



UNITED STATES COMMISSION ON CIVIL RIGHTS

624 NINTH STREET, NW, WASHINGTON, DC 20425
www.usccr.gov

October 28, 2010

VIA FAX (202-616-0222) AND E-MAIL AND REGULAR MAIL

Joseph H. Hunt, Esq.
Director, Federal Programs Branch
Civil Division
United States Department of Justice
20 Massachusetts Avenue, NW
Washington, DC 20001

Re: United States Commission on Civil Rights Statutory Enforcement Report

Dear Mr. Hunt:

No response has been received from the Department to the Commission's letters of October 13, 2010 to the Attorney General, or to my follow-up email to you of October 25, 2010 as to when a response could be expected. A copy of said email is attached.

Given this lack of cooperation, please be informed that depositions before the Commission have been set for the following Department of Justice personnel: Julie Fernandes, Loretta King, Steve Rosenbaum and Sam Hirsch.

It is requested that you please indicate whether the Department (with full reservation of any objections or defenses) will facilitate service of said subpoenas at a mutually convenient time and place. Without said cooperation, the Commission will have no alternative but to serve said individuals at their place of abode.

Please be informed that, if the Department does not respond to this request by midnight this evening, the Commission will proceed unilaterally to serve the subpoenas in question.

Joseph H. Hunt, Esq.
October 28, 2010
Page 2

Thank you for your anticipated cooperation.

Sincerely,

David P. Blackwood 

David Blackwood
General Counsel

Attachment -- email

cc: Chairman Gerald A. Reynolds
Vice Chair Abigail Thernstrom
Commissioner Todd F. Gaziano
Commissioner Gail Heriot
Commissioner Peter N. Kirsanow
Commissioner Arlan D. Melendez
Commissioner Ashley L. Taylor, Jr.
Commissioner Michael J. Yaki
Martin Dannenfelser, Staff Director

Faith Burton, Esq.
Special Counsel
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Lillian Dunlap

From: David Blackwood
Sent: Thursday, October 28, 2010 9:35 AM
To: Lillian Dunlap
Subject: Fw: USCCR Letters to Hon. Eric Holder, 10-13-10
Attachments: Letter to The Honorable Eric Holder, Jr. 10-13-10 with 3 requests.docx; Letter to The Honorable Eric Holder, Jr. 10-13-10 with production requests.docx

From: David Blackwood
To: Hunt, Jody (CIV) <Jody.Hunt@usdoj.gov>
Sent: Mon Oct 25 07:10:58 2010
Subject: FW: USCCR Letters to Hon. Eric Holder, 10-13-10

Mr. Hunt,

Please indicate when the Commission can expect a response to the attached letters of October 13, 2010.

David Blackwood
General Counsel
U.S. Commission on Civil Rights

From: David Blackwood
Sent: Wednesday, October 13, 2010 9:05 AM
To: 'Hunt, Jody (CIV)'; 'faith.burton@usdoj.gov'
Subject: USCCR Letters to Hon. Eric Holder, 10-13-10

Jody and Faith,

Attached, please find correspondence from the Commission to Attorney General Holder. The original hard copies of the letters will be delivered to the Department this morning.

Please contact me should you have any questions.

David Blackwood
General Counsel
U.S. Commission on Civil Rights

"This message is for the designated recipient only and may contain privileged, proprietary, or otherwise private information. If you have received it in error, please notify the sender immediately and delete the original. Any other use of the email by you is prohibited."



UNITED STATES COMMISSION ON CIVIL RIGHTS

624 NINTH STREET, NW, WASHINGTON, DC 20425
www.usccr.gov

October 13, 2010

The Honorable Eric Holder, Jr.
Attorney General of the United States
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Holder:¹

Since June 2009, the U.S. Commission on Civil Rights has sought information from the Department of Justice, much of which the Department refused to provide despite its statutory obligation to “cooperate fully” with such Commission requests.² Our original aim was to determine the reasons for and implications of DOJ’s dismissal of most of the New Black Panther Party (NBPP) voter intimidation lawsuit and its narrow injunction against the remaining defendant. Our current focus is on the following systemic issue: the growing evidence of a culture of hostility in the Civil Rights Division to the race-neutral enforcement of the civil rights laws that may involve both supervisory attorneys and some of your political appointees.

To date, the Department has ordered its employees under subpoena not to provide testimony to the Commission and has raised questionable and sweeping privilege claims. Notwithstanding that interference, the Commission has heard from eyewitnesses detailed allegations of malfeasance in the Civil Rights Division (CRD) which are at war with its core mission. The specific instances of alleged misconduct detailed by Christopher Coates and J. Christian Adams have not been disputed, and they also are supported by affidavits received from other former CRD attorneys. The live and affidavit testimony alleges: a broad culture of hostility to race-neutral enforcement of the civil rights laws; a pattern of harassment and intimidation against those who work on suits in which the defendants are racial minorities; and instructions from a political appointee that basic voting rights laws will not be enforced against racial minorities during this administration.

