

**FRANK R. WOLF**

10TH DISTRICT, VIRGINIA

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES:

RANKING MEMBER—COMMERCE-JUSTICE-  
SCIENCE

TRANSPORTATION-HUD

CO-CHAIR—TOM LANTOS  
HUMAN RIGHTS COMMISSION



**Congress of the United States**  
**House of Representatives**

May 12, 2010

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wolf.house.gov

Ms. Phyllis K. Fong  
Chair, CIGIE  
1400 Independence Ave SW Rm 117-W  
Washington DC 20250

Dear Ms. Fong:

I write to share the enclosed correspondence with Mr. Glenn Fine and respectfully request that you, as chair of the Council of Inspectors General on Integrity and Efficiency (CIGIE), initiate a review of Mr. Fine's actions.

As you know, the CIGIE was statutorily established in P.L. 110-409, the Inspector General Reform Act of 2008, specifically to address issues of **integrity**, economy, and effectiveness. I believe that Mr. Fine's repeated failure to review the questionable dismissal of *U.S. v. New Black Panther Party* -- which was dismissed under dubious circumstances over the ardent objections of numerous career attorneys within the department -- has undermined the integrity of his office and should be of serious concern to the CIGIE.

As you will read in the enclosed correspondence, I have repeatedly asked Mr. Fine to review the actions taken by the department's political leadership both in dismissing this important voting rights case and its continued suppression of information requested by members of Congress and the U.S. Commission on Civil Rights. I believe both the attorney general and the department's inspector general are -- in their own ways -- undermining the integrity of federal oversight of the Justice Department.

For nearly a year, I have been urging the department to release all the documents surrounding this case and to make a genuine attempt to answer the questions asked by members of Congress and the U.S. Commission on Civil Rights. My requests have been rebuffed at each turn by the department.

Since July 2009, I have been urging Mr. Fine to open an investigation into whether improper political influence contributed to the dismissal of this case. Unfortunately, Mr. Fine continues to maintain willful ignorance, which I believe is an unacceptable abdication of his responsibilities as Inspector General.

I believe one anecdote, in particular, summarizes the disappointment and frustration of the career attorneys who were inexplicably overruled by the department's political leadership on this matter. It is my understanding that the career Voting Section chief, Chris Coates, offered a

Ms. Phyllis K. Fong  
May 12, 2010  
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vigorous defense of the New Black Panther Party case at his going-away luncheon earlier this year.

According to one report, "At the end [of the luncheon in his honor], the attendees were startled when Coates pulled out a binder and began reciting a written defense of his decision to file" the New Black Panther case. Mr. Coates reportedly stated: **"I did my best to enforce all of our voting statutes for all Americans, and I leave here with my soul rested that I did the right thing to the best of my ability."**

Although Mr. Fine continues to turn a blind eye to this matter, I believe this anecdote helps to convey the ardent opposition of the department's career attorneys to the dismissal of this voting rights case. Mr. Fine's lack of action, I believe, deserves the scrutiny of the Council of Inspectors General on Integrity and Efficiency (CIGIE).

I appreciate your consideration and look forward to your response. Please do not hesitate to contact me or my staff member, Thomas Culligan, at 202-225-5136 if I can provide additional information.

Best wishes.

Sincerely,

Frank R. Wolf  
Member of Congress

THANK

Yes

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

July 9, 2009

The Honorable Glenn A. Fine  
Inspector General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Dear Mr. Inspector General,

We write today to request that you investigate whether improper political considerations led the Justice Department to dismiss a voter intimidation case it previously brought against the New Black Panther Party and two individuals affiliated with it. Following the dismissal, Judiciary Committee Ranking Member Lamar Smith and Ranking Member Frank Wolf each submitted letters to the Justice Department requesting information regarding the decision to drop the voter intimidation charges. To date, the Department has not responded to either request. Copies of the letters are attached.

