

EXCLUSIVE: Inquiry opened into New Black Panther case

Originally published 03:36 p.m., September 9, 2009, updated 10:20 p.m., September 9, 2009

By: Jerry Seper

The Justice Department's Office of Professional Responsibility has begun an official inquiry into the dismissal in May of a civil complaint against the New Black Panther Party and two of its members who disrupted a Philadelphia polling place during the November general elections.

The inquiry is disclosed in an Aug. 28 letter to Rep. Lamar Smith of Texas, the ranking Republican on the House Judiciary Committee who first raised questions about the dismissal in May and asked unsuccessfully that Attorney General Eric H. Holder Jr. make available the head of the department's Voting Section of the Civil Rights Division for a closed-door briefing on the decision.

In the letter, Mary Patrice Brown, acting OPR counsel, told the veteran congressman from Texas that the office had "initiated an inquiry into the matter" and that it would "contact you with the results of our inquiry once it is completed." A copy of the letter was obtained by The Washington Times.

"I am pleased that someone at the Justice Department is finally taking the dismissal of the New Black Panther Party case seriously," Mr. Smith said Wednesday. "The Justice Department's decision to drop a case against political allies who allegedly intimidated voters on Election Day 2008 reeks of political interference."

Mr. Smith said the department's refusal to provide Congress with an explanation for the dismissal "only further raises concerns that political favoritism played a role in this case."

RELATED STORIES:

- 'Non-responsive' Justice Dept. pressed again on Panthers case
- EDITORIAL: Black Panther case expands
- Justice Dept. pressed to explain Panthers dropped charges
- Panel blasts Panther case dismissal
- Lawmakers seek refiling in Panther case
- EXCLUSIVE: No. 3 at Justice OK'd Panther reversal

"Voter intimidation threatens democracy," he said. "These cases must be prosecuted to the fullest extent of the law without political considerations."

In January, the Justice Department filed a civil complaint in U.S. District Court in Philadelphia against the New Black Panther Party, claiming two of its members in black berets, black combat boots, black shirts and black jackets with military insignias intimidated voters with racial insults, slurs and a nightstick. A third party member was accused of managing, directing and endorsing their behavior.

The complaint said two New Black Panthers engaged in "coercion, threats and intimidation racial threats and insults menacing and intimidating gestures and movements directed at individuals who were present to vote." It said that unless prohibited by court sanctions, they would continue to direct intimidation, threats and coercion at voters and potential voters "by again deploying uniformed and armed members at the entrance to polling locations in future elections, both in Philadelphia and throughout the country."

The original incident was captured on videotape and gained national attention after the video was distributed on YouTube.

Rep. Frank R. Wolf, Virginia Republican and a senior member of the House Appropriations Committee, has unsuccessfully sought to interview the career lawyers involved in the case and has called on Mr. Holder to refile the civil complaint. He said he was "deeply troubled" by the dismissal, adding that "this stinks to high heaven."

"After months of unanswered questions, incomplete and faulty excuses, and revelations of political influence, the Office of Professional Responsibility has agreed with our July 9 letter asking for a full investigation of the dismissal of this important voter intimidation case over the objections of both the career attorneys on the trial team and the department's own appellate board," he said Wednesday.

"I fully support OPR's decision to investigate this dismissal and look forward to their report," he said. "I hope the Civil Rights office also will agree that the case should be re-filed."

OPR, which reports directly to the attorney general, is responsible for investigating allegations of misconduct involving department attorneys in the exercise of their authority to investigate, litigate or provide legal advice.

Justice spokeswoman Tracy Schmalzer said, "As a general policy, we don't comment on ongoing OPR matters."

The Times first reported the decision to dismiss the complaint in May and later reported that Associate Attorney General Thomas J. Perrelli, the department's No. 3 political appointee, had approved the decision even after the government had won judgments against the New Black Panthers for their actions.

A Justice Department memo shows that the front-line career lawyers who brought the case decided as early as December to seek a complaint against the party; its chairman, Malik Zulu Shabazz, a lawyer and D.C. resident; Minister King Samir Shabazz, a resident of Philadelphia and head of the Philadelphia chapter who was accused of wielding the nightstick; and Jerry Jackson, a resident of Philadelphia and a party member.

Witnesses said Mr. Samir Shabazz, armed with the nightstick, and Mr. Jackson used racial slurs and made threats as they stood outside the polling place door.

The Justice Department did obtain an injunction against Mr. Samir Shabazz that prohibits him from brandishing a weapon outside a polling place through Nov. 15, 2012, and Ms. Schmalzer has said the department "will fully enforce the terms of that injunction."

Mr. Jackson was an elected member of Philadelphia's 14th Ward Democratic Committee and was credentialed to be at the polling place as an official Democratic Party polling watcher, according to the Philadelphia city commissioner's office. Records show he obtained new credentials as a poll watcher "at any ward/division in Philadelphia" just days after the charges against him were dismissed.

None of the New Black Panthers responded to the charges or made any appearance in court. The party has not returned e-mails for comment, and the voice mailbox at its Washington headquarters Wednesday was full.

Four months after the complaint was filed, at a time career lawyers who brought the charges were in the final stages of seeking actual sanctions, they were told by their superiors to seek a delay after a meeting between political appointees and career supervisors, according to federal records and interviews.

Loretta King, who was acting assistant attorney general, ordered the delay after she discussed with Mr. Perrelli concerns about the case during one of their regular review meetings, according to the interviews. Mrs. King, a

career senior executive service official, had been named by President Obama in January to temporarily fill the vacant political position of assistant attorney general for civil rights while a permanent choice could be made.

She and other career supervisors ultimately recommended dropping the case against two of the men and the party. Mr. Perrelli approved that plan, officials said.

None of the front-line career lawyers who brought the complaint has been made available for comment.

The U.S. Commission on Civil Rights also has demanded that the Justice Department explain the dismissal, saying a previous response "paints the department in a poor light." In a letter to Mr. Holder, the commission noted that it is "answerable" to the president, Congress and the public to ensure that civil rights laws are enforced and had the authority to subpoena witnesses and documents to guarantee that the laws are being followed.

Commissioner Todd Gaziano, an independent named to the agency by Congress in February 2008, has outlined a witness list in a request for a "major study project" by the commission that would include an extensive investigation by its staff armed with subpoenas and public hearings in both Washington and Philadelphia.

Mr. Gaziano, a former Justice Department lawyer who served in the Office of Legal Counsel during the Reagan, George H.W. Bush and Clinton administrations, said the commission needs to determine, among other things, whether the decision to drop the charges constituted a departure from prior enforcement policy and whether it ultimately would lead to more voter intimidation.

"The dismissal of the lawsuit has the potential to significantly change the understanding some officials have regarding the enforcement of the Voting Rights Act, for good or for bad," he said.

© Copyright 2009 The Washington Times, LLC.