Request Nos. 9, 10, 11, 13, 15, 16, 17, 18, 19,² 25, 26, and 39, and items 4 through 22 under the heading "Documents Known or Believed to Exist" in the Appendix to your letter. We do not intend to provide a log of withheld materials; our confidentiality interests in attorney work product are so conventional that we do not see a basis for creating a log of these materials.

Finally, we do not believe that the Commission's subpoenas and requests override the well-established confidentiality interests in these types of materials that are integral to the Department's discharge of its law-enforcement responsibilities. Thus, as we do in responding to congressional committees conducting oversight, we have sought to provide information to

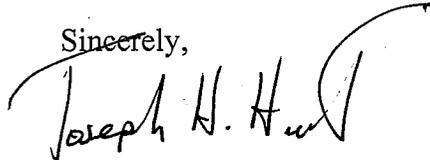
¹ As we explained by letter dated April 16, 2010, the Department also redacted material from documents that was unrelated to the subjects of the Commission's inquiry and therefore was deemed not responsive to any request.

² This Document Request also seeks information protected from disclosure by the law-enforcement privilege.

accommodate the Commission's needs to the fullest extent consistent with our need to protect the confidentiality of the work product of our attorneys. The President has not asserted executive privilege, nor do we believe that the President is required to assert executive privilege for the Department to take appropriate steps to protect law-enforcement deliberative confidentiality interests in this context. For these same reasons, we do not believe it is appropriate to appoint a special counsel.

We hope that this information is helpful to the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph H. Hunt". The signature is written in a cursive style with a large, sweeping flourish at the end.

Joseph H. Hunt
Director
Federal Programs Branch

cc: David P. Blackwood