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Friends in High Places

The Obama Justice Department went to bat for the New Black Panther party—and then covered it up.

BY Jennifer Rubin

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The case is straightforward. On Election Day 2008, two members of the New Black Panther party (NBPP) dressed in military garb were captured on videotape at a Philadelphia polling place spouting racial epithets and menacing voters. One, Minister King Samir Shabazz, wielded a nightstick. It was a textbook case of voter intimidation and clearly covered under the 1965 Voting Rights Act.

A Department of Justice trial team was assigned to investigate. They gathered affidavits from witnesses—one of the poll watchers was called a "white devil" and a "cracker." A Panther told him he would be "ruled by the black man." The trial team, all career Justice attorneys and headed by voting section chief Chris Coates, filed a case against the two Panthers caught on tape. Malik Zulu Shabazz, head of the national NBPP, and the party itself were also named based on evidence the party had planned the deployment of 300 members on Election Day and on statements after the incident in which the NBPP endorsed the intimidation at the Philadelphia polling station.

The trial team quickly obtained a default judgment—meaning it had won the case because the New Black Panther party failed to defend itself. Yet in May 2009, Obama Justice Department lawyers, appointed temporarily to fill top positions in the civil rights division, ordered the case against the NBPP dismissed. An administration that has pledged itself to stepping-up civil rights enforcement dropped the case and, for over a year, has prevented the trial team lawyers from telling their story.

The Panthers like to tout their "victory" and parrot the Obama Justice Department's line that the case was unmeritorious. The party held a national convention in Atlanta over Memorial Day weekend (sponsored and attended by the once mainstream Southern Christian Leadership Conference and a grab bag of socialist and anti-Semitic figures). Its website boasts: "The New Black Panther Party has been embroiled in a battle between Republican Congressmen and the U.S. Department of Justice over a 'voter intimidation' scandal for the last 18 months. During these 18 months right wing and Republican Newspaper and Electronic media have gone to exhaustive lengths to discredit and slander the New Black Panther Party and its Chairman and Attorney Malik Zulu Shabazz."

But on June 4, J. Christian Adams, a veteran lawyer in Justice's voting section and a key member of the trial team, resigned. His reasons were spelled out in a letter that also noted that the U.S. Commission on Civil Rights, which was investigating the dismissal, had subpoenaed him and Coates, but their superiors, in violation of federal law, had ordered them not to testify. He noted that "the defendants in the New Black Panther lawsuit have become increasingly belligerent in their rhetoric toward the attorneys who brought the case. . . . Their grievances toward us generally echo the assertions [by Justice Department officials] that the facts and law did not support the lawsuit against them." Coates, too, has left the Voting Section, moving to South Carolina to work in the U.S. attorney's office. Last Friday, the civil rights commission's general counsel, David Blackwood, announced that he had received an email from Christian Adams's attorney stating that Adams is now available to provide information to the commission. Commissioner Todd Graziano said they would schedule Adams's appearance at a public hearing as soon as possible as the commission had been seeking his testimony for many months.

With Adams's resignation and letter, a clearer picture is finally emerging of what led to the dismissal of the case, the actions of DoJ political appointees, the department's misrepresentations about the case, and the Obama administration's approach to civil rights enforcement.

Based on documents obtained by The Weekly Standard and interviews with Justice personnel, we now know far more about the sequence of events surrounding the dismissal. The then-acting assistant attorney general for civil rights, Grace Chung Becker, signed off on the case as the Bush administration was leaving office in January 2009. She confirms that the decision to file the case was an easy one. In response to my questions, she was emphatic that this was a serious case of voter intimidation. The trial team, which also included attorneys Robert Popper and Spencer Fisher, conducted its investigation and on January 8, 2009, filed suit against the NBPP. As the Panthers did not respond to the lawsuit, the department had a slam-dunk victory.

The trial team was poised to enter a default judgment in late April 2009. An order for a default of judgment was drafted and sent to the voting section management. On the morning of April 29, the acting deputy assistant attorney general for civil rights, Steven Rosenbaum, sent an email to Coates about the case. It was the first indication by any department official that something was amiss. "I have serious doubts about the merits of the motion for entry of a default judgment and the request for injunctive relief," Rosenbaum, an Obama appointee, wrote. "Most significantly, this case raises serious First Amendment issues, but the papers make no mention of the First Amendment." Rosenbaum asked Coates a series of questions—whether "the defendants make any statements threatening physical harm to voters or persons aiding voters," for example, and what was the "factual predicate for enjoining the Party, as opposed to individual defendants"—which indicated that he was not familiar with the case and had not read the detailed memorandum accompanying the draft order.