The dismissal of the Department's case against the New Black Panther Party raises significant concerns about possible politicization of the Justice Department. The case in question was filed by the Department against members of the New Black Panther Party and two individuals affiliated with it. Significantly, one of those individuals carried credentials indicating he was a member of the local Democratic Committee. As both of our letters recount, the individuals are alleged to have engaged in brazen acts of voter intimidation outside of polling locations in Philadelphia, Pennsylvania, on Election Day 2008. After reviewing the facts, the Justice Department brought charges against the two individuals and the Party under the Voting Rights Act.

Despite the fact that a judge essentially ruled in favor of the Justice Department's complaint when the defendants failed to respond to the allegations, the Civil Rights Division under the Obama Administration decided to dismiss the case instead of obtaining a default judgment. We are unaware of any changes in the facts underlying this case between the Department's filing of its initial complaint and the subsequent filing of its motion to dismiss. Nor are we aware of any allegations of prosecutorial misconduct in the bringing of the initial complaint.

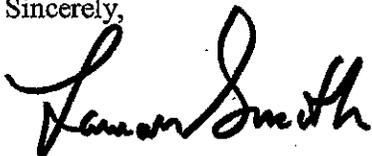
The Hon. Glenn A. Fine  
July 9, 2009  
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As Inspector General of the Justice Department, you spent more than a year investigating allegations of wrongful political influence in the removal of several U.S. Attorneys. Allegations of wrongful political influence by Obama Administration officials in the dismissal of a voting rights case are equally important and should be subject to an equally thorough investigation.

Voter intimidation threatens the very core of democracy. The American people need to know that the Justice Department takes seriously cases of voter intimidation, regardless of the political party of the defendants. We respectfully request that you open an investigation into the dismissal of the Black Panther Case and report to Congress.

We appreciate your timely consideration of our request.

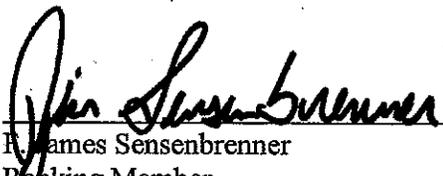
Sincerely,



Lamar Smith  
Ranking Member  
House Judiciary Committee



Frank Wolf  
Ranking Member  
Commerce, Justice, Science Subcommittee  
House Appropriations Committee



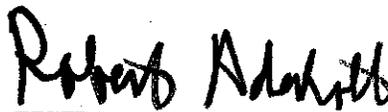
James Sensenbrenner  
Ranking Member  
Constitution, Civil Rights, Civil Liberties  
Subcommittee  
House Judiciary Committee



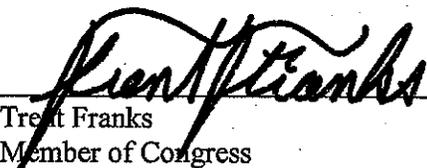
John Culberson  
Member of Congress



Steve King  
Member of Congress



Robert Aderholt  
Member of Congress



Trent Franks  
Member of Congress



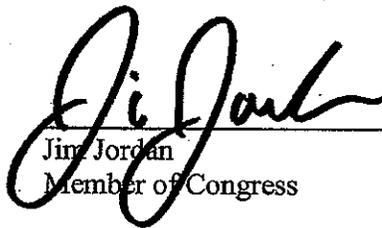
Jo Bonner  
Member of Congress

The Hon. Glenn A. Fine  
July 9, 2009  
Page 3



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Louie Gohmert  
Member of Congress



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Jim Jordan  
Member of Congress

**FRANK R. WOLF**  
10TH DISTRICT, VIRGINIA

COMMITTEE ON APPROPRIATIONS

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RANKING MEMBER—COMMERCE-JUSTICE-  
SCIENCE

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CO-CHAIR—TOM LANTOS  
HUMAN RIGHTS COMMISSION



**Congress of the United States**  
**House of Representatives**

June 8, 2009

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The Honorable Eric H. Holder, Jr.  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave NW Rm 5111  
Washington DC 20530

Dear Attorney General Holder:

I am troubled by your recent decision to drop the Department of Justice's lawsuit against the "New Black Panther Party for Self-Defense," a militant supremacist organization and hate group, and its two members who threatened voters as part of a national voter intimidation effort on Election Day last November.

