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Congress of the United States
House of Representatives

January 26, 2010

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Mr. Glenn Fine
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue NW
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Dear Mr. Fine:

I have been disappointed by your reluctance to investigate the unfounded dismissal of an important voter intimidation case, *U.S. v. New Black Panther Party*. As you may recall, this case was inexplicably dismissed last year -- over the ardent objections of the career attorneys overseeing the case as well as the division's own appeal office. Despite repeated requests for information by members of Congress, the press, and the U.S. Commission on Civil Rights, the Department of Justice (DOJ) continues to stonewall all efforts to obtain information regarding the case's abrupt dismissal. This obstruction should be of great concern to you and merit an immediate investigation.

According to the Council of the Inspectors General on Integrity and Efficiency (CIGIE), the role of federal inspectors general is to "detect and prevent fraud, waste, abuse, and violations of law and to promote economy, efficiency and effectiveness in the operations of the Federal Government." I firmly believe that in this case, officials at the Department of Justice are engaged in activities that are an abuse of power, a blatant violation of voting rights enforcement, and potentially even defrauding of members of Congress and the U.S. Commission on Civil Rights by obstructing legitimate investigations of this matter.

In response to my letter to you last July, you referred the case to the department's Office of Professional Responsibility (OPR), which reports to the attorney general. Although OPR opened a preliminary investigation into the dismissal, more than seven months later I still have received no additional information. I do not believe that this office is capable of conducting an unbiased and independent review of this case given that it reports to a political appointee -- an inherent conflict-of-interest that can only be avoided by an independent inspector general (IG) investigation.

I have been a stalwart supporter of voting rights enforcement. Voting is a sacrosanct and inalienable right of any democracy. I was the only member of the Virginia congressional delegation -- Republican or Democrat -- to vote for the Voting Rights Act in 1982. I was heavily criticized by state newspapers, including the *Richmond Times-Dispatch*, for my vote. I was

Mr. Glenn Fine
January 26, 2010
Page 2

criticized again by editorials in my district when I supported the Voting Rights Act extension in 2006.

Given my longstanding support for voting rights, I have been deeply concerned with the department's mismanagement of this case and its continued obstructive tactics. These concerns rise far above the scope of the OPR preliminary investigation and are more appropriately handled by your office. Specifically, I would like you to consider the following concerns:

1. The attorney general has still not responded to the questions and concerns I shared in my six letters to him since last June 8. I have only received one response from DOJ, from Ron Weich last July, that was vague and, at least in one instance factually inaccurate. Members of Congress should be able to interact with the department and expect a response that attempts to answer questions.
2. The dismissal of this case was wholeheartedly opposed by the four career attorneys managing the case as well as the division's own appellate office, which is also staffed by career DOJ attorneys. In a memo penned by career Appellate Chief Diana K. Flynn, she wrote that DOJ could make a "reasonable argument in favor of default relief against all defendants and probably should." She further noted that the complaint's purpose was "to prevent the paramilitary style intimidation of voters while leaving open ample opportunity for political expression." I fear that only politicization from the department's leadership can explain why the department acted contradictory to the recommendations of its career trial attorneys and appellate office.
3. Ms. King and Mr. Rosenbaum, the two officials identified in recommending this case for dismissal, have a history of questionable judgment. Earlier this month, U.S. Magistrate Judge David Waxse -- former legal counsel for the ACLU in Kansas and western Missouri -- imposed sanctions on King and Rosenbaum for their refusal to provide information in a housing discrimination case. King was also reprimanded and sanctioned \$587,000 in attorneys' fees imposed against the department in an earlier case, *Johnson v. Miller*.
4. I am deeply concerned about allegations that Associate Attorney General Perrelli consulted with the White House counsel's office in his decision to dismiss this case. *The Washington Times* has reported a series of meetings between Mr. Perrelli and the deputy White House counsel corresponding to key dates in the decision to dismiss this case. Last week, *The Washington Times* further reported that Perrelli visited the White House counsel's office, including visits with former deputy Cassandra Butts and former counsel Greg Craig, on dates corresponding with key actions in the decisions that led to the dismissal of this case. The pace of these visits immediately slowed following the final dismissal of the case. If true, this represents a dangerous breakdown of the "firewall" policy that former Attorney General Mukasey put in place in 2007 to prevent politicization on active cases.