¹ At a public meeting of the U.S. Commission on Civil Rights on October 8, 2010, the Commission approved this letter by a 5-1 vote. Commissioners Reynolds, Kirsanow, Taylor, Heriot and Gaziano voted in favor and Commissioner Yaki opposed. The motion to approve the letter allowed commissioners who were not present at the meeting to vote on the letter after the meeting, and Commissioner Melendez subsequently voted against sending the letter.

² “All Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.” 42 USC § 1975b(e).

The Honorable Eric Holder, Jr.

October 13, 2010

Page 2

This testimony calls for a thorough investigation and specific confirmation, refutation or detailed explanations—not the bland assertion that the laws are properly enforced without regard to race. Coates and Adams testified that the hostility within CRD to bringing particular cases involving black defendants is symptomatic of deep-seated—and shockingly common—attitudes favoring racially-selective enforcement of the law. Although Assistant Attorney General for Civil Rights Thomas Perez has refused to admit, deny or explain the specific allegations of harassment and intimidation, the troubling statements by supervising attorneys, or the race-based instructions that were allegedly issued by Deputy Assistant Attorney General Julie Fernandes, we urge you to order full cooperation with our investigation and allow the Commission to finish its job.

To that end, we respectfully ask you to take the following actions:

1. Waive any purported privilege that might apply to the Commission's requests and promptly supply all the documents, emails, and other material that have been withheld. To the extent the Department has concerns about the waiver of privilege with respect to specific documents, emails and other materials, the Commission remains willing to meet with DOJ representatives to negotiate such waiver.

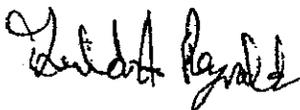
2. Instruct Mr. Coates, Mr. Adams, and other current or former employees who may come forward with similar information or accounts of malfeasance that they may testify freely before the Commission regarding the conversations and written exchanges they had with Loretta King, Steven Rosenbaum, Julie Fernandes, Thomas Perez, and others. (Mr. Coates and Mr. Adams withheld many important details about such exchanges because they felt an obligation to abide by the Department's asserted privilege claim. Particularly given the credible allegations of wrongdoing, they and others should have no fear about testifying freely.)

3. Instruct all other Department employees the Commission may subpoena to cooperate fully by first turning over all responsive documents and then testifying without restraint before the Commission. In the coming days, subpoenas for documents and testimony will be delivered to Steven Rosenbaum, Loretta King,³ Julie Fernandes,⁴ and possibly others.

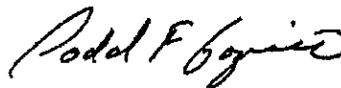
³ The Department asserts that then Acting Assistant Attorney General Loretta King and her then-deputy Steven Rosenbaum made the decision to dismiss the NBPP case. There is no doubt they were the senior CRD officials who transmitted the order to the trial team to dismiss most of the suit, even if other Department appointees were involved in the decision. Coates and Adams have testified that members of the trial team had heated exchanges with Rosenbaum about the reasons for dismissal. Adams's testimony suggests that Rosenbaum did not even bother to read the trial team's legal memos regarding the NBPP case. Rosenbaum also sought and then ignored the advice of the CRD Appellate Section that the case should proceed against all four defendants. Instead, Coates testified that the reason he was ordered to dismiss the NBPP case was because of the "deep-seated opposition to the equal enforcement of the VRA against racial minorities . . ." Prepared Testimony of Christopher Coates Before the U.S. Commission on Civil Rights at 9 (Sept. 24, 2010). Whatever the true reason for dismissing the NBPP suit was, there is now

We appreciate your prompt actions to expedite our investigation.

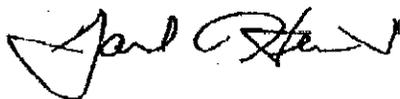
Sincerely,



Gerald A. Reynolds
Chairman



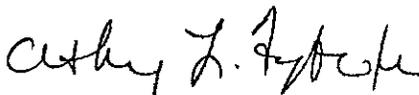
Todd Gaziano
Commissioner



Gail Heriot
Commissioner



Peter Kirsanow
Commissioner



Ashley Taylor, Jr.
Commissioner

cc: Vice Chair Abigail Thernstrom
Commissioner Arlan Melendez
Commissioner Michael Yaki

a compelling need to hear the full account of communications between these individuals and others who were present for these discussions.