According to the DOJ complaint, two uniformed men stood outside a polling station located at 1221 Fairmont Street in Philadelphia, Pennsylvania, brandishing weapons to intimidate voters. New Black Party Chairman and self-proclaimed "Attorney at War" Malik Zulu Shabazz confirmed that the placement of these men, Samir Shabazz and Jerry Jackson, in front of the polling station was part of a nationwide effort to position armed party members at precincts.

The complaint also stated that Samir Shabazz "pointed the weapon at individuals, menacingly tapped it [on] his other hand, or menacingly tapped it elsewhere. This activity occurred approximately eight to fifteen feet from the entrance to the polling station." Additionally, both men made "racial threats and racial insults at both black and white individuals" and made "menacing and intimidating gestures, statements, and movements directed at individuals who were present to aid voters," according to witness statements in the DOJ complaint. One of the witnesses, an experienced civil rights attorney who worked with Charles Evers in Mississippi, has publicly called this "the most blatant form of voter intimidation" he has ever seen.

On January 7, the Department of Justice appropriately filed suit in the U.S. District Court in Philadelphia against three men and the New Black Panther Party for Self-Defense under the Voting Rights Act. In the department's news release, Acting Assistant Attorney General Grace Chung Becker stated, "The Voting Rights Act of 1965 was passed to protect the fundamental right to vote and the Department takes allegations of voter intimidation seriously."

The Honorable Eric H. Holder, Jr.  
June 8, 2009  
Page 2

I worry that the department's commitment to protecting the "fundamental right to vote" is wavering under your leadership. I fail to understand how you could dismiss a legitimate case against a party that deployed armed men to a polling station -- one of whom brandished a weapon to voters -- who harassed and intimidated voters, and could then decide that such actions do not constitute a violation of section 11(b) of the Voting Rights Act of 1965, which prohibits "intimidation, coercion, or threats" against voters. What message does this send to other like-minded groups -- whoever their target -- about this administration's commitment to voting rights?

None of the defendants filed an answer to the lawsuit, which means that legally they admitted all of the allegations in the complaint. Yet your department dismissed the suit it had already won by default against three of the defendants. Not only did the department dismiss the civil suit, but it has also failed to criminally prosecute the defendants. The actions of these defendants are all violations of criminal provisions of the U.S. Code that prohibit intimidating, threatening and coercing voters. This is outlined on pages 54-63 of "Federal Prosecution of Election Offenses," the handbook provided by the Public Integrity Section of the Criminal Division to Justice Department prosecutors. These defendants could have (and should have) been charged under a number of provisions, including 42 U.S.C §1973gg-10(1); 18 U.S.C. §§ 241, 242, 245(b)(1)(A), and 594.

In 2006, then-Senator Barack Obama called such intimidation tactics "deplorable," citing similar intimidation of Native American voters in South Dakota in 2004 and a number of other incidents targeting African American voters. Your inexplicable dismissal of the civil case and the failure to file a criminal prosecution flies in the face of the president's stand on voting rights and sullies the good name of your department. It calls into question your commitment to protecting all voters and guaranteeing that they can exercise their franchise freely without fear.

The American people and this Congress deserve a full and transparent accounting of your decision to drop this case.

Best wishes.

Sincerely,

Frank R. Wolf  
Member of Congress

FRW:tc

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ONE HUNDRED ELEVENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

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<http://www.house.gov/judiciary>

May 28, 2009

Ms. Loretta King  
Acting Assistant Attorney General  
Civil Rights Division  
U.S. Department of Justice  
Washington DC 20530

Dear Ms. King,

It has come to my attention that on Election Day 2008, several members of the New Black Panther Party intimidated voters at a polling place in Philadelphia. These members brandished a baton in a threatening manner and made verbal threats to potential voters. After investigating the incident, the Civil Rights Division filed a complaint against the New Black Panther Party and several of its members for violations of Section 11(b) of the Voting Rights Act, which prohibits any "attempt to intimidate, threaten, or coerce" any voter and those aiding voters.

