



UNITED STATES COMMISSION ON CIVIL RIGHTS

624 NINTH STREET, NW, WASHINGTON, DC 20425

www.usccr.gov

September 30, 2009

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
Washington, DC 20530

Re: U.S. Commission on Civil Rights Review and Report on the Implications of Enforcement Actions in *United States v. New Black Panther Party for Self-Defense*, Civ. No. 09-0065 SD (E.D. Pa.) (NBPP case)

Dear Attorney General Holder:

The Commission requests that you instruct Department officials to fully cooperate, as 42 U.S.C. § 1975b(e) requires, with our overdue information requests in the above-referenced matter. To that end, we also ask you to identify an individual who will exercise the substantive authority to coordinate the Department's responses to our current and future requests.

Pursuant to formal proceedings, the Commission initiated an inquiry into the implications of the Department's enforcement actions in the NBPP case as reflected in our letters to DOJ of June 16 and 22. We received a largely non-responsive letter from Portia Roberson in late July and none of the documents we requested. On August 7, the Commission voted 6-0, with two members abstaining, to expand its investigation by sending a follow-up letter to the Department. On August 10, the Commission addressed its letter to you, explaining our need for the information. For example, we stressed our need for information on previous voter intimidation investigations so that we could determine whether the Department's action in the NBPP case constitutes a change in policy and, if so, what the implications of that change might be.

At our most recent meeting on September 11, 2009, the Commission voted to make its review of the implications of the NBPP matter the subject of its annual enforcement report. The Commission was aware that the Department's Office of Professional Responsibility (OPR) had initiated an inquiry into some aspects of the NBPP case to determine whether further review is warranted. Although a letter from Ms. Roberson of September 9 expresses the Department's desire to delay any response to the Commission until the OPR investigation is complete, you may rest assured that the Commission will be sensitive to OPR's internal ethics review as we move forward with our own inquiry. As the discussion at our recent meeting indicates, the Commission will work to accommodate any legitimate concerns the Department may have regarding specific requests for information once the Department begins its production.

The Commission has a special statutory responsibility to investigate voting rights deprivations and make appraisals of federal policies to enforce federal voting rights laws. The Commission must form an independent judgment regarding the merits of the NBPP enforcement actions (regardless of how the decisions were made) and the potential impact on future voter-intimidation enforcement by the Department. Accordingly, Congress has provided, in a provision with no statutory exceptions, that, "All Federal agencies shall fully cooperate with the Commission to the end that it may effectively carry out its functions and duties." 42 U.S.C. § 1975b(e).

It is important to note that many aspects of the Commission's inquiry have no connection with the matters subject to OPR's jurisdiction. As set forth in our August 10 letter, the Commission will seek to determine:

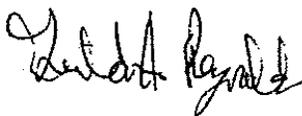
- 1) the facts and the Department's actions regarding prior voting intimidation investigations;
- 2) the underlying conduct in Philadelphia giving rise to the NBPP case;
- 3) whether the decision in the NBPP case is consistent with departmental policy or practice in prior cases or amounts to a change in policy or practice;
- 4) the extent to which current policy or practice as reflected in the NBPP case may encourage voter intimidation; and
- 5) whether that policy or practice is consistent with proper enforcement of section 11(b) of the Voting Rights Act.

The Commission may also seek to determine whether any decisions in the case were induced or affected by improper influences. Thus, there may be some areas of potential overlap with OPR's internal review, including an examination of the decision-making process in the case. With regard to these questions, if there are concerns as to the timing or content of specific discovery requests, the Commission will work with the Department to resolve them in a prompt and satisfactory manner. In addition to my personal availability to speak with your representatives, the Commission has appointed a subcommittee of commissioners to focus on any discovery issue that might arise in our investigation.

Accordingly, please identify the individual with substantive responsibility for the production of documents, scheduling of interviews and any possible depositions. If you have not done so by October 14th, however, it will be necessary for us to propound our interrogatories and interview requests directly on the affected Department personnel.

Thank you in advance for your cooperation and prompt reply to these requests.

Sincerely,



Gerald A. Reynolds
Chairman