⁴ Mr. Coates also testified that Loretta King instructed him to stop asking attorneys applying for jobs in the Voting Section whether they would be willing to enforce the laws in a race-neutral manner. See, e.g., Prepared Testimony at Coates, *supra*, at 7. And both Coates and Adams have testified that Deputy Assistant Attorney General Julie Fernandes announced to the Voting Section that the Division would only pursue Voting Rights Act cases on behalf of racial and language minorities. These and other statements need to be carefully and thoroughly investigated, with key witnesses testifying in a public forum.



UNITED STATES COMMISSION ON CIVIL RIGHTS

624 NINTH STREET, NW, WASHINGTON, DC 20425

www.usccr.gov

October 13, 2010

The Honorable Eric Holder, Jr.
Attorney General of the United States
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Holder:¹

In a separate letter, the Commission asks you to waive any purported privilege you have asserted and cooperate fully with all of its requests for information.² This letter concerns some particularly important writings that we request be produced without delay—and regardless of whether the Department will produce all other responsive documents.

In sworn testimony before the Commission, former Voting Section attorney J. Christian Adams stated that he participated in a meeting on May 13, 2010 to brief and help prepare Assistant Attorney General Perez for his testimony the next day before the Commission. On September 24, 2010, former Voting Section Chief Christopher Coates testified that he participated in this meeting by phone and that he informed Mr. Perez that the New Black Panther Party lawsuit was effectively dismissed because of hostility to the race-neutral enforcement of the voting laws.³ The day after that briefing, May 14, 2010, Mr. Perez testified in response to a question about the possibility that individuals in the Civil Rights Division harbored such views that “We don’t have people that are of that ilk” in the Division.⁴

¹ At a public meeting of the U.S. Commission on Civil Rights on October 8, 2010, the Commission approved this letter by a 5-1 vote. Commissioners Reynolds, Kirsanow, Taylor, Heriot and Gaziano voted in favor and Commissioner Yaki opposed. The motion to approve the letter allowed commissioners who were not present at the meeting to vote on the letter after the meeting, and Commissioner Melendez subsequently voted against sending the letter.

² See 42 USC § 1975b(e) (“All Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.”).

³ Hearing Testimony of Christopher Coates Before the U.S. Commission on Civil Rights at 145 (Sept. 24, 2010).

⁴ Hearing Testimony of Thomas Perez Before the U.S. Commission on Civil Rights at 35 (May 14, 2010).

The Honorable Eric Holder, Jr.

October 13, 2010

Page 2

The Commission is understandably interested in why Mr. Perez neglected to disclose the information he had learned from Mr. Coates the previous day regarding “people [who might be] of that ilk.” Our immediate problem is that Mr. Coates felt constrained by the Department’s privilege assertions not to provide details regarding such conversations. (He said he would be willing to provide details if the privilege is waived or ruled to be invalid.) We would like to recall Mr. Coates after you instruct him he may testify freely. In the meantime, we ask that you expedite the production of the following:

- Writings or emails Mr. Coates prepared about the New Black Panther Party litigation or hostility to the race-neutral enforcement of the voting laws in the month preceding Mr. Perez’s testimony, particularly one on or about April 26, 2010.
- Writings or emails J. Christian Adams prepared about the New Black Panther Party litigation or hostility to the race-neutral enforcement of the voting laws in the month preceding Mr. Perez’s testimony, particularly one on or about May 10, 2010.

Please also identify every person in the Department who saw or received these documents.

Finally, it is disappointing that private litigants seeking similar information pursuant to the Freedom of Information Act have received a 62-page privilege log of the documents that were withheld, while the Commission, which is entitled to the actual documents, has received neither the documents nor the courtesy of a privilege log of materials you refuse to provide, which the Department has also refused to provide.⁵ The Commission asked for such a privilege log ten months ago and several times since then. We respectfully renew our request for all documents and emails responsive to our requests and, if appropriate, for a detailed privilege log explaining the reasons why any documents responsive to our requests have been withheld.

⁵ See Letter of Joseph H. Hunt to Chairman Gerald Reynolds (May 13, 2010).

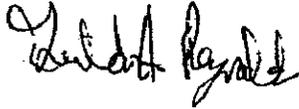
The Honorable Eric Holder, Jr.

October 13, 2010

Page 3

Thank you for your prompt attention to these matters.

Sincerely,



Gerald A. Reynolds
Chairman



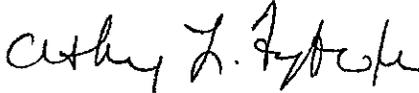
Todd Gaziano
Commissioner



Gail Heriot
Commissioner



Peter Kirsanow
Commissioner



Ashley Taylor, Jr.
Commissioner

cc: Vice Chair Abigail Thernstrom
Commissioner Arlan Melendez
Commissioner Michael Yaki