

Congress of the United States
Washington, DC 20515

March 2, 2010

The Honorable Glenn A. Fine
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Mr. Inspector General,

We write regarding your letter of February 2, 2010, in which you declined to investigate the Department of Justice's dismissal of its voter intimidation case against the New Black Panther Party (NBPP) and affiliated individuals. We urge you to reconsider your decision, which we believe to be based on a too narrow reading of both the scope of your investigative jurisdiction and the scope of the NBPP matter.

The Department's actions in May 2009 to dismiss most of the charges in its Voting Rights Act voter intimidation lawsuit against the NBPP and three of the Party's associates, a lawsuit it initiated only four months prior, has raised many issues for Congress's consideration. Chief among them is whether the Voting Rights Act's scope stretches broadly enough to reach such a clear instance of voter intimidation. However, it also raises a host of troubling questions about whether the Department's political appointees abused their power in this case for political purposes.

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These include questions of whether White House officials attempted for partisan political purposes to influence either the NBPP case, the broader class of voting rights cases against minority defendants or both; whether senior Department management officials and political appointees actually colluded for these purposes with White House officials to derail the NBPP case or cases against minority defendants in general; whether senior Department management officials or political appointees unduly interfered with the recommendations of the NBPP trial attorneys to move forward with a default judgment when invited to do so by the trial judge upon the NBPP defendants' default; and whether Department management or political appointees, in concert with White House officials or on their own initiative, have acted improperly to impede the U.S. Commission on Civil Rights' investigation of this affair. Concerns raised in the NBPP matter also include, for example, whether White House or Department officials acted contrary to the letter or spirit of recommendations that you made and Attorney General Michael Mukasey adopted in connection with the U.S. Attorneys investigation last reported on by your office in September 2008.

We readily acknowledge that strict issues of prosecutorial misconduct raised by the case may be within the investigative and ethics jurisdiction of the Department's Office of Professional Responsibility (OPR). While OPR reviews the performance of the Department's attorneys to ensure that they meet basic ethical obligations, it is beyond the scope of OPR's duties and expertise to investigate the politically charged questions raised by the Department's management of the NBPP case. As the above recitation makes clear, the full set of issues presented by the NBPP matter extends well beyond strict issues of prosecutorial misconduct, reaches into the area of Department "politicization" by the White House and senior Department management, and may implicate the sufficiency of the recommendations you made in the U.S. Attorneys matter. Moreover, in the U.S. Attorneys matter itself, both you and OPR demonstrated the ability of your offices to conduct coordinated or parallel investigations of matters that raise companion issues within each of your respective jurisdictions.

For these reasons, we believe there is no impediment to your investigating the NBPP matter, regardless of whether you have properly or improperly already referred some issues in the case to OPR. Moreover, the larger issues in this affair, whether for the pursuit of impartial justice, the pursuit of criminal justice for government officials or the credibility of the Department, lie within your jurisdiction, not OPR's. In the U.S. Attorneys matter, you pursued your investigative authority promptly and zealously to its limits and then pressed for the appointment of a special prosecutor to take the investigation further when you could not, due to your lack of subpoena power over White House officials. It is imperative that you likewise quickly commence a thorough and zealous investigation of the NBPP matter and carry that investigation to its conclusion. We fear that further delay could compromise your ability to obtain all of the facts concerning the potential "politicization" of the Department and that your own hesitation could compromise the credibility of the Office of the Inspector General.

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To date, we remain confident of your ability and willingness to investigate allegations within your jurisdiction wherever they may lead. It is precisely our high regard for the Office of the Inspector General that drives our request that your office investigate this matter. Given the Department's refusal thus far to provide meaningful answers to Congress or the U.S. Commission on Civil Rights as to what led to the abrupt reversal of its litigation position in the case we look to you to provide the thorough and impartial investigation called for. Knowing that the NBPP matter raises issues squarely within your jurisdiction and consistent with the precedent that you set in the U.S. Attorneys investigation, we are optimistic that, following your receipt of this letter, you will reconsider and reverse your prior decision not to initiate an Office of the Inspector General investigation of the NBPP affair.

Thank you for your attention to this matter. We look forward to receiving your reply no later than March 12, 2010.

Sincerely,



Lamar Smith
Ranking Member
House Judiciary Committee



Frank Wolf
Ranking Member
Commerce-Justice-Science Subcommittee
House Appropriations Committee

cc: The Honorable John Conyers, Jr.