



U.S. Department of Justice

Office of the Inspector General

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April 19, 2010

The Honorable Lamar Smith  
United States House of Representatives  
Washington, DC 20515

The Honorable Frank R. Wolf  
United States House of Representatives  
Washington, DC 20515

Dear Congressmen Smith and Wolf:

This is in response to your letter to me, dated March 2, 2010. In that letter, you urged the Office of the Inspector General (OIG) to reconsider our decision regarding your request that the OIG investigate the Department of Justice's handling of the New Black Panther Party case.

Our original decision, conveyed in our letter dated February 2, 2010, was that by statute jurisdiction to investigate the Department's handling of the New Black Panther Party litigation fell within the Office of Professional Responsibility's (OPR) jurisdiction rather than the OIG's jurisdiction. Your March 2 letter stated that our decision was based on too narrow a reading of our investigative jurisdiction and the scope of the New Black Panther Party matter. Your letter also stated that the Department's actions "raise a host of troubling questions whether the Department's political appointees abuse their power for political purposes," and you listed those questions.

We have carefully considered the issues you raise in your March 2 letter. However, it still appears to us that each of the issues you urge us to investigate relate to the Department's handling of the New Black Panther Party case or other cases. Specifically, the questions you raise concern whether improper political factors or actions affected the handling of the New Black Panther Party case or other related cases. Even though these allegations concern possible "politicization" of Department decisions, the issues to be investigated consist of whether the alleged politicization had an improper impact on the Department's handling of a case or cases. For the reasons laid out in more detail in our February 2 letter, we believe that, by statute, those issues fall within OPR's jurisdiction, not the OIG's jurisdiction.

According to the statute which defines the jurisdiction of the OIG and OPR, OPR's jurisdiction is not limited to "strict issues of prosecutorial

misconduct.” Rather, it extends to allegations that “relate to the exercise of the authority of an attorney to investigate, litigate, or provide legal advice.” 5 U.S.C. App. 3 § 8E (b)(3).<sup>1</sup> Moreover, while you stated that “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,” the statute does not exempt OPR from investigating the matter when it is alleged that politicization has affected an attorney in the exercise of the authority to investigate, litigate or provide legal advice, or give us the jurisdiction to do so.<sup>2</sup>

Your letter also refers to the OIG’s role in investigating the firing of the U.S. Attorneys, and it questions why the OIG would have jurisdiction to review that matter but not have jurisdiction to review the Department’s dismissal of the New Black Panther Party litigation. The investigation concerning the U.S. Attorneys was initially assigned to OPR by the former Attorney General. Because the matter involved the firing of U.S. Attorneys (as well as allegations involving the hiring of career Department attorneys), we argued, before OPR started its investigation, that these issues did not involve the handling of litigation, and therefore the matter fell within our jurisdiction. OPR disagreed, arguing that the firing of at least some of the U.S. Attorneys was alleged to have occurred in order to influence a particular case, which gave OPR jurisdiction to investigate the matter. Eventually, because of this jurisdictional ambiguity, we agreed to conduct the investigation jointly.

By contrast, there does not appear to us to be a similar jurisdictional ambiguity with regard to the New Black Panther Party matter, because it involves the Department’s actions in the handling of a specific case or cases. That is true even though the allegations are that the handling of this case or class of cases was affected by improper political considerations.

It is also important to note that OPR has been actively investigating this matter for several months (including whether political considerations affected the Department’s decisions about the case). We recently inquired again about the status of OPR’s investigation and were informed that OPR is in the latter stages of its investigation.

Finally, as described in our February 2 letter, we believe that the jurisdiction between OPR and the OIG should be changed and that we should

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<sup>1</sup> See also 28 C.F.R. § 0.29c(b) (the Inspector General “shall refer to OPR allegations of misconduct involving attorneys, investigators, or law enforcement personnel, where the allegations relate to the exercise of the authority of an attorney to investigate, litigate, or provide legal advice. . . .”)

<sup>2</sup> As discussed in our February 2 letter, we believe it would be a better policy to give an independent Inspector General jurisdiction to investigate all matters within the Department of Justice, including allegations that politicization affected a decision to bring or dismiss a case. However, that is not what the statute currently provides.

have jurisdiction throughout the Department of Justice. Congress did not make such a change in 2008 in connection with its consideration of the Inspector General Reform Act. Recently, however, several members of Congress have expressed support for such a change. In light of the sentiments you express in your letter about the benefit of OIG investigating these types of matters, we hope that you will consider supporting legislation extending the OIG's jurisdiction to include matters now reserved to OPR's jurisdiction.

In sum, while we continue to understand your desire that the OIG investigate the Department's handling of the New Black Panther Party case, our reading of the statute indicates that the matter by law falls within OPR's jurisdiction. However, we would be willing to meet with you to discuss these issues further, and the concerns you raise, in order to understand more fully why you believe that under the jurisdictional statute the matter is within the OIG's jurisdiction.

If you have any questions about this letter, please feel free to contact us.

Sincerely,

A handwritten signature in cursive script that reads "Glenn A. Fine". The signature is written in black ink and is positioned above the printed name and title.

Glenn A. Fine  
Inspector General