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LEGAL DIRECTOR

March 24, 2010

VIA TELECOPY AND FIRSTCLASS MAIL

Thomas E. Perez, Esq.  
Assistant Attorney General  
U.S. Department of Justice  
Civil Rights Division  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Dear Mr. Perez:

We write on behalf of the American Civil Liberties Union of Maryland and the Somerset County Branch of the NAACP, to request that the Civil Rights Division open an investigation into continuing racial disparities in the Somerset County, Maryland government. Specifically, we ask that the Department of Justice investigate -- pursuant to its authority under 42 U.S.C. 2000e and 42 U.S.C. 1973 -- whether these disparities result from a pattern of illegal race discrimination in the County's employment practices and/or election system.

For the last year, the ACLU and NAACP have been working on a project aimed at exposing and addressing racial disparities in Somerset, beginning with our issuance of a report last May, first calling attention to the problem. The report -- entitled "Semper Eadem: Always the Same?" -- examines the demographics of Somerset County government, as recorded in the 2007 EEO reports<sup>1</sup> filed by the County and its School System with the federal government.<sup>2</sup> These records reveal alarming disparities between the numbers of African Americans who live in Somerset County, and the number employed in government there, especially at the upper echelons. At the time of the last U.S. Census, Somerset County was 42 percent African American -- the highest black population percentage of any Eastern Shore County, and any other county in the state but Prince George's and Baltimore City. Yet, *never in history* has any African American been hired, elected, or appointed to a top job in County government.<sup>3</sup> In fact, as of its 2007

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<sup>1</sup> These were the most recent filings available at the time of the study. We have since obtained more recent reports, however the updated statistics do nothing to diminish concerns about the County's racial divide.

<sup>2</sup> The report is available online, at this link:  
[http://www.aclu-md.org/aPress/Press2009/051909\\_Somerset.html](http://www.aclu-md.org/aPress/Press2009/051909_Somerset.html).

<sup>3</sup> Created in 1666, Somerset County is a lower Eastern Shore community with a total population of 24,747, as reported in the 2000 U.S. Census. U.S. Census Bureau,

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EEO filing, *not a single African American* was employed by the County in a professional capacity. The County employed 46 people full or part time that year in official, professional, technical or paraprofessional positions, but *none* was African American.

### **Somerset County Has a Long History of Racial Discrimination**

Any conversation about racial justice in Somerset County must begin with an acknowledgement of the County's long history of racial injustice. As summarized in our report:

Forever imprinted on Somerset County is that Princess Anne was the site, in 1933, of the State's horrific last lynching, at which "two thousand spectators watched and many cheered the public mutilation, hanging and burning of a black man."<sup>4</sup> ... Public school segregation in Somerset County continued through the late 1960s, when the federal government finally intervened to require desegregation. Until ACLU lawsuits forced change in the 1980s and 1990s, at-large election systems and non-resident voting were employed in counties and municipalities throughout the Lower Shore, reducing the chances for African-Americans to be elected to public office. And not so long ago, in 1996, a federal court jury in Baltimore ruled that the Somerset County Board of Education illegally fired School Superintendent H. DeWayne Whittington because of his race, awarding Dr. Whittington a huge monetary verdict -- including punitive damages against

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Quick Tables DP-1 Profile of General Demographic Characteristics: 2000, [http://factfinder.census.gov/servlet/QTTable?\\_bm=n&\\_lang=en&q\\_r\\_name=DEC\\_2000\\_SF1\\_U\\_DP1&ds\\_name=DEC\\_2000\\_SF1\\_U&geo\\_id=05000US24039](http://factfinder.census.gov/servlet/QTTable?_bm=n&_lang=en&q_r_name=DEC_2000_SF1_U_DP1&ds_name=DEC_2000_SF1_U&geo_id=05000US24039) (last visited July 20, 2009) [*hereinafter* Quick Tables DP-1]. Somerset County functions under the county commissioner form of local Maryland government. Under this structure, Somerset County elects a board of five county commissioners to four-year terms. The Commissioners' current terms conclude in 2010. Currently, the county is split into five districts on the basis of total population derived from the Federal Census. Each district elects one County Commissioner and one member of the Board of Education.

