

JOHN P. SARBANES  
3RD DISTRICT, MARYLAND

COMMITTEE ON  
ENERGY AND COMMERCE

COMMITTEE ON  
NATURAL RESOURCES

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-2003**

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November 9, 2010

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

Dear Attorney General Holder:

I am writing to call your attention to concerns raised by several of my constituents regarding the recent prosecution and conviction of Sholom Rubashkin, a former Chief Executive Officer of the defunct Agriprocessors, the largest kosher meatpacking plant in the United States. In November 2009, after being convicted of financial fraud, Mr. Rubashkin was sentenced to prison by Judge Linda Reade. I have enclosed correspondence signed by seven Rabbis in my district urging the Justice Department to initiate an inquiry into this matter.

I have enclosed additional background materials provided by my constituents, summarizing the federal investigation of Agriprocessors and the arrest, indictment, trial and conviction of Shalom Rubashkin. As the enclosed documents indicate, the undersigned Rabbis believe that the Justice Department should initiate an inquiry into the circumstances surrounding the conviction of Mr. Rubashkin.

I trust that you will evaluate whether the decisions made by judges and prosecutors are worthy of an investigation by your department. I urge you to give such concerns your full and fair consideration. Please keep me informed of developments in this matter. I look forward to your reply.

Sincerely,



John P. Sarbanes  
Member of Congress

JPS/mp



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## Chabad of Anne Arundel County

Rabbi Nochum Light  
Executive Director

October 26, 2010

The Honorable Congressman John Sarbanes  
Arundel Center  
44 Calvert Street  
Suite 349  
Annapolis, MD 21401

Dear Honorable Congressman John Sarbanes,

We would like to bring to your attention an issue which is important to us and many members in our respective communities.

The issue is concerning a systemic problem with our justice system, manifested recently in the case of Sholom Rubashkin.

Mr. Rubashkin, vice president of the Agriprocessors meat processing plant in Postville, Iowa, was convicted of bank fraud and related charges following a May 2008 raid on the Agriprocessors plant by federal authorities. Mr. Rubashkin was sentenced to 27 years in prison, a sentence that exceeded prosecutors' recommendations by two years. Prior to the sentencing six Attorneys General -- and many former high ranking Justice Department officials -- wrote to the Judge in an unprecedented letter that the sentence was overly harsh and excessive.

Indeed, how is it that a first-time non violent offender should get a 27-year sentence while others in the country who have committed the same or worse received a year and a day? The Attorney General must look into the fairness of the current "Sentencing Guidelines."

Moreover, thanks to documents released under the Freedom of Information Act, it has come to light that the Judge residing over Sholom Rubashkin's case, Judge Linda Reade, participated in "weekly" *ex-parte* meetings with the prosecution months leading up to the raid. In sworn affidavits, noted legal scholars and ethics experts -- Professor Stephen Gillers and Mark Harrison -- have affirmed that the prosecutors and the Judge have violated their codes of ethics.

We write to you today to request that you send a letter to Attorney General Eric Holder urging him to open an inquiry specifically into the conduct of the prosecutors involved in this alleged misconduct. This country is founded upon fair and equal justice for all and hence prosecutorial misconduct must never be tolerated or ignored.

Your assistance in this matter is greatly appreciated.

Sincerely,  
Rabbi Light, Annapolis, MD  
Rabbi Bukiet, Baltimore, MD  
Rabbi Druk, Baltimore, MD  
Rabbi Lisbon, Baltimore, MD  
Rabbi Slavaticki, Baltimore, MD  
Rabbi Katsenelenbogen, Owings Mills, MD  
Rabbi Rivkin, Towson, MD

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## **The Sholom Rubashkin Case**

### **Denial of Judicial Impartiality**

Sholom Rubashkin, the former CEO of Agriprocessors, was found guilty in November 2009 of 86 counts of bank fraud and related charges in the U.S. District Court for the Northern District of Iowa after a jury trial that Chief Judge Linda Reade presided over. The charges stemmed from a massive May 2008 raid on the Agriprocessors plant in Postville, Iowa, in which 389 allegedly illegal workers were arrested and prosecuted.

In August 2010, after Rubashkin was convicted and sentenced, defense attorneys received new evidence through a Freedom of Information Act filing showing that Judge Reade was actively engaged in the planning for the raid on Agriprocessors and participated in preparations for the raid for more than six months. She was required to disclose this involvement to defense attorneys, but did not do so before presiding over the 2009 trial of Sholom Rubashkin or prior to sentencing him to 27 years in prison for bank fraud. Judge Reade should have recused herself from the Rubashkin trial or, at the very least, disclosed her participation in the planning for the raid to defense attorneys. She did neither.

