



UNITED STATES
COMMISSION ON
CIVIL RIGHTS

624 Ninth Street, N.W.
Washington, D.C. 20425

February 4, 2010

Mr. Gregory G. Katsas
Jones Day
51 Louisiana Avenue, N.W.
Washington, DC 20001-2113

Dear Mr. Katsas:

I write to you in your capacity as a former Department of Justice (DOJ) official to request your participation in a hearing of the U.S. Commission on Civil Rights (Commission) on February 12, 2010. The hearing will take place at the Commission's headquarters at 624 Ninth Street, NW, Washington, DC 20425. It relates to our review of the implications of DOJ's actions in *United States v. New Black Panther Party for Self-Defense*, particularly for future enforcement of Section 11(b) of the Voting Rights Act. The Commission began its inquiry into this matter in June 2009. In September, we voted to expand our investigation of DOJ's enforcement actions and to issue a report to the President and Congress with our factual findings and recommendations for further action. This letter outlines the matters we hope you can cover in your testimony.

The basic facts of the New Black Panther Party (NBPP) case may be found in the original complaint, which lists the allegations of voter intimidation against four defendants, and the narrow injunction entered against one defendant after the Department declined to take a default judgment against all defendants. As you may be aware, the Commission's organic statute requires the Department to "fully cooperate with the Commission to the end that it may effectively carry out its functions and duties." 42 U.S.C. § 1975b(e). To date, however, the DOJ has failed to provide any information with regard to the role different components within the administration had in the decision to file the initial civil action. It has similarly failed to provide any information with regard to the administration's decision to dismiss the suit against several defendants. Documents have identified some individuals within the Civil Rights Division (including the respective Acting Assistant Attorneys General for the Civil Rights Division) who were involved in the initial and subsequent decisions in the case. Press accounts have suggested that the current Associate Attorney General also was involved in relevant decisions related to this case within the DOJ and possibly with regard to communications with officials in the White House.

We remain hopeful that the administration will reconsider its generalized assertions of privilege and that it will eventually cooperate fully in this investigation, but for now, we assume such claims would be asserted against both current and former officials involved in the deliberations in the NBPP case. Yet, it is also important for us to understand: (1) how DOJ decisions normally are reached in similar matters, particularly a decision to reverse course and dismiss claims against some defendants, and (2) whether White House personnel normally would have been consulted. Your insights on these matters would be greatly appreciated given your

experience serving as Acting Associate Attorney General, Principal Deputy Associate Attorney General, Assistant Attorney General for the Civil Division, and other positions in the Department.

Specifically, we would like you to present testimony on the following matters:

(1) Based on your experience, would the Office of Associate Attorney General normally be consulted in the decision to file a Section 11(b) lawsuit similar to the one filed against the NBPP defendants, and if so, what role would the Office typically have played?

(2) Assuming the Office of Associate Attorney General was consulted in the filing of a lawsuit of this type, what procedures, standards, and other considerations normally would be used to determine whether to approve the filing of such a Section 11(b) action?

(3) In aid of our fact finding mission, the Commission will hear testimony from fact witnesses who observed the actions that are the subject of the NBPP complaint at the hearing on February 12. Assuming the allegations in the initial complaint are true, however, do they present strong legal grounds to file the NBPP action and seek injunctive relief against all defendants?

(4) Assuming the allegations in the initial complaint are true, do you think there are other strong reasons *not* to file the NBPP action?

(5) Once a case like the NBPP matter was filed, would the Office of Associate Attorney General normally be consulted before DOJ reversed course and refused to take a default judgment against several defendants, and if so, what role would the Office typically play?

(6) Assuming the allegations in the complaint are true, do you think there are serious First Amendment concerns with seeking discovery and maintaining the litigation against all defendants?

(7) Assuming the allegations in the complaint are true, do you think the suit should have been dropped against three defendants, and do you think the Department should have obtained a broader injunction against Minister King Samir Shabazz than the one sought?

(8) Under DOJ policies regarding contacts between the Department and the White House in place while you were at the Department, which Attorney General Holder pledged to keep in place, is it likely that the Associate Attorney General or other DOJ officials would have discussed with White House staff whether to reverse course in a suit like the NBPP matter?

(9) Pursuant to such established DOJ policies, which DOJ and White House personnel would normally have been involved in discussions (assuming they existed) on whether to reverse course in a lawsuit like the NBPP case? How would those communications normally have been conducted?

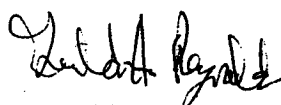
(10) Assuming that DOJ officials had contacts with White House Counsel staff on litigation of this nature, would it be unusual for officials in the White House Counsel's Office to

consult others within the White House on such matters, e.g., the White House Chief of Staff or the President?

We also invite you to submit testimony addressing any other matters that you think would be useful to the Commission's investigation. Written testimony is normally due seven days prior to the hearing date. If you cannot meet that deadline given the late request, please submit your written testimony as soon as possible before the February 12 hearing date.

Thank you in advance for your willingness to testify. Please contact me or the Commission's General Counsel, David Blackwood, at dblackwood@usccr.gov or (202) 376-7622, should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald Reynolds". The signature is written in a cursive style with a large initial "G".

Gerald Reynolds
Chairman