5. The department has thwarted all attempts by the U.S. Commission on Civil Rights to investigate this matter. The commission has repeatedly sought this same information, in fulfillment of its statutory responsibility to ensure the enforcement of civil rights law. After being similarly rebuffed, the commission filed subpoenas with the department for this information as well as to interview the career attorneys that handled the case.
6. DOJ is flagrantly obstructing the U.S. Commission on Civil Rights' statutory authority to provide oversight of the enforcement of civil rights laws. The department has instructed its career attorneys not to comply with subpoenas issued by the commission. This is an inherent conflict of interest with DOJ's statutory responsibility to enforce the commission's investigations and subpoenas.
7. Your office should be deeply troubled by the broad scope of the seven privileges claimed by DOJ in refusing to answer interrogatory questions submitted by the commission. What precedent will these broad claims of dubious privilege have on future congressional oversight of DOJ? DOJ even went as far as to claim that seven pages of a letter that I sent to the attorney general were considered privileged documents.

According to Michael Carvin, former deputy assistant attorney general for both the Civil Rights Division and the Office of Legal Counsel:

"They are relying on privileges that the Office of Legal Counsel says do not exist. There is no privilege, for instance, saying that the Justice Department will not identify personnel working on the case. ... Generally, a number of these privileges [are ones] I've literally never heard of. Normally there is no general attorney-client privilege unless you are dealing with the president. So a claim would have to come under the 'work product' or 'deliberative process' exemption. But 'work product' is very narrow, and the deliberative-process privilege is moot ... once the case closes. This is especially true when the [request for the information] does not involve litigants but instead an agency with statutory responsibilities concerning civil rights."

8. My staff has reviewed all of the documents provided by DOJ to the commission in response to their interrogatory request. The documents provided to the commission have little or no relevance with regard to the decision to dismiss this case. The "document dump" was merely a smokescreen designed to give the illusion of cooperation. In fact, the department failed to even provide all of the scant information that it agreed to share.
9. New Black Panther Party leader Malik Zulu Shabazz has been quoted issuing threatening comments toward Rep. Lamar Smith and me in a recent statement, saying, "These right-wing white, red-faced, red-neck Republicans are attacking the hell out of the New Black Panther Party, and we're organizing now to fight back... We gearing up for a showdown with this cracker... He keep talking - we going to Capitol Hill, we're just gearing up

Mr. Glenn Fine
January 26, 2010
Page 4

right now, we'll go to Capitol Hill." When laws aren't enforced, lawless men like Mr. Shabazz feel more emboldened to spread their intimidation.

In light of these new developments surrounding the department's refusal to reply to of congressional inquiries, its undermining of an investigation by the U.S. Commission on Civil Rights, and questionable meetings between Mr. Perrelli and the White House corresponding with keys dates in the dismissal of this case, I believe that you have an imperative to investigate these potential improprieties. Given that neither the Congress nor the commission can obtain critical information from the department, your authority as inspector general is the only way to learn whether the department has engaged in improper conduct with regard to the dismissal of this case and its hostility to the commission's statutory authorities and responsibilities.

In light of information that surfaced since my initial letter to you, I ask that you revisit your decision and immediately open an investigation. I would appreciate a decision on this matter no later than Friday, January 29.

Please do not hesitate to contact me or my staff member, Thomas Culligan, at 202-225-5136 if I can provide additional information on this matter.

Best wishes.

Sincerely,

Frank R. Wolf
Member of Congress

enclosures