Judge Reade's involvement in the planning of the raid on Agriprocessors went beyond the "logistical cooperation" that she had disclosed in denying a motion to recuse filed by an Agriprocessors employee who was tried before Mr. Rubashkin. The evidence shows that Judge Reade was not only provided with briefings on the raid preparations but that she expressed her "support" for the raid and directed that she be briefed on how it was going to be carried out.

Rubashkin's defense attorneys have filed a Rule 33 motion for a new trial, based on the fact that Judge Reade did not disclose this to them. They have submitted affidavits that if they had known these facts, they would have moved to recuse her. They have also asked that Judge Reade transfer the motion to another judge for determination, "in order to preserve public confidence in the impartiality of the judicial system."

This new information sheds light on some of the decisions that Judge Reade made while presiding over this case – including her decision to have the bank fraud charges tried first and then dismiss all of the immigration charges and on her decision to sentence Mr. Rubashkin to two years more than the already harsh, 25-year sentence prosecutors recommended. Judge Reade had a personal stake in the outcome of the Sholom Rubashkin case because she had been involved in the planning of the Agriprocessors raid for more than six months.

### **Background**

- Agriprocessors operated a major kosher meatpacking plant in Postville, Iowa, that was raided in May 2008 by Immigration and Customs Enforcement. The raid was the largest ever

carried out by Immigration and Customs Enforcement. It included a Black Hawk military helicopter, 600 agents in riot gear, and the rental of numerous facilities where 389 arrested workers were processed.

- The plant's manager, Sholom Rubashkin, was arrested more than five months later on charges of harboring illegal immigrants. Unlike others charged with similar offenses, Rubashkin was initially released on very high bail and required to wear an electronic ankle bracelet. As soon as he was released, he was re-arrested and charged with bank fraud on the ground that he had concealed from the bank that Agriprocessors had employed illegal immigrants. The prosecutors then argued that since he was Jewish he could flee to Israel and would not be extradited because of Israel's Law of Return. The Magistrate Judge accepted this plainly spurious argument, and Rubashkin was held in prison without bail for 76 days.
- The prosecutors then inflated the charges against Rubashkin through seven superseding indictments, fragmenting a single bank-fraud allegation into 91 counts and dividing the immigration charges into 72 overlapping counts.
- The bank fraud charges were based on false invoices that misrepresented the amount owed by customers to Agriprocessors. Although Rubashkin never exceeded the limit on his line of credit and made timely interest payments, the false invoices enabled Agriprocessors to draw more funds on its line of credit. Not until the immigration raid in May 2008 did Agriprocessors delay or default on the bank loan. Indeed, the bank continued to lend Agriprocessors money even after the raid and profited greatly from the loan.
- Prosecutors were allowed to present to the jury prejudicial evidence regarding the employment of illegal aliens at the bank fraud trial, even though the judge had severed the immigration from the bank fraud charges based on her finding that proof of immigration violations would prejudice the jury trying the bank fraud case.
- Rubashkin was found guilty of 86 counts of bank fraud and related charges in November 2009. Prosecutors initially recommended life in prison for Rubashkin. That recommendation was widely criticized by legal scholars, including six former U.S. attorneys general. Prosecutors eventually lowered their recommendation to 25 years in prison.
- Judge Linda Reade sentenced Rubashkin to 27 years in prison, two more than the prosecutors recommended. The sentence is grossly disproportionate to other first-time, non-violent white-collar offenders. For example, Mark Turkcan, the president of First Bank Mortgage of St. Louis, who misapplied \$35 million in loans, resulting in a loss of approximately \$25 million, was recently sentenced by a federal judge in Missouri to one year and one day in prison.
- All the federal immigration-law charges against Rubashkin were dropped. In an Iowa state-court trial in June 2010 on charges of hiring minors (where the State had initially alleged

9,311 misdemeanor offenses and went to trial on only 83) the judge permitted 67 counts to go to the jury and the jury acquitted Rubashkin on all 67 counts.

### **The Raid**

The May 2008 ICE raid on the Agriprocessors plant in Postville, Iowa itself used massive disproportionate force. As a Black Hawk military helicopter circled overhead, 600 agents in heavy riot gear broke down doors and corralled nearly 400 workers, whisking them away in chains to a temporary detention center that also served as a court.