I understand that neither the New Black Panther Party nor its members filed a response to the complaint or any motion. As a result, the federal judge directed the Division to file a motion for a default judgment against the Party and its members. Instead of submitting the default judgment against the Party and its members to the court for signature, however, I understand the Division voluntarily moved to dismiss the complaint, even though it had effectively won the case.

This case was an uncontested lawsuit against defendants including one who, by the terms of the Division's own complaint, had "made statements containing racial threats and racial insults at both black and white individuals," and who "made menacing and intimidating gestures, statements, and movements directed at individuals who were present to aid voters." That individual, Jerry Jackson, had been carrying credentials as a member of the local Democratic committee. The Division sought relief only against the one defendant who carried and waived a baton on Election Day, and not against Mr. Jackson, and it sought only to enjoin that defendant from "displaying a weapon within 100 feet of any open polling location" in Philadelphia.

Ms. Loretta King  
Page Two  
May 28, 2009

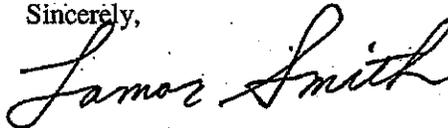
These actions raise a number of troubling questions. For example, why did the Civil Rights Division voluntarily dismiss a lawsuit that it had effectively already won, against defendants who were physically threatening voters? Is the Division concerned that this dismissal will encourage the New Black Panther Party, or other groups, to intimidate voters? Why did the Division seek such limited relief against a defendant who was actually carrying and brandishing a weapon at a polling station on Election Day? What role did the change of administrations play in the unusual resolution of voluntarily dismissing a case on which the Division had already prevailed?

In an effort to obtain answers to these and related questions, I request that the appropriate employees of the Division brief my staff regarding this lawsuit and the circumstances surrounding its dismissal. I am also requesting all non-privileged documents relating to the Division's dismissal of the suit.

Please respond to Crystal Jezierski, minority chief oversight counsel, or Paul Taylor, minority chief counsel on the Subcommittee on the Constitution, Civil Rights, and Civil Liberties at (202) 225-6906 by June 19 to arrange the briefing and the document delivery.

Thank you for your prompt consideration of this request.

Sincerely,



Lamar Smith  
Ranking Member

cc: The Honorable Ron Weich  
The Honorable John Conyers, Jr.  
The Honorable Jerrold Nadler  
The Honorable F. James Sensenbrenner, Jr.

**FRANK R. WOLF**  
10TH DISTRICT, VIRGINIA

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SCIENCE

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HUMAN RIGHTS COMMISSION



**Congress of the United States**  
**House of Representatives**

January 26, 2010

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wolf.house.gov

Mr. Glenn Fine  
Inspector General  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington DC 20530

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



U.S. Department of Justice

Office of the Inspector General

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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. . . .”<sup>1</sup>

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.<sup>2</sup>

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

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<sup>1</sup> 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).

<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> 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

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<sup>3</sup> 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).

<sup>4</sup> 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.

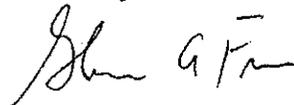
investigation the issue you raised in your letter regarding any alleged contact between Associate Attorney General Perrelli and the White House, and whether any alleged contact improperly influenced the Department's decisions regarding the case.

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, appearing to read "Glenn A. Fine". The signature is written in a cursive style with a horizontal line under the "e" in "Fine".

Glenn A. Fine  
Inspector General

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

March 2, 2010

The Honorable Glenn A. Fine  
Inspector General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Dear Mr. Inspector General,

We write regarding your letter of February 2, 2010, in which you declined to investigate the Department of Justice's dismissal of its voter intimidation case against the New Black Panther Party (NBPP) and affiliated individuals. We urge you to reconsider your decision, which we believe to be based on a too narrow reading of both the scope of your investigative jurisdiction and the scope of the NBPP matter.

The Department's actions in May 2009 to dismiss most of the charges in its Voting Rights Act voter intimidation lawsuit against the NBPP and three of the Party's associates, a lawsuit it initiated only four months prior, has raised many issues for Congress's consideration. Chief among them is whether the Voting Rights Act's scope stretches broadly enough to reach such a clear instance of voter intimidation. However, it also raises a host of troubling questions about whether the Department's political appointees abused their power in this case for political purposes.

