

**Congress of the United States**  
**Washington, DC 20515**

July 29, 2010

The Honorable Eric H. Holder, Jr.  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Attorney General Holder:

We are writing to request information about allegations of voter intimidation by the New Black Panther Party (“NBPP”) on Election Day, November 4, 2008, in Philadelphia, Pennsylvania. Specifically, we want to know why the Department of Justice (“DOJ”) decided to dismiss a federal lawsuit filed against NBPP and three of its members. J. Christian Adams, a former senior attorney in the Voting Rights Section of DOJ’s Civil Rights Division involved in the case, has recently stated that the dismissal “was motivated by a lawless hostility toward equal enforcement of the law.”<sup>1</sup>

On Election Day 2008, two NBPP members, Samir Shabazz and Jerry Jackson, positioned themselves at the entrance to a polling place in Philadelphia wearing military-style uniforms and brandishing a baton. They threatened poll watchers, calling them “white supremacists,” one a “race traitor,” and another “a cracker.”<sup>2</sup> At one point, Mr. Shabazz yelled, “how you [*sic*] white mother [*expletive*] gonna like being ruled by a black man?”<sup>3</sup> Comments made by NBPP Chairman Malik Zulu Shabazz appear to have endorsed the presence of NBPP members on Election Day and the use of the baton.<sup>4</sup>

After conducting an investigation of the incident, attorneys in the Voting Rights Section, including Mr. Adams, recommended that DOJ file a complaint against NBPP, Mr. Shabazz, Mr. Jackson, and Mr. Zulu Shabazz.<sup>5</sup> DOJ filed the complaint on January 7, 2009. When the defendants failed to respond or raise any defense whatsoever to the lawsuit, the U.S. District Court for the Eastern District of Pennsylvania entered a default order on April 17, 2009. The court gave DOJ until May 1, 2009 to file a motion for default judgment. On April 28, 2009, DOJ notified the defendants of its intent to file for

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<sup>1</sup> Kevin Ferris, *Back Channels: Panther Case Dismissal Needs Explanation*, PHILA. INQUIRER, July 4, 2010, available at [http://www.philly.com/inquirer/currents/20100704\\_Back\\_Channels\\_\\_Panther\\_case\\_dismissal\\_needs\\_explanation.html](http://www.philly.com/inquirer/currents/20100704_Back_Channels__Panther_case_dismissal_needs_explanation.html).

<sup>2</sup> Memorandum from Christopher Coates, Chief, Voting Section; Robert Popper, Deputy Chief; J. Christian Adams, Trial Att’y; and Spencer R. Fisher, Law Clerk to Grace Chung Becker, Acting Ass’t Att’y Gen. on Recommended Lawsuit Against the New Black Panther Party for Self-Defense and Three Individual Members for Violations of Section 11(b) of the Voting Rights Act (Dec. 22, 2008).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

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

default judgment. Although the case was on track for a default judgment, Steven Rosenbaum, Acting Deputy Assistant Attorney General for Civil Rights, sent an email on April 29, 2009 questioning DOJ's position in the case. As a result, on May 1st, DOJ filed a motion to extend the deadline for filing a motion for default judgment to May 15, 2009.

Mr. Adams and three fellow career attorneys wrote a remedial memorandum dated May 6, 2009, reasserting the legal reasoning in support of the complaint.<sup>6</sup> In addition, two lawyers in the Appellate Section wrote a memo dated May 13, 2009 that supported moving forward in the case.<sup>7</sup> Despite the opinions of these six career lawyers, Loretta King, Acting Assistant Attorney General for Civil Rights, approved the voluntary dismissal of three defendants on May 15, 2009 and drastically limited the injunction against Mr. Shabazz so as to render it meaningless.