Because it was apparent from government activity near Postville before the raid that ICE might be planning a raid, Agriprocessors retained an attorney who had represented another meatpacker and successfully persuaded federal prosecutors to cancel a raid and instead to inspect employment records and weed out illegal immigrants. This attorney called the Iowa prosecutors on behalf of Agriprocessors on May 9, 2008, and followed up with a faxed letter the same day. He requested a meeting and stated that Agriprocessors wished to cooperate with ICE and avoid the dangers and disruption of a raid. The requests were summarily denied and the raid took place.

The raid demolished the city's economic infrastructure; destroyed a legitimate business that was a major employer in the area, wiped out livelihoods, forced other businesses to shut down and drove away residents. The government then threatened potential purchasers of the company with forfeiture of the entire Agriprocessors company, including its corporate name, trademarks and stock if the purchasers employed any member of the extended Rubashkin family (even as a consultant) in the future business (this was important because the Rubashkin name was itself a valuable asset of the business). The government treated the company as if it were a purely criminal enterprise, without any legitimate business or religious function.

Postville's population has shrunk by nearly half, to about 1,800 residents. Of those who remain, many are unable to sell their homes. The town itself is nearly insolvent.

### **Overzealous Prosecution**

Sholom Rubashkin has been unfairly treated by prosecutors who have used inappropriate tactics in their efforts to punish him so as to justify the heavy-handed raid on Agriprocessors and its continued effects on Postville. This overzealous prosecution has affected kosher meat consumers all around the country because it bankrupted the largest kosher meat plant in the United States.

Rubashkin was actually the first person in the history of the United States to be prosecuted for violating the Packers and Stockyard Act, enacted in 1921 (and since amended), because he failed to pay cattle suppliers within 24 hours. He was prosecuted even though all cattle suppliers were paid in full – and at most only 11 days late.

Defense evidence excluded at his trial showed that the bank was not concerned about the size of Agriprocessors' draws on its line of credit so long as interest continued to be paid. At trial, a

representative from the bank testified that the bank received at least \$13.5 million dollars in interest payments during the course of the loan.

Evidence of Mr. Rubashkin's very modest lifestyle and his extraordinary charity was offered by his lawyers but was excluded at his trial. For two days, however, the jury did get to hear very prejudicial evidence regarding the employment of illegal aliens – evidence that the judge had ruled prior to trial would prejudice the jury against the defendant. The defense moved repeatedly for a mistrial on this ground because this evidence poisoned the record and the thinking of the jurors.

Immigration charges were ultimately dropped after the jury verdict in the bank fraud trial. The prosecutor even acknowledged that the immigration charges formed a substantial basis for the jury's guilty verdict. The prosecutor said, "The jury's verdicts on several of the fraud counts were premised... upon the defendant knowingly [misleading] the bank with regard to harboring undocumented aliens at Agriprocessors."

The sentencing guidelines for the immigration violations are very low. Most people convicted for immigration-related violations receive sentences of probation – or, at most, approximately one year in prison. The prosecutors and the judge escalated that possible sentence into the equivalent of a life sentence for a 51-year-old, non-violent first-time offender.

The government also reduced the value of Agriprocessors after it went into bankruptcy by preventing potential purchasers from having any association with members of the Rubashkin family, including those not accused of any crime. The government trustee also lowered the value of Agriprocessors by mishandling inventory at the Postville plant. The decrease in the value of Agriprocessors inflated the "loss" for Sentencing Guidelines purposes.

### **The Justice Department's Lack of Oversight**

To date, the Department of Justice has been completely unwilling to investigate the Iowa prosecutors' handling of the Rubashkin case. In April, Mr. Rubashkin's attorneys sent a letter to Lanny Breuer, the assistant attorney general for the criminal division, seeking the Department's involvement in investigating alleged misconduct by the prosecutors. Mr. Breuer replied that the lawyers' concerns should be raised with the local U.S. Attorney's office that prosecuted Mr. Rubashkin. The department is being dismissive, if not negligent, in its oversight responsibilities.

Attorney General Eric Holder has recently and publicly affirmed his policy to ensure that all federal prosecutions and sentencing procedures are conducted in a fair and even-handed manner. An increasing number of lawmakers and veteran senior Justice Department officials have called on the Justice Department to review this case, including the actions of prosecutors and Judge Linda Reade.