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These include questions of whether White House officials attempted for partisan political purposes to influence either the NBPP case, the broader class of voting rights cases against minority defendants or both; whether senior Department management officials and political appointees actually colluded for these purposes with White House officials to derail the NBPP case or cases against minority defendants in general; whether senior Department management officials or political appointees unduly interfered with the recommendations of the NBPP trial attorneys to move forward with a default judgment when invited to do so by the trial judge upon the NBPP defendants' default; and whether Department management or political appointees, in concert with White House officials or on their own initiative, have acted improperly to impede the U.S. Commission on Civil Rights' investigation of this affair. Concerns raised in the NBPP matter also include, for example, whether White House or Department officials acted contrary to the letter or spirit of recommendations that you made and Attorney General Michael Mukasey adopted in connection with the U.S. Attorneys investigation last reported on by your office in September 2008.

We readily acknowledge that strict issues of prosecutorial misconduct raised by the case may be within the investigative and ethics jurisdiction of the Department's Office of Professional Responsibility (OPR). While OPR reviews the performance of the Department's attorneys to ensure that they meet basic ethical obligations, 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. As the above recitation makes clear, the full set of issues presented by the NBPP matter extends well beyond strict issues of prosecutorial misconduct, reaches into the area of Department "politicization" by the White House and senior Department management, and may implicate the sufficiency of the recommendations you made in the U.S. Attorneys matter. Moreover, in the U.S. Attorneys matter itself, both you and OPR demonstrated the ability of your offices to conduct coordinated or parallel investigations of matters that raise companion issues within each of your respective jurisdictions.

For these reasons, we believe there is no impediment to your investigating the NBPP matter, regardless of whether you have properly or improperly already referred some issues in the case to OPR. Moreover, the larger issues in this affair, whether for the pursuit of impartial justice, the pursuit of criminal justice for government officials or the credibility of the Department, lie within your jurisdiction, not OPR's. In the U.S. Attorneys matter, you pursued your investigative authority promptly and zealously to its limits and then pressed for the appointment of a special prosecutor to take the investigation further when you could not, due to your lack of subpoena power over White House officials. It is imperative that you likewise quickly commence a thorough and zealous investigation of the NBPP matter and carry that investigation to its conclusion. We fear that further delay could compromise your ability to obtain all of the facts concerning the potential "politicization" of the Department and that your own hesitation could compromise the credibility of the Office of the Inspector General.

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To date, we remain confident of your ability and willingness to investigate allegations within your jurisdiction wherever they may lead. It is precisely our high regard for the Office of the Inspector General that drives our request that your office investigate this matter. Given the Department's refusal thus far to provide meaningful answers to Congress or the U.S. Commission on Civil Rights as to what led to the abrupt reversal of its litigation position in the case we look to you to provide the thorough and impartial investigation called for. Knowing that the NBPP matter raises issues squarely within your jurisdiction and consistent with the precedent that you set in the U.S. Attorneys investigation, we are optimistic that, following your receipt of this letter, you will reconsider and reverse your prior decision not to initiate an Office of the Inspector General investigation of the NBPP affair.

Thank you for your attention to this matter. We look forward to receiving your reply no later than March 12, 2010.

Sincerely,



Lamar Smith  
Ranking Member  
House Judiciary Committee



Frank Wolf  
Ranking Member  
Commerce-Justice-Science Subcommittee  
House Appropriations Committee

cc: The Honorable John Conyers, Jr.



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. . . .”)

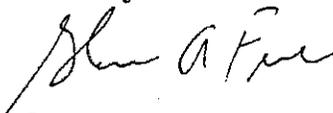
<sup>2</sup> As discussed in our February 2 letter, we believe it would be a better policy to give an independent Inspector General jurisdiction to investigate all matters within the Department of Justice, including allegations that politicization affected a decision to bring or dismiss a case. However, 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 black ink, appearing to read "Glenn A. Fine". The signature is written in a cursive style with a large initial "G".

Glenn A. Fine  
Inspector General