For over one year, both the Ranking Members on the House Committee on the Judiciary and the House Commerce-Justice-Science Appropriations Subcommittee, which funds DOJ, as well as the U.S. Commission on Civil Rights ("USCCR") have sought to investigate the NBPP case with little cooperation from DOJ.<sup>8</sup> Thomas Perez, appointed by President Obama to be the Assistant Attorney General leading the Civil Rights Division, finally agreed to give limited testimony about the NBPP case before the House Committee on the Judiciary on December 3, 2009. When asked about DOJ's decision not to pursue a default judgment against the defendants, he stated the following:

[I]f you are going to seek a default judgment you need to be able to represent to the court—there is a rule, Rule 11, that requires you to be able to represent to the court that the charges you are putting forth are charges that are supported by the facts and the evidence. . . .<sup>9</sup>

Despite Mr. Perez's testimony, however, no Rule 11 pleadings were filed in the case, and the career attorneys believed that the facts and evidence fully supported the charges. Furthermore, in his May 14, 2010 testimony before USCCR, Mr. Perez did not explain why DOJ would not appoint a special counsel to enforce the commission's subpoenas for

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<sup>6</sup> Memorandum from Christopher Coates, Chief, Voting Section; Robert Popper, Deputy Chief; J. Christian Adams and Spencer R. Fisher, Trial Att'ys, to Loretta King, Acting Ass't Att'y Gen., on Proposed Injunction Order (May 6, 2009).

<sup>7</sup> E-mail from Diana K. Flynn to Steven Rosenbaum, Christopher Coates, and Marie K. McElderry regarding comments on the proposed default judgment filings in NBPP (May 13, 2009).

<sup>8</sup> DOJ's lack of cooperation contradicts assurances to the Senate Judiciary Committee that it "seeks to be as responsive as possible . . . to requests from the U.S. Commission on Civil Rights. See Att'y Gen.'s Answers to Questions for the Record Posed by S. Judiciary Comm. (Mar. 22, 2010), Resp. to Question 81d(ii) – (iv).

<sup>9</sup> *Civil Rights Division of the Department of Justice: Hearings before the Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the H. Comm. on the Judiciary*, 111th Cong., 77-78 (Dec. 3, 2009) (testimony of Thomas Perez, Assistant Att'y Gen., U.S. Dep't of Justice).

witness testimony and documents from DOJ about whether the dismissal of the NBPP case was politically motivated.<sup>10</sup>

Immediately following Mr. Perez's testimony before the U.S. Commission on Civil Rights, Mr. Adams submitted a letter of resignation from DOJ, expressing his dismay over the events surrounding the dismissal of the NBPP case. He also expressed concern regarding his personal legal obligation to comply with a subpoena from the commission. Prior to Mr. Adams's resignation, Christopher Coates, the former career head of the Voting Section in the Civil Rights Division, was relieved of his post and transferred to the U.S. Attorney's Office in South Carolina by the division's new political leadership.

DOJ has stated that it voluntarily dismissed the claims against three defendants named in the complaint "because the facts and the law did not support pursuing those claims against them."<sup>11</sup> It cited a lack of "sufficient evidentiary support" to justify the dismissal of claims against the defendants.<sup>12</sup> However, Gregory Katsas, who served as Principal Deputy Associate Attorney General, the top advisor to the Associate Attorney General, as well as the Acting Associate Attorney General, believed that the complaint stated a "strong case of voter intimidation against all the defendants, and that the decision to file was fully justified, and that the decision to abandon most of the claims in the case and narrow the requested injunction was not justified."<sup>13</sup> In Mr. Katsas's view, "there is no good reason apparent to me for why the case would've been abandoned."<sup>14</sup> In addition, veteran civil rights lawyer and poll watcher Bartle Bull, who served as Senator Robert F. Kennedy's New York campaign manager and campaign advisor to President Jimmy Carter, was present at the polling place in question on November 4, 2008. Mr. Bull described the behavior he observed as "**an outrageous affront to American democracy**" and "**the most blatant form of voter intimidation I have encountered in my life in political campaigns in many states.**"<sup>15</sup>

The Department's mission is to "enforce the law and defend the interests of the United States according to the law" and "to ensure fair and impartial administration of justice for all Americans."<sup>16</sup> The Department failed to live up to this mission in its handling of the NBPP case. Moreover, DOJ has been wholly uncooperative in providing documents and witness testimony to USCCR. To understand more fully the NBPP case,

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<sup>10</sup> See *id.* at 92-93.

<sup>11</sup> Letter from Ronald Weich, Assistant Att'y Gen., DOJ Office of Legis. Affairs, to Rep. Lamar S. Smith, Ranking Member, H. Comm. on the Judiciary (July 13, 2009).