<sup>4</sup> SEMPER EADEM, at 5, *citing* Sherrilyn A. Ifill, ON THE COURTHOUSE LAWN: CONFRONTING THE LEGACY OF LYNCHING IN THE TWENTY-FIRST CENTURY, Beacon Press (2007) at 21. Another well-known lynching occurred in Crisfield, in 1907, in addition to several others that occurred in Somerset County. Substantial evidence suggests that Somerset County's white law enforcement officials of the time were complicit in these lynchings, and in preventing those who carried out the violence from being brought to justice. *Id.*, at Ch. 4.

individual board members -- because of the School System's blatant discrimination. Among the evidence in that case was testimony from a newspaper reporter that the School Board President openly used racial slurs toward African Americans, including against Superintendent Whittington.<sup>5</sup>

### **The Continuing Legacy of Past Discrimination**

The legacy of this discrimination remains obvious today, in the yawning racial disparities that continue to exist in County government. Despite the fact that 42 percent of the County's population is African-American,<sup>6</sup> no African-American in the County has, in the County's 350-year history, held any top elected or appointed position, including County Commissioner, County Administrator, Sheriff, Detention Center Warden, Judge, State's Attorney, State Delegate, County Treasurer, County Finance Director, County Attorney, County Personnel Director, County Planning Director, County Fire Marshall, County Emergency Management Director or County Elections Administrator, among others.<sup>7</sup> Nor is this problem limited to the highest levels of government. According to the ACLU study, Somerset County did not employ a single African-American in a professional capacity in 2007. Of 230 full and part time personnel employed by Somerset County that year, only 29 were African-American.<sup>8</sup> None of them was employed in Official, Administrative, Professional, Technical or Paraprofessional capacities.<sup>9</sup>

This disparity also reflects itself in the distribution of salaries among the County's employees. While 88 of the county's 179 employees in 2007 were employed in positions paying over \$33,000 per year, only eight of the 88 were African-American.<sup>10</sup> Nine persons earned salaries of over \$55,000 per year; not a single one was African-American.<sup>11</sup> Furthermore, evidence suggests the problem may actually be getting worse. In 2005, 13.6 percent of the County's new hires were African-American.<sup>12</sup> In 2007, only one African-American was hired – just 6.7

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<sup>5</sup> *Id.*

<sup>6</sup> Quick Tables DP-1.

<sup>7</sup> *See* SEMPER EADEM, at 3.

<sup>8</sup> *Id.* at 7.

<sup>9</sup> *Id.* at 11.

<sup>10</sup> *Id.* at 16.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 14.

percent of the fifteen new hires.<sup>13</sup> That single hire was to a service-sector position.<sup>14</sup>

Importantly, this is not for a lack of qualified candidates.<sup>15</sup> Because Somerset County is home to the University of Maryland Eastern Shore (UMES), a historically black college, a substantial number of African-Americans within the County reach higher levels of education. Nearly a quarter of the County's residents with a four-year college degree are African-American.

We believe the inequalities in Somerset County's employment ranks have been perpetuated, in part, by problems with the County's electoral process. As noted above, for many years, African-Americans were shut out of elective offices throughout the County due to local use of at-large election systems and non-resident voting schemes, by which non-residents who owned real property in the jurisdiction were entitled to full voting rights.<sup>16</sup> In 1985, the ACLU challenged the County's at-large system as violating Section 2 of the Voting Rights Act.<sup>17</sup> Despite the fact that 34.6 percent of the County's population then was African-American, no African-American had ever been elected as a Commissioner or Board of Education member. In response to the suit, a settlement agreement was reached which replaced the at-large election system with five single-member districts, each electing one county commissioner. As part of the settlement, District 1 was created as a majority-minority "remedial" district, in order to comply with the Voting Rights Act.