The trial team was surprised by the email and answered Rosenbaum point by point in a response sent that same evening. They corrected his misstatements and explained in answer to his First Amendment concerns, "We are not seeking to enjoin the making of those (or any) statements. We plan to introduce them as evidence to show that what happened in Philadelphia on Election Day was planned and announced in advance by the central authority of the NBPP, and was a NBPP initiative." They pointed out that dressing in military garb did not raise First Amendment concerns when "used with the brandishing of a weapon to intimidate people going to the polling station." They concluded: "We strongly believe that this is one of the clearest violations of Section 11(b) [of the Voting Rights Act] the Department has come across. There is never a good reason to bring a billy club to a polling station. If the conduct of these men, which was video recorded and broadcast nationally, does not violate Section 11(b), the statute will have little meaning going forward."

The trial team assumed that Rosenbaum was simply confused about the applicable law. The notion that this was a problematic case would have been outlandish. With video evidence, multiple witnesses, and clear case law, it was one the easiest cases on which any of the trial team attorneys—who had more than 75 years of collective experience—had worked.

After sending the response, Coates and Robert Popper met with Rosenbaum and the then acting assistant attorney general for civil rights, Loretta King. People familiar with the discussions describe "two days of shouting." The trial team now knew that DoJ political appointees were serious about undermining the case by using whatever arguments they could dream up, including First Amendment concerns. The team prepared a detailed memo dated May 6 explaining the factual and legal basis for the case. In 13 pages, the attorneys meticulously analyzed the law and the facts and rebutted any notion that the First Amendment could insulate the Panthers. The memo made clear that Rosenbaum's and King's arguments for dismissing the case were spurious. Rosenbaum and King, for example, argued that legal precedent involving protestors at abortion clinics would undermine the case. The trial team pointed out, however, that these cases were either inapplicable or actually *supported* the issuance of an injunction when there was a significant government interest (such as the protection of voting rights) at stake.

The arguments continued after the May 6 memo was submitted. During one meeting in a conference room on the 5th floor of the Main Justice building, Coates became so exasperated he threw the memo at Rosenbaum who had admitted not reading the trial team's detailed briefing on the issues.

Rosenbaum and King sent a request to the appellate section asking their opinion of the case. The appellate attorneys sided with the trial team on May 13. Coates announced this to his team with the words "Good news." They all agreed it would be unthinkable for their superiors to nix the case. They were wrong. On May 15, Coates received an order to dismiss the case against everyone but the baton-menacing Shabazz. And they were ordered to scale back the injunction against him to cover only the display of a weapon within 100 feet of a Philadelphia polling place until 2012. (No other behavior was enjoined.)

The actions of King and Rosenbaum were unprecedented in the collective experience of the trial team. They were not alone in that assessment. A former associate attorney general for the civil division Greg Katsas testified before the civil rights commission on April 23, 2010, and termed the Panthers' actions a blatant case of voter intimidation. He said it was a "straightforward and overwhelmingly strong case" and that the Panthers' conduct was "egregious and

intentional." As for the party itself and its leadership, Katsas said that under "general principles of agency law" they were liable.

From the onset, Justice has denied that any political appointees were involved in the decision to dismiss the case. This line was repeated in multiple letters to and face-to-face meetings with Republican representatives Frank Wolf and Lamar Smith and in statements to the media. We now know that this is incorrect. In interrogatory answers supplied to the civil rights commission, the department acknowledged that Attorney General Eric Holder was briefed on the decision to dismiss the case and that the number three man in Justice, Associate Attorney General Tom Perrelli, was consulted as well. Katsas testified, "Certainly DoJ's decision to abandon all claims against the party, Malik Shabazz, and Mr. Jackson [the second polling place intimidator], despite their refusal to even defend the case, would have qualified as important enough for the leadership of the Civil Rights Division to raise with [Perrelli]." The same is true of the decision to seek only a narrow injunction against the billy club-wielding defendant. He notes that the filing of the case may have been routine, but the decision to dismiss it was so extraordinary that someone of Perrelli's rank must certainly have played an "active role."

The department is, moreover, trying to characterize King and Rosenbaum, who instructed the trial team to dismiss the case, as "career attorneys with over 60 years of experience." It is true that they both served in career positions at Justice in the past. But under the Federal Vacancies Reform Act, as soon as someone is appointed to fill a political position—as Rosenbaum and King were early in the Obama administration—they *are* political appointees.

Neither King nor Rosenbaum has directly worked on a voting rights case since the mid-1990s and both have received sanctions of hundreds of thousands of dollars by federal court judges for bringing unmeritorious cases and for failing to respond to court orders. In January 2010, a federal court judge in Kansas fined King and Rosenbaum for failing to respond to interrogatories in a housing discrimination case. Former civil rights division attorney Hans von Spakovsky has written: "That particular sanction is also very unusual—I have never seen a sanction order directed at individual lawyers that specifically says their employer is not responsible for paying the costs. . . . During the Bush administration, when liberals claim there was politicization going on in the division, I am not aware of a single such sanction." King and the Justice Department were also ordered to pay $587,000 in attorneys' fees and fines for bringing an unmeritorious claim during the Clinton administration in *Johnson* v. *Miller*. (In that case the court also took DoJ and King to task for allowing the ACLU to unduly affect the litigation decisions of the department.)

