



December 18, 2009

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

Dear Mr. Hunt:

The U.S. Commission on Civil Rights appreciates the sensitivities relating to its request for information while the investigation being conducted by U.S. Department of Justice's Office of Professional Responsibility (OPR) is still underway. To allay your concerns, the Commission requested a meeting where we would negotiate revisions to our discovery plan so as to eliminate or minimize the likelihood the Commission's work would interfere with OPR's pending investigation. Your refusal to schedule a meeting even to discuss the Commission's pending discovery requests and depositions suggests that DOJ is not interested in working to develop a path that will allow each agency to fulfill its statutory obligation. As you are aware, the Commission first began requesting related information from the Department on June 16, 2009, six months ago. After six months passed without a substantive response from DOJ, the Commission felt it necessary to issue subpoenas.

The collection of information to satisfy our information requests should have been underway for months. In the alternative, DOJ should have informed the Commission whether DOJ intended to comply at all. You state that you may revisit the "possibility of a meeting" if the Department identifies "any common ground on which to move forward." According to news reports, however, DOJ shared sufficient common ground to consult with an outside advocacy group concerning aspects of the New Black Panther Party litigation, prior to the Department's dismissal of most of the charges. We were hopeful that a similar courtesy would be extended to the Commission. While DOJ's consultation with an outside advocacy group was optional, its duty to cooperate with the Commission is mandatory. Congress gave the Commission the obligation to review the Department's enforcement of voting rights laws while requiring the Department to "cooperate fully with the Commission to the end that it may effectively carry out its functions and duties." 42 U.S.C. § 1975b(e).

In declining to meet to discuss the discovery requests, you should be aware that the Department's lack of transparency and cooperation stands in stark contrast to the practice of numerous other federal agencies. For example, just last year, the Commission issued discovery requests to a number of federal agencies and government-sponsored entities with regard to the Commission's 2009 study, "Civil Rights and the Mortgage Crisis." In pursuing information relating to said study, the Commission issued Interrogatories and Requests for Production of Documents to the Department of Housing and Urban Development, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, the National Credit Union Administration, the Office of Thrift Supervision, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Reserve Board. In each case, Commission staff met with representatives of these agencies at the beginning of the discovery process, long before a formal response was due. This step was undertaken in an effort to clarify the issues, identify any concerns related to sensitive information, and, in the spirit of cooperation, to minimize the time, effort and resources of the responding agencies. In many cases, Commission staff met with the responding agencies on multiple occasions.

Moreover, the Commission enjoyed this same level of cooperation from the Department of Justice when it sought information in connection with the Commission's FY 2007 enforcement study titled, "Becoming Less Separate? School Desegregation, Justice Department Enforcement, and the Pursuit of Unitary Status." Throughout this process, Commission staff met with Justice Department personnel to expedite the production of the information sought, resolve any concerns, and ensure accuracy.

Unfortunately, your most recent communication indicates that the Department does not intend to follow past practice, and will not meet to discuss the Commission's request for information until after January 11, 2010, when the Department's formal response is due.

Given the Department's failure to provide any information for over six months, its refusal to meet raises concerns as to the Department's intention to cooperate with the Commission. If the Department was in the process of preparing a substantive response, such a meeting would serve to clarify any issues and address any disputes. Conversely, the failure to agree to such a meeting seems to indicate the Department's belief that there is nothing to discuss and that the Department's refusal to provide any information remains unchanged. The latter position is particularly inexplicable as it relates to the information that the Commission has sought from the Department regarding past investigations of voter intimidation that pre-date the New Black Panther matter. There simply is no reason for the Department's ongoing failure to provide this information to the Commission.

The January 11, 2010 deadline is not a time to raise initial questions, seek clarifications, or ask for additional time. If the Department is following the path of cooperation, the proper forum for raising such concerns is the proposed initial staff meeting. This has been the practice of the Commission, other federal agencies, and, indeed, the Department of Justice in other investigations initiated by the Commission.

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The Commission also agreed to postpone the deposition of Department personnel so that they and the Department could discuss any timing issues, or in an extraordinary case, to determine whether the President will invoke executive privilege to prevent the employees from providing certain testimony. A meeting would have clarified any outstanding issues related to the depositions. The Commission will set new deposition dates for the Department employees in the next few weeks, and may consider subpoenaing other Department personnel during the same time. If the Department does not want to discuss these issues, then the Commission will have to act without its input as to the individuals and timing of such depositions.

Given the Department's inexplicable six-month failure to provide any information relating to the New Black Panther Party litigation, it is hereby requested that the Department provide written assurance that its response to the outstanding discovery requests will be substantive. We would ask that such written assurance be provided no later than December 23, 2009.

Alternatively, in light of past practice, it is hoped that the Department will reconsider its decision not to meet with Commission staff at this time. In the meantime, if you should have any questions, please do not hesitate to give me a call.

Sincerely,

David Blackwood
General Counsel

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
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