In 1987, the Eastern Correctional Institution (ECI) was opened in District 1. Prisoners are counted by the U.S. Census in the place they are incarcerated, although they are ineligible to vote in Maryland.<sup>18</sup> Therefore, when the County

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<sup>13</sup> *Id.* at 6.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 11. A recent example involving the nomination of candidates for an open County Commissioner's seat exemplifies this problem. In 2009, the Somerset Democratic Central Committee announced that it was accepting applications for nominees to fill a vacant seat on the County Commission. Two African-Americans – Clarence E. Bell, a career law enforcement officer, and Kenneth Ballard, a longtime NAACP branch president – applied for the position. Unfortunately, the committee nominated neither man for consideration by the Governor – instead nominating two white applicants, one of whom was appointed by Governor Martin O'Malley in March of 2009. *Id.* at 2.

<sup>16</sup> The ACLU challenged property-qualified voting schemes in Princess Anne and Crisfield in the early 1990s, resulting in elimination of the practice.

<sup>17</sup> *Padgett v. Commissioners of Somerset County*, Civil No. HAR-85-3190 (July 31, 1985).

<sup>18</sup> See MD. CODE ANN., ELEC. LAW § 3-102(b)(2), 16-202(a).



conducted redistricting following the 1990 Census, it placed this large, non-voting population in District 1, the remedial district, and it has remained there since. The University of Maryland, Eastern Shore (UMES), likewise, was placed and remains in District 1. We believe the inclusion of both ECI and UMES within the same district has impaired district residents' ability to field strong African American candidates, and to elect a candidate of their choice.<sup>19</sup> As noted, to this day the County has yet to elect an African-American County Commissioner.

### **The Need for Change**

Our hope in producing this report was to raise awareness within Somerset County of the harms associated with these racial disparities, and to work with community leaders and residents on a process for reform. Last June we held a community forum with Somerset County leaders and residents to discuss the report and hear testimony concerning the issues underlying these racial disparities and the effects they have on members of the community. Moderated by Carl Snowden, the Director of Civil Rights for the Maryland Attorney General's Office, this forum offered an important opportunity for people within Somerset County – both black and white – to come together to hear each other out, so as to begin to lay the groundwork for bridging the County's racial divide. At the conclusion of the meeting, a Task Force composed of community members, local advocates, and officials was created with the goal of establishing recommendations to encourage equal opportunity and diversity in Somerset County government going forward. Although several county officials attended the community forum, and school system officials embraced the effort, only one County Commissioner (and no other representative of the County government) volunteered to serve as a member of the Task Force. Our subsequent requests that the County Administrator, Sheriff, and Detention Center Warden also join the Task Force in order to ensure sufficient involvement by key decision-makers in the County were either rebuffed or ignored.

The Task Force conducted a series of sessions over the course of the summer and early fall, and developed a list of recommendations for steps that could be taken to overcome the racial disparities that exist in County government. Those recommendations were released and discussed at a community meeting on November 12, 2009. Representatives of the Task Force formally presented the

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<sup>19</sup> Currently, approximately 64 percent of both District 1's overall population and its African-American population are ECI inmates. While African-Americans constitute 71 percent of District 1's non-prison population, the district's non prison-population is largely (more than 80 percent) made up of students residing within dormitories at UMES. While these students reside within the district, many choose to vote in the districts from which they originally hail. The combined effect of the inclusion of ECI and UMES within a single district is reflected in the district's extremely low voter turnout in the 2006 County Commissioners' election. District 1's turnout of 481 is approximately one-third of that of District 2 – the next lowest – and approximately one-fourth of District 3 which had a voter turnout of 1,722. The county's voter registration totals reflect similar disparities.

recommendations to the County Commission on November 24, with a copy sent to the Commission for review in advance of that meeting. A response was requested by mid-December, and one was received from the County in mid-January 2010. Although the County's response was generally a positive one, it was vague on numerous points. Our January 29 request for clarification, information, and follow up action has received no response to date. This non-response, and the County's general lack of engagement in this process are what lead us to this request for assistance from the Department of Justice.<sup>20</sup>

