



U.S. Department of Justice

Office of the Inspector General

February 2, 2010

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

Dear Congressman Wolf:

This is in response to your letter to me, dated January 26, 2010, in which you asked the Office of the Inspector General (OIG) to open an investigation of the Department of Justice's (Department or DOJ) handling of the New Black Panther Party case.

We have carefully reviewed your letter and appreciate the importance of the matters that you have raised. As you note, we received the first letter from you and nine other members of Congress in July 2009 requesting that the OIG investigate the Department's handling of the case and whether political considerations influenced the Department's decisions in the case. When we received that letter, we referred the matter to the Department's Office of Professional Responsibility (OPR).

We did so because, by statute, OPR has jurisdiction to investigate allegations of misconduct relating to Department attorneys' handling of litigation or legal decisions. Such matters are expressly excluded by statute from the OIG's jurisdiction. In the 2002 Department of Justice Reauthorization Act (Act), Congress codified into statute the Attorney General Orders which gave this jurisdiction to OPR.

According to the Act, the OIG has jurisdiction to investigate allegations of misconduct against all employees in any DOJ component with one exception: DOJ attorneys acting in their legal capacity (or investigators acting at an attorney's direction). Specifically, Section 308 of the DOJ Reauthorization Act, entitled "Authority of the Department of Justice Inspector General," states that 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. . . .”¹

The issues that you raised regarding the New Black Panther Party case involved the exercise by Department attorneys of their authority to litigate and make legal decisions, and whether those decisions were based on improper considerations, such as political influence. That is why we referred the matter to OPR for investigation.²

In your letter dated January 26, 2010, you again ask us to open an investigation of the Department’s handling of the New Black Panther Party matter. Your letter stated that you are disappointed in our “reluctance to investigate the unfounded dismissal of an important voter intimidation case,” and you expressed concern about OPR handling the matter. You stated that you do not believe that OPR “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.” You also stated that in light of several recent issues, including your inability to obtain information from the Department about the case, the Department’s actions in response to the U.S. Civil Rights Commission’s requests for information, and allegations of contacts between Associate Attorney General Thomas Perrelli and the White House, the OIG should revisit our decision and immediately open an investigation.

I understand your desire to have the OIG investigate the Department’s handling of the New Black Panther Party case because of our independence. I have advocated changing the OIG’s jurisdiction to allow us to investigate all matters within the Department, including matters such as this one that involve Department attorneys’ exercise of their legal duties. Unfortunately, unlike all other OIGs which have unlimited jurisdiction to investigate all allegations of waste, fraud, or abuse within their agencies, the Department of Justice OIG does not.

For several years I have expressed my position that Congress should change this jurisdiction and give the OIG the authority to investigate all matters within the Department. I have raised various arguments for this

¹ See Public Law 107-273, Section 308 (21st Century Department of Justice Appropriations Authorization Act), codified at 5 U.S.C. App. 3 § 8E(b)(3). See also 28 C.F.R. § 0.29c(b).

² Over the years, we have received letters from members of Congress, on both sides of the aisle, asking the OIG to handle various allegations related to the Department’s handling of litigation or legal decisions. In accord with the Attorney General Orders and the statute, we have referred such matters to OPR for it to handle, often to the disappointment of the members who asked us to conduct the investigation.

change, including, as you note in your letter, the independence issues that arise because OPR reports to the Attorney General.³

When Congress most recently considered this issue in its deliberation on the IG Reform Act, which was enacted in 2008, I again advocated for a change in the jurisdiction between OPR and OIG, to allow us to investigate all matters within the Department. However, Congress did not include this change in the IG Reform Act.⁴ Therefore, the jurisdiction to investigate Department attorneys' legal and litigation decisions, such as DOJ attorneys' litigation and legal actions related to the handling of the New Black Panther Party, remains with OPR.

However, in response to your recent letter, we asked OPR about the status of its ongoing investigation. It reported to us that it is in the midst of its investigation – which is a full investigation, not a preliminary investigation or inquiry. OPR reported that it has gathered documents and other relevant materials, has interviewed witnesses, and has numerous other witness interviews scheduled. OPR also told us that it intends to share the results of its investigation with Congress.

In addition, OPR informed us that it has included in its investigation the allegations relating to whether any improper political influence affected the Department's handling of the case. It has specifically included as part of its

³ See, e.g., my statement before the Senate Homeland Security and Governmental Affairs Committee, July 11, 2007, available at <http://www.justice.gov/oig/testimony> (the current limitation on the DOJ OIG's jurisdiction should be changed because it assigns jurisdiction to OPR, which is not statutorily independent and reports directly to the Attorney General and the Deputy Attorney General; this creates a conflict of interest and contravenes the rationale for establishing independent Inspectors General); my testimony before the Senate Judiciary Committee, May 2, 2006 (“[U]nfortunately, in my view, the jurisdiction of the Inspector General in the Department of Justice is limited to some degree because there's a Department of Justice Office of Professional Responsibility that has jurisdiction to review the actions of attorneys in the exercise of their legal authority up to and including the Attorney General . . . It originally arose from an Attorney General order issued by Attorney General Reno and then Attorney General Ashcroft, and then it was codified in the DOJ Reauthorization Act by the Congress. So it would require a congressional action to change it at this point.”); my testimony before the Senate Judiciary Committee, July 30, 2008 (“We don't have jurisdiction, unfortunately, over attorneys in the exercise of their legal duty. I have testified about that and I am hopeful, I hope that the Congress will do something about that because I believe that the Inspector General's Office ought to have unlimited jurisdiction in the Department of Justice. We're independent, we're transparent, and there's no conflict of interest. So I think that ought to be changed.”); my testimony before House Judiciary Committee, October 3, 2008 (OIG does not have the authority to investigate prosecutive decisions made by DOJ attorneys; Congress would have to amend this carve-out to our jurisdiction, and I have suggested that it be amended).

⁴ Although we believed this should be a bipartisan issue, the prior Administration opposed the change, and Congress did not include the change in the final bill.

investigation the issue you raised in your letter regarding any alleged contact between Associate Attorney General Perrelli and the White House, and whether any alleged contact improperly influenced the Department's decisions regarding the case.

Your letter also raises concerns about the appropriateness of the Department's response to requests by Congress and the U.S. Civil Rights Commission for information about this case, including the appropriateness of Department's legal position on the assertion of certain privileges. We have inquired of the Department about its decisions regarding providing information to Congress and the U.S. Civil Rights Commission. The Department has indicated to us that it is still in the process of considering the legal issues about what information it can and should provide to the U.S. Civil Rights Commission, and that searches to identify responsive documents are still underway. Moreover, we believe, based on our inquiry, that the appropriateness of the legal position the Department takes in responding to these requests is also a matter involving attorneys' legal decisions, which would fall within OPR's jurisdiction.

Therefore, while we understand and appreciate the reason for your request that the OIG investigate the Department's handling of the New Black Panther Party case, we do not have jurisdiction to do so. We believe, and have advocated, that Congress should change this jurisdiction, but it has not done so. Therefore, in accord with the law, we referred the matter to OPR, and OPR is in the midst of its investigation.

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

Sincerely,

A handwritten signature in black ink that reads "Glenn A. Fine". The signature is written in a cursive style with a horizontal line above the "e" in "Fine".

Glenn A. Fine
Inspector General