

DECLARATION OF ROBERT A. KENGLE

I, Robert A. Kengle, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am Acting Co-Director of the Voting Rights Project at the Lawyers' Committee for Civil Rights Under Law. From September 1984 through April 2005 I was an attorney in the Voting Section of Department of Justice's Civil Rights Division. I became a Deputy Chief of the Voting Section in 1999 and remained in that position until left the Department of Justice. I make the following declaration in response to the testimony of Christopher Coates before this Commission concerning the August 2003 primary election in Noxubee County, Mississippi.
2. In his written testimony Mr. Coates quotes an unnamed deputy chief as having asked him "Can you believe that we are going to Mississippi to protect white voters?" It is my understanding that, in response to a question by a member of this Commission, Mr. Coates identified me by name as the deputy chief in question. For the reasons described below, Mr. Coates' testimony about me was materially incomplete and misleading.
3. At the time of the election in question, I was a deputy chief in the Voting Section of the Civil Rights Division. I generally supervised litigation but handled other matters as required. Mr. Coates was a Special Counsel who focused primarily upon vote dilution litigation under Section 2 of the Voting Rights Act. The Voting Section was directed by the office of the Assistant Attorney General for Civil Rights to conduct attorney coverage of the August 2003 Noxubee County primary election. The specific concern was that Noxubee County Democratic Party Chairman Ike Brown had published a list of voters, along with a statement that he planned to challenge them if they attempted to vote on the Democratic Primary, on the ground that they supported non-Democratic candidates in violation of the Democratic Party loyalty requirement. I volunteered to lead the coverage and accompanied Mr. Coates and other Voting Section attorneys to Mississippi, meeting with state officials beforehand and visiting precincts on election day.
4. I do not recall making the statement to Mr. Coates "Can you believe that we are going to Mississippi to protect white voters". I certainly did express my dissatisfaction to Mr. Coates on several occasions during the trip and it is possible that during the multi-day coverage I said something to him along the lines of "Can you believe we're doing this?" However, I did not complain to Mr. Coates in sum or substance about "protect[ing] white voters" because I did not consider that to be the problem.
5. The sum and substance of the concerns that I definitely and specifically expressed to Mr. Coates during the 2003 Noxubee County coverage, as I did to other management-level career staff within the Voting Section, was that "I think it's ridiculous (or outrageous) that we are being ordered to cover this election when Hans [von Spakovsky] and [Bradley] Schlozman are rejecting our other recommendations." By this I referred to recommendations to monitor elections and open investigations based upon concerns of discrimination against minority voters, which had been rejected by those front office appointees for what I believed were spurious reasons. I believed that a double standard was being applied under which complaints by minority voters were subjected to excessive and unprecedentedly demanding standards, then

dismissed as not being credible, while on the other hand the Voting Section was being ordered to pursue the Noxubee complaints at face value – in a dispute over party loyalty -- as a top priority. I confided my view of this double-standard to Mr. Coates and to other management-level career staff. If I made the remark to Mr. Coates “Can you believe we’re doing this?” it was within this context. I did not protest this instance of what I perceived to be a double standard to Mr. Schlozman or Mr. von Spakovsky because I was certain that it would only prompt retaliation against Section Chief Joe Rich, myself or other career employees.

6. I do not understand Mr. Coates to complain that I failed to deploy DOJ personnel properly during the election, restricted Mr. Coates in any way from pursuing whatever evidence he saw fit, or interfered with Mr. Coates reporting his findings verbatim. As a Special Counsel, Mr. Coates regularly received a great deal of deference and this occasion was no different.
7. It is my understanding that the DOJ Inspector General plans to undertake a long-term review of Voting Section enforcement. It is my recommendation that such a review include: a) changes in the standards under which political subdivisions were certified for federal examiner and observer coverage between 2001 and 2004; b) specific decisions that were made by staff in the Office of the Assistant Attorney General for Civil Rights between 2001 and 2004 to reject recommendations for election coverage and civil investigations by Voting Section career staff with respect to discrimination against minority citizens; and c) the decision-making process concerning how federal observers and Department of Justice attorneys were assigned to cover the 2004 Presidential election.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 18, 2010
Washington DC


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