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November 5, 2010

The Honorable Eric H. Holder, Jr.  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

RE: United States v. Sholom Rubashkin (N.D. IA)

Dear Mr. Holder:

Like most Americans, I am committed to see that justice is served fairly for all who come before our courts. In the vast majority of cases, defendants are afforded fair process and, if found guilty, are sentenced fairly. But this is not always true. One particular case that has come to my attention illustrates clearly and tragically that injustice happens, and that disparate sentences are sometimes imposed -- the prosecution of Sholom Rubashkin.

Rubashkin is the former manager of the Agriprocessors kosher meatpacking plant in Postville, Iowa raided by the government in May 2008. Although initially arrested on immigration-law violations, all such charges were subsequently dismissed by the government; and Rubashkin was tried and found guilty of bank fraud and related white-collar crimes in November 2009. He was sentenced in June 2010 to 27 years in prison; two years beyond what even the government recommended.

This case raises very serious issues of judicial and prosecutorial misconduct, resulting in an unfair and disparate sentence. I believe these allegations are sufficiently serious to warrant an investigation by you.

Rubashkin's harsh, 27-year sentence raises a number of troubling concerns. He is a first-time offender and was found guilty of white-collar violations with no hint of violence or physical harm to anyone. The federal judge -- the Honorable Linda Reade of the Northern District of Iowa -- gave what amounts to a life sentence for a 51-year-old man. The sentence has been criticized by many lawyers and legal scholars, including six of your predecessors who publicly called on the trial judge to impose a fair sentence consistent with other, similar cases. Instead, the judge imposed a sentence greater than many sentences imposed on other defendants convicted of far more serious white-collar crimes.

The process by which the government and the judge arrived at and justified such a disproportionate sentence is troubling as well.

For example, after the Agriprocessors firm went into bankruptcy as a result of the May 2008 raid, the government deliberately hampered the ability of the trustee to sell the company's considerable assets at a fair price in order to minimize any loss to the Iowa bank that had extended credit to the company. The

government trustee further lowered the value of Agriprocessors by mishandling inventory at the Postville plant. Moreover, the government unnecessarily included a forfeiture clause in the initial, immigration-based indictment; further reducing the marketability of the plant's considerable assets. The resulting decrease in the value of Agriprocessors significantly inflated the "loss" for Sentencing Guidelines purposes.

In short, these steps by the government had the effect of significantly boosting Rubashkin's Sentencing Guideline numbers; which in turn provided justification for the judge to impose an excessive and disproportionate sentence.

There are other troubling aspects of this case, such as the fact that the federal judge who presided over the trial of Rubashkin improperly engaged in numerous and detailed, ex parte discussions in the six months preceding the May 2008 raid with the Office of the United States Attorney and immigration officials. None of this was disclosed by either the judge or the prosecutors to the lawyers representing Rubashkin. They discovered it only recently in reviewing a large quantity of documents received post-sentencing as a result of an earlier FOIA inquiry.

These facts seem to raise some of the same concerns that caused you to take the extraordinary but commendable step of dropping charges last year against former Sen. Ted Stevens as a result of government misconduct. Withholding information relating to possible recusal of a judge is as serious as withholding exculpatory evidence.

To date, however, the Department of Justice has been unwilling to inquire into the Iowa prosecutors' handling of the Rubashkin case. Lanny Breuer, Assistant Attorney General for the Criminal Division, has responded to requests to engage the Department in reviewing these allegations, by referring the matter to the U.S. Attorney's office for the Northern District of Iowa.

This lack of interest in following up allegations of systemic improprieties in sentencing and government-judicial contacts is distressing. You have recently and publicly expressed a desire to ensure that all federal prosecutions and sentencing procedures are conducted in a fair and even-handed manner.

I therefore request that you expressly and formally inquire into the manner in which Sholom Rubashkin was sentenced, and into what appears to have been a tainted and secret relationship between the trial judge and the government leading to the prosecution of Rubashkin.

Thank you, and thank you for your service as our country's Attorney General.

Sincerely,  
  
Edolphus "Ed" Towns  
Member of Congress