



U.S. Department of Justice

Office of Professional Responsibility

950 Pennsylvania Ave. N.W. Room 3266
Washington, D.C. 20530

March 29, 2011

The Honorable Lamar S. Smith
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

SUBJECT: OPR Investigation Regarding Dismissal of Defendants in *United States v. New Black Panther Party for Self-Defense, Inc., et al.*, No. 2:09cv0065 (E.D. Pa. May 18, 2009)

Dear Mr. Chairman:

This follows up on our previous response to your letter dated July 9, 2009, to the Department's Office of the Inspector General (OIG), regarding the government's voluntary dismissal of its complaint against three of the four defendants in *United States v. New Black Panther Party for Self-Defense, Inc., et al.*, No. 2:09cv0065 (E.D. Pa. May 18, 2009). Your letter raised the possibility that the Department's decision to dismiss three defendants might have been politically motivated, and requested an investigation to determine whether the decision was based on any improper considerations. OIG referred the matter to the Office of Professional Responsibility (OPR) because the allegations fall within OPR's investigative jurisdiction. We are sending identical responses to the other Members who joined in your letter to us.

By letter dated August 28, 2009, we informed you that OPR had initiated an inquiry into the concerns raised in your letter, and that we would provide you with the results of our inquiry upon its completion. We have, in fact, conducted an investigation into the facts and circumstances surrounding the New Black Panther Party for Self-Defense (NBPP) case, from its inception to its conclusion. That investigation is now complete and, consistent with our previous response, we are advising you of our conclusions.

As you know, on January 7, 2009, the Voting Section of the Civil Rights Division filed a civil complaint in the U.S. District Court for the Eastern District of Pennsylvania, alleging that defendants Minister King Samir Shabazz, Jerry Jackson, Malik Zulu Shabazz, and the NBPP violated the Voting Rights Act by directing or engaging in, or attempting to direct or engage in, coercion, threats, and intimidation toward poll workers and voters at a polling place in Philadelphia, Pennsylvania during the November 4, 2008 federal general election. After the defendants failed to answer the complaint, the clerk of court duly entered defaults against all four defendants. In order

to obtain a default judgment, however, the government was required to satisfy the district court that the relief it was seeking – a nationwide injunction against each of the four defendants – was both necessary and appropriate under the facts and the law. In early May 2009, the acting leadership of the Civil Rights Division decided not to pursue a default judgment against the two national defendants, NBPP and its president, Malik Zulu Shabazz, and one of the two individual defendants, Jerry Jackson, and to pursue more narrowly-tailored injunctive relief against the remaining individual defendant, King Samir Shabazz.

To determine the basis for the dismissals, OPR obtained written responses from numerous Department of Justice employees, reviewed the Voting Section's NBPP file, as well as thousands of pages of internal Department e-mails, memoranda, and notes, and conducted 44 interviews of current and former Department employees, including Department of Justice and Civil Rights Division leadership and current and former Department employees who had participated in either bringing or dismissing the NBPP case.

Based on the results of our investigation, we concluded that Department attorneys did not commit professional misconduct or exercise poor judgment, but rather acted appropriately, in the exercise of their supervisory duties in connection with the dismissal of the three defendants in the NBPP case. We found no evidence that the decision to dismiss the case against three of the four defendants was predicated on political considerations. We found that the decision by the Acting Assistant Attorney General for the Civil Rights Division, a career Department employee, was made following appropriate consultation with, or notification to, career attorneys and supervisors, and Department leadership. We found no evidence of improper political interference or influence from within or outside the Department in connection with the decision in the case. In sum, we concluded that the decision to dismiss three of the four defendants and to seek more narrowly-tailored injunctive relief against King Samir Shabazz was predicated on a good faith assessment of the law and the facts of the case and had a reasonable basis. We found no evidence that political considerations were a motivating factor in reaching the decision.

We also concluded that the decision to initiate the NBPP case was based upon a good faith assessment of the facts and the law. We found no evidence that political considerations were a motivating factor in authorizing the civil action against the four defendants.

Finally, we found no evidence to support allegations (which were raised during the course of our investigation) that the decision makers, either in bringing or dismissing the claims, were influenced by the race of the defendants, or any considerations other than an assessment of the evidence and the applicable law.

In sum, we examined only whether any of the individuals involved in the decision-making process – with respect to either the initiation or dismissal of claims in the NBPP case – committed professional misconduct in the performance of their official duties. We determined that the attorneys involved in the NBPP case made good faith, reasonable assessments of the facts and the law. We did not attempt to evaluate the relative merits of their differing positions.

Thank you for bringing this important matter to our attention. If you have any questions, we request that you submit them to us through the Department's Office of Legislative Affairs.

Sincerely,

A handwritten signature in black ink, reading "Robin C. Ashton". The signature is written in a cursive style with a long, sweeping underline.

Robin C. Ashton
Counsel

cc: The Honorable John Conyers, Jr.
Ranking Minority Member