We appreciate Somerset County's acknowledgement of the need for increased diversity, and its stated openness to reforms that would make such diversity possible. However, we are concerned about the lack of progress being made by the County toward the goal of increasing representation of African Americans in County government. It has now been over a year since two well-qualified African Americans were passed over for an open County Commission post in favor of yet another white male (thus maintaining an all-white, all male Commission, the same as it has always been.) And it is nearly a year since the issuance of the *Semper Eadem* report. Yet no noticeable change has occurred in the racial make up of County government – notwithstanding representations by County officials that hiring improvements are under way. In the few instances in which jobs of significance have opened up, African Americans do not seem to have been actively recruited, and none has been hired. For example, when the job of County Planning Director came open last summer, there was an opportunity to recruit a diverse applicant pool, and to hire a minority director to a job of importance in the County government. However, it does not appear that significant effort was made to recruit African American applicants, and ultimately, a white male filled the planning position. Moreover, although the County had already committed to us that it would strive to involve African Americans in its application screening process, our understanding is that the new Planning Director was screened and

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<sup>20</sup> Additionally, the ACLU and NAACP have been moving forward on two fronts with respect to efforts to improve Somerset County's election system. First, our organizations have worked with the Legislative Black Caucus of the Maryland General Assembly on bills that would require that for redistricting purposes, persons incarcerated in Maryland prisons be counted at their last home residence, rather than the place of their incarceration. These bills are currently working their way through the legislative process; If passed into law, this would change the way election districts throughout Maryland are drawn during the next the redistricting process following the 2010 U.S. Census, and would alter the districts significantly in Somerset County. Second, in response to one of the Task Force Recommendations on this issue, the chair of Legislative Black Caucus took the initiative of requesting a formal opinion from Maryland Attorney General Douglas Gansler on the legal advisability of excluding the prison population in Somerset County from the redistricting base. The ACLU filed a brief with the Attorney General on this request, providing extensive background information and reasoning as to why the fairness of Somerset's election system would be enhanced by exclusion of the non-voting prison population. We now await issuance of the Attorney General's opinion.

selected by the all-white Board of County Commissioners – the same appointment process that has been followed in the past. In another instance, an African American organizer of our Task Force – a longtime law enforcement officer who has served three stints as a police chief in Somerset County – was turned away when he applied for an open position with the County as a sheriff's deputy. The stated reason was that he was unqualified (because he would have to renew his police certification through a quick refresher course before he could assume full duties.) Meanwhile, the Sheriff's Office employs only one African American in the certified ranks of its police force.

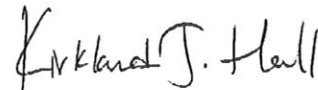
Other recent complaints received by our organizations – involving use of racial slurs by law enforcement and public officials, and the alleged refusal of a local hotel to permit African-American guests -- further reflect the troubling state of race relations in Somerset County generally. One example is a December 2009 incident in which a Maryland State Trooper working in Somerset County telephoned a local African-American woman and left a voice mail message seeking a call back. Then -- erroneously thinking he had disconnected the call -- the trooper launched into a derisive rant about the woman, twice casually using a racial slur. The offensive message was recorded in its entirety on the woman's voicemail, and was widely publicized in the community, leaving African-American residents to wonder just how often police engage in such exchanges when the tape recorder is not running.<sup>21</sup>

In sum, we believe the situation in Somerset County cries out for reform, and that the Department of Justice would be an invaluable partner to us in our efforts to make such reform happen. Please let us know if there is any additional information you need in support of this investigation request, or if there is any way we can assist you.

Sincerely,



Deborah A. Jeon  
Legal Director  
ACLU of Maryland



Kirkland J. Hall  
President  
Somerset County NAACP

cc: Chief, Employment Litigation Section  
Chief, Voting Rights Section  
Hon. Michael McCready, (via facsimile and U.S. Mail)

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<sup>21</sup> Although the Maryland State Police have said they sustained a complaint against the offending trooper, they refuse to provide any information to the complainant, the ACLU or the NAACP about the investigation and whether any disciplinary action has been taken.