

Congress of the United States  
House of Representatives  
Washington, DC 20515-1505

COMMITTEES:

AGRICULTURE

JUDICIARY

POLICY

SMALL BUSINESS

December 23, 2010

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

Dear Attorney General Holder:

I write to you regarding Sholom Rubashkin, who was found guilty of bank fraud by a federal court jury in the Northern District of Iowa a little more than one year ago. Although he is a first-time offender and allegedly committed a non-violent crime, he was sentenced by Judge Linda Reade in June of this year to an outrageous and disparate sentence of 27 years, two years more than the prosecution requested. This case concerns me not only because it involves an Iowa businessman and a court in my home state; but even more important, because it indicates abuse in the federal judicial system, including within the Department of Justice.

I respectfully request that you formally inquire into these matters and take corrective action if, at the conclusion of a full inquiry, it appears that abuses have been committed.

I am certain you are aware of at least the general issues involving this case, but in my opinion, the most important aspects – those that clearly would seem to warrant your attention – relate to the following two problems:

First, internal Immigration and Customs Enforcement documents produced after the trial, establish there were numerous undisclosed meetings between the judge and Assistant United States Attorneys (and other government agents) in the months preceding the May 2008 raid on the Agriprocessors plant in Postville, Iowa (which was then managed by Mr. Rubashkin.) Neither Judge Reade nor the U.S. Attorney's office disclosed these meetings to Mr. Rubashkin's trial counsel before the trial, when they could have invoked these meetings as grounds to recuse Judge Reade. A Motion for a New Trial was filed promptly after these documents were produced to Mr. Rubashkin's counsel.

If the evidence in this case establishes that there were undisclosed and unrecorded *ex parte* meetings between a judge and prosecutors regarding the planning of a raid that led to criminal prosecution of the manager of the raided plant, the situation would, I believe, be comparable to that which led you to take the courageous step of terminating the

prosecution of the late Senator Ted Stevens. Both situations concern prosecutorial misconduct that threatens the fairness and credibility of our judicial system.

The second major area of concern that I believe warrants your personal attention is the use (and abuse) of the federal Sentencing Guidelines by the government and a judge, in order to arrive at and justify an outrageously long sentence - 27 years - for a first-time, white collar defendant. The sentencing judge ignored the factors prescribed by statute and calculated a prison term based entirely on an erroneous assertion of the lending bank's "loss." This so-called "loss," which was a major factor in significantly boosting Mr. Rubashkin's sentence, manifested itself only *after* the meat packing plant was forced into bankruptcy following the government's raid for alleged immigration violations.

Troubling also, is the fact that this entire prosecution was premised initially on alleged immigration law violations; but in fact every single immigration count in the indictment was dropped, following a series of seven superseding indictments. Moreover, when an Iowa state court last summer tried Mr. Rubashkin on 67 immigration-related counts (down from 9,113 misdemeanor counts that he knowingly hired under-age illegal workers at the plant), he was acquitted on every count.

Returning to the bankruptcy proceedings which resulted in a "loss" to the bank, during that process - at which time the federal government essentially controlled the assets and disposition of the Agriprocessors plant - significant restrictions were placed on the manner in which the assets could be purchased. This was how the government was able to claim a significant "loss" to the bank; a calculation readily adopted by the trial judge.

In fact, this loss would not have occurred had the government not drastically and unnecessarily restricted the eventual sale of the assets.

There are other problematic aspects of the manner in which Mr. Rubashkin was sentenced; but the bottom line, Mr. Attorney General, is that both the U.S. Attorney's office and the federal judge were able to manipulate the Guidelines based on circumstances under the government's control, so as to result in an outrageously long and disparate sentence for this man.

Like you and many other Americans, I am committed to see that justice is served fairly for all who come before our courts; this is one of the primary reasons I sit as a member of the Committee on the Judiciary. In the vast majority of cases, defendants are afforded fair process and, if found guilty, are sentenced fairly. But this is not always true; there are cases illustrating that injustices occur and unfairly disparate sentences sometimes imposed. Unfortunately, one such case - that of Sholom Rubashkin - occurred in my own state of Iowa.

It is my understanding that officials at the Department of Justice have thus far turned a deaf ear to these allegations; even to the extent of ignoring a letter signed by six of your predecessor Attorneys General. I believe you to be a man committed to fairness and justice, and that you would neither countenance nor practice the dismissive attitude

exhibited by others at the Department, when asked to look into these serious allegations of misconduct.

I therefore respectfully urge you to formally investigate the allegations of misconduct in the case of Sholom Rubashkin.

Sincerely yours,

A handwritten signature in blue ink that reads "Steve King". The signature is written in a cursive style with a large, prominent "S" and "K".

Steve King  
Member of Congress