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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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July 29, 2010

The Honorable Jeff Sessions
Republican Ranking Member
Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Jeff:

I write in response to a letter from you and the other Republican members of the Committee sent last Friday. I was in Vermont when you sent the letter, but did read about it in conservative media outlets.

The 2008 incident and the civil action that arose from it have been the subject of previous questioning by members of the Judiciary Committee. The Justice Department has responded to numerous questions about the New Black Panther case in oversight hearings and letters dating back to last year. In fact, in an oversight hearing just three months ago, you asked Assistant Attorney General Tom Perez of the Civil Rights Division about the case. He reiterated that two career attorneys with more than 60 years of combined experience made the determination to seek civil penalties and an injunction against the individual involved in the incident who was holding a stick. The Justice Department's answers to inquiries indicate that career attorneys made the determination how to proceed in that case.

In addition to your questioning, I submitted a question to Attorney General Holder following a May hearing of the Commerce, Justice, Science Appropriations Subcommittee, asking the Department to clarify why it decided to resolve the New Black Panther Party case in the way that it did, how the decision was made, what steps were taken if any to ensure that the decision was made on the merits and not based on political motivations, and what were the results. I look forward to the Attorney General's answers providing further clarity.

What makes allegations of politicization especially hard to credit is that the Department's decision to seek civil penalties rather than criminal sanctions in this case pre-dates the Obama administration. As made clear by the January 7, 2009, civil complaint filed by Attorney General Mukasey and others at the Department, that decision was made during the Bush administration. Another decision by experienced career attorneys evaluating the case was to pursue those civil penalties and obtain an injunction against King Shamir Shabazz, the only party alleged to have a stick outside the polling place.

I have no reason to second guess the initial decision made under Attorney General Mukasey and the Bush administration not to seek criminal prosecution stemming from the incident and, instead, to bring a civil proceeding. Likewise, I have seen no credible basis to second guess the decision by career attorneys later in the case about how to proceed and resolve it with an injunction against Mr. Shabazz. Just as I trust that the law and the facts informed the exercise of prosecutorial discretion and the decision not to prosecute former Attorney General Alberto Gonzales and former Acting Assistant Attorney General Bradley Schlozman – despite findings of serious wrongdoing by the Department’s own Inspector General – the Justice Department exercised its authority in the case arising from the 2008 incident. Prosecutorial discretion is a hallmark of the Justice Department, and, as a former prosecutor, it is a principle I respect.

The right to vote is a foundational right of every American. I have always supported proper enforcement of laws that protect the right to vote. In addition, condemnation of the behavior exhibited in this incident has been overwhelming across the political spectrum. No responsible observers have tried to excuse that behavior; there is no excuse for it.

Your letter describes an ongoing review being conducted by the U.S. Civil Rights Commission. Dr. Abigail Thernstrom, the Republican-appointed vice-chair of the Commission and a conservative political scientist who has frequently been a Republican witness on issues involving race and voting, has been harshly critical of the attacks on the Department’s handling of this incident. In a July 16 article in *Politico*, she said: “This doesn’t have to do with the Black Panthers; this has to do with their fantasies about how they could use this issue to topple the [Obama] administration.” She also said: “My fellow conservatives on the commission had this wild notion they could bring Eric Holder down and really damage the president.”

I also note Dr. Thernstrom’s conclusions about the incident itself, which, as she described it in her July 6 column in the *National Review Online*: “[I]nvolved only two Panthers at a single majority-black precinct in Philadelphia. So far — after months of hearings, testimony and investigation — no one has produced actual evidence that any voters were too scared to cast their ballots. Too much overheated rhetoric filled with insinuations and unsubstantiated charges has been devoted to this case.” She concluded: “Thomas Perez, the assistant attorney general for civil rights, makes a perfectly plausible argument: Different lawyers read this barely litigated statutory provision differently.” Earlier this week, Dr. Thernstrom wrote another column for the *National Online Review* in which she noted: “There is certainly no direct or hard evidence of either an effective voter-suppression effort of Justice Department indifference to such cases.” While I may not agree with Dr. Thernstrom very often, or even with every comment in her piece, that observation struck me as significant. Dr. Thernstrom’s review of the facts and the process followed by the Justice Department is consistent with the Department’s answers to questions about this matter.


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When I became Chairman of the Senate Judiciary Committee in 2007, I placed a renewed focus on long-ignored oversight. The Committee has continued its oversight during the Obama administration. Yesterday, we held an oversight hearing with the Director of the FBI, his fourth appearance before the Committee in the last two years. Since he was confirmed last February, Attorney General Holder has appeared before the Judiciary Committee four times, answering numerous questions during and after the hearings and in response to correspondence from Committee members. The Assistant Attorney General in charge of the Civil Rights Division, Tom Perez, has appeared twice before the Committee since his confirmation nine months ago. He last testified at an oversight hearing only three months ago where he answered every question asked him about the New Black Panther case. The Committee will have heard testimony from more than 80 administration witnesses in the course of hearings this Congress alone.

In addition to the U.S. Civil Rights Commission consideration that is ongoing, I understand that in response to a request from members of Congress, the Justice Department's Office of Professional Responsibility is reviewing the matter. I would not want to do anything to interfere with that inquiry.

I applaud the significant work done by Attorney General Mukasey and Attorney General Holder to remove the taint of partisan politics from law enforcement decisions at the Justice Department. I look forward to working together with you and the administration to ensure the ability of all Americans to participate freely in our elections. The current partisan focus on this issue seems to be a product of the election year calendar more than credible evidence of wrongdoing. The insinuation that there may be "widespread politicization and possible corruption" seems to echo the ongoing drumbeat on partisan advocacy cable and radio shows. Questions about this incident have been asked and answered numerous times. Reviews are ongoing.

Sincerely,



PATRICK LEAHY
Chairman

cc: The Honorable Orrin G. Hatch
The Honorable Charles E. Grassley
The Honorable Jon Kyl
The Honorable Lindsey Graham
The Honorable John Cornyn
The Honorable Tom Coburn