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

<sup>13</sup> *Hearing on the Department of Justice's Actions Related to the New Black Panther Party Litigation and its Enforcement of Section 11(b) of the Voting Rights Act*, U.S. Comm'n on Civil Rights (Apr. 23, 2010) (testimony of Gregory Katsas), available at [http://www.usccr.gov/NBPH/04-23-2010\\_NBPPhearing.pdf](http://www.usccr.gov/NBPH/04-23-2010_NBPPhearing.pdf).

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

<sup>15</sup> Declaration of Bartle Bull ¶ 6, *U.S. v. New Black Panther Party for Self-Defense, et al.*, No. 09-0065, (E.D. Pa. executed Apr. 7, 2009) (emphasis added).

<sup>16</sup> Mission Statement, U.S. Dep't of Justice, <http://www.justice.gov/02organizations/about.html>.

we request you provide the following information and comply with the following requests no later than August 13, 2010:

1. Affirmatively state that the DOJ will cooperate fully with USCCR's current investigation, including the enforcement of Commission subpoenas as provided by statute.
2. Authorize Christopher Coates, former Chief of the Voting Rights Section of the Civil Rights Division, to comply with a subpoena issued by USCCR.
3. Affirmatively state that career attorneys, professional staff, and political appointees in the Voting Rights Section and other applicable DOJ divisions will be permitted to be interviewed by USCCR and to comply with any subpoenas that may be issued by USCCR. These individuals should include, but not be limited to, the following:

Thomas Perrelli, Associate Attorney General  
Thomas Perez, Assistant Attorney General  
Julie Fernandes, Deputy Assistant Attorney General  
Loretta King, Acting Assistant Attorney General  
Steven Rosenbaum, Acting Deputy Assistant General

4. Produce all documents, including emails, that relate to DOJ's enforcement of subpoenas issued by USCCR.
5. Produce all documents, including emails, that relate to the DOJ's handling of the NBPP case.
6. Produce a copy of the Voting Rights Section log of Freedom of Information Act requests from 2008 to the present.
7. Did any DOJ attorney communicate with members of any outside groups or organizations regarding the outcome of the NBPP case? If so, please provide the attorneys' names, the dates of the communications, and the name of the group or organization.
8. Did Associate Attorney General Thomas Perrelli, Deputy Attorney General David Ogden, or Acting Deputy Attorney General Gary Grindler personally approve of the dismissal of the NBPP case?
9. Did any DOJ attorney discuss the NBPP case with any current or former member of the White House staff? If so, please provide the names of the attorneys and the staff members as well as the dates of the communications.

10. What is the status of the investigation into this matter opened by DOJ's Office of Professional Responsibility?
11. Pursuant to statutory authority, do you plan to appoint a special counsel to investigate the dismissal of the charges in this case; whether DOJ has adopted a policy of enforcing voting rights laws in a racially discriminatory matter; and enforce subpoenas issued by USCCR to DOJ?
12. Does DOJ plan to re-file a complaint in this matter?

Additionally, please make arrangements by August 11, 2010 to brief Committee staff on the background and procedural history of the NBPP case, as well as DOJ's efforts to comply with document requests and assist USCCR with its investigation.

Thank you for your attention to this important matter. If you have any questions, you may contact Ashok Pinto of the Oversight Committee Staff at (202) 225-5074; Crystal Jezierski of the Judiciary Committee Staff at (202) 225-3951; or Thomas Culligan of the Appropriations Subcommittee Staff at (202) 225-5136.

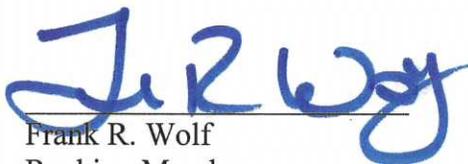
Sincerely,



Darrell Issa  
Ranking Member  
Committee on Oversight and  
Government Reform



Lamar Smith  
Ranking Member  
Committee on the Judiciary



Frank R. Wolf  
Ranking Member  
House Commerce-Justice-Science Appropriations Subcommittee

cc: The Honorable Edolphus Towns, Chairman  
Committee on Oversight and Government Reform  
The Honorable John Conyers, Jr., Chairman  
Committee on the Judiciary  
The Honorable Alan B. Mollohan, Chairman,  
Commerce-Justice-Science Appropriations Subcommittee