The administration's internal investigation also appears to have been fraudulent. Under ongoing pressure from Representatives Smith and Wolf, an investigation by the Office of Professional Responsibility (OPR) was finally ordered to commence in July 2009. Until a few days before Adams's resignation, however, none of the trial team had been interviewed by OPR investigators.

Furthermore the department has been less than candid in congressional testimony. In December 2009, Assistant Attorney General Thomas Perez testified before the House Subcommittee on the Constitution, Civil Rights, and Civil Liberties, and he either did not understand the case fully or chose to disregard the documentation the trial team had put together. Perez said, for example, that Shabazz had received the "maximum penalty." An experienced voting rights lawyer scoffs at the statement. "The maximum penalty is Leavenworth." Perez then suggested that the attorneys on the trial team might have violated Federal Rule 11, which prohibits lawyers from bringing frivolous actions. The trial team was angered at the public insinuation that they had been derelict in their professional responsibilities.

In written responses to the civil rights commission, the Justice Department has claimed there was no evidence of involvement by outside groups—specifically the NAACP. Yet there is substantial reason to doubt this assertion. An attorney for the NAACP, Kristen Clarke, has admitted that she spoke to department attorneys about the case and shared the complaint with others. (In a deposition she also said that a department lawyer sent her news clippings of the case.) She spoke to a voting section attorney Laura Coates (no relation to Chris Coates) about the case at a Justice Department function. Clarke asked Coates, who she assumed was sympathetic, when the Panther case was going to be dismissed. The comment suggested that the NAACP had been pushing for such an outcome, and Coates reported the conversation to her superiors. Under oath in a deposition with the civil rights commission, however, Clarke denied six times that she had any conversations with Justice Department attorneys. When shown an email from a department attorney to her calling a *Washington Times* report on the NBPP case nothing but "lies" and declaring "This is CC's doing" she incredibly denied (despite her long association with him) that she understood the reference was to Chris Coates.

While the interference by political appointees in the NBPP case has been egregious, there is a critical issue with implications far beyond this single case: Whether the attorneys who populate the civil rights division of the Justice Department believe that civil rights laws exist only to protect minorities from discrimination and intimidation by whites. In a farewell address to his colleagues before his reassignment to a U.S. attorney's office, Coates spoke about this widespread sentiment and why it was antithetical to the department's mission to seek equal enforcement of federal laws.

Former voting rights attorneys confirm that the belief is omnipresent in the Justice Department. DoJ attorneys openly criticized the Panther case, objecting not to any lack of evidence or to the legal arguments but to the notion that any discrimination case should be filed against black defendants. There are instances of attorneys refusing to work on cases against minority defendants. In 2005, for example, Coates pursued, filed, and won a case (upheld on appeal to the Fifth Circuit in 2009) of egregious voter discrimination by black officials in Noxubee County, Mississippi. Colleagues criticized Coates for filing the case and refused to work on it.

Liberal civil rights lawyers argue that because "a history of official discrimination" can be one subsidiary factor in voting cases it "wipes out every other factor" and prohibits cases from being brought against blacks. And further, that since "socio-economic" factors can be considered in determining whether voting discrimination has occurred, these cases cannot be brought against black defendants until there is economic parity between blacks and whites. Such attorneys use phrases like "traditional civil rights cases" and "traditional civil rights victims" to signal that only minority victims and white perpetrators concern them. Justice sources tell me that career attorneys have been "assured" that cases against minority defendants won't be brought. In testimony before the civil rights commission, Thomas Perez denied he was aware of any such conversations or sentiments.

To date the Democratic Congress has exercised virtually no oversight over either the Panther case or the department's civil rights enforcement approach generally. The OPR investigation shows no sign of completion. Neither Holder nor Perrelli has been questioned in depth about his participation in the case or about the allegations that Justice attorneys don't intend to enforce civil rights laws against anyone other than white defendants.

Smith and Wolf, who just this week fired off two-dozen questions to Attorney General Eric Holder, continue to pursue the case, but without Democratic support they cannot subpoena either witnesses or documents. That may change after the November election. If the House of Representatives or Senate flips to Republican control and new committee chairmen decide to engage in actual oversight, Perrelli and Holder may find themselves forced by subpoenas to tell the complete NBPP story and explain why Obama's Justice Department believes the civil rights laws exist only to protect citizens of certain races.

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