

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

May 26, 2010

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

Dear Attorney General Holder:

We are writing to urge the appointment of a special prosecutor to investigate Congressman Joe Sestak's claim that a White House official offered him a job to induce him to exit the Pennsylvania Senate primary race against Senator Arlen Specter. Such an offer would appear to violate various federal criminal laws, including 18 U.S.C. § 600 (promise of employment or other benefit for political activity). You have the clear statutory authority under 28 U.S.C. §§ 510, 515 to appoint a special prosecutor to investigate this matter, which would avoid any appearance of a conflict of interest and square with the precedent of Attorney General Ashcroft's recusal from a White House-related investigation in 2003.

The allegations in this matter are very serious and, if true, suggest a possible violation of various federal criminal laws intended to safeguard our political process from the taint of bribes and political machine manipulation. The first hint of improper conduct came to light in a February 2010 cable television interview when Congressman Sestak revealed that a White House official offered him a federal job in an effort to end his campaign in his state's Senate primary. This issue arose again this past weekend when Mr. Sestak confirmed on both *Meet the Press* and *Face the Nation* that he was offered a job, but declined to provide any specifics. On the same *Face the Nation* program, White House spokesman Robert Gibbs confirmed that "conversations" took place between the White House and Sestak, but concluded "nothing improper happened." On Monday, May 24, 2010, senior presidential advisor David Axelrod suggested that White House lawyers had conducted their own investigation and found that everything was "perfectly appropriate," notwithstanding Axelrod's concession that Mr. Sestak's claims, if true, would constitute "a serious breach of the law."

We do not believe the Department of Justice can properly defer to White House lawyers to investigate a matter that could involve "a serious breach of the law." The White House cannot possibly manage an internal investigation of potential criminal misconduct while simultaneously crafting a public narrative to rebut the claim that misconduct occurred. This inherent conflict of interest is borne out by Mr. Axelrod's claim yesterday that there is "no evidence" of a job offer to Congressman Sestak. As noted above, Mr. Sestak has repeatedly stated that an administration official offered him a job in a way that would induce him to leave the Pennsylvania Senate race. There is simply no question that evidence exists. Moreover, the evidence at issue here would be fully admissible at any trial or legal proceeding. Firsthand witness testimony of an unlawful offer fully complies with the federal hearsay rules because such an offer constitutes both a verbal act and an admission. See Fed. R. Evid. 801(c), (d)(2); *United States v. Clarke*, 24 F.3d 257, 267 (D.C. Cir. 1994) (citing favorably arguments made by the government in a brief signed by then-U.S. Attorney Eric Holder that evidence of a prior conversation was not hearsay because it constituted "admissions of a party opponent" and "verbal acts" that were part of a crime). Accordingly, testimony regarding the offer would be admissible under the Federal Rules of Evidence and longstanding case authority.

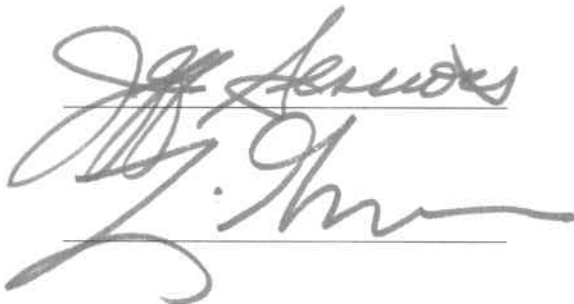
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At your confirmation hearing, you pledged to be an independent attorney general and explained: “Though I am a part of the president’s team, I am not a part of the president’s team in the way that any other cabinet officer is. I have a special and unique responsibility. There has to be a distance between me and the president.” Consistent with your testimony, we believe there must be a similar – if not greater – distance between the White House and an investigation of this sort into potential White House misconduct. On Friday, May 21, 2010, Assistant Attorney General Ronald Weich wrote a short letter to Congressman Darrell Issa suggesting that a special counsel is not needed in this instance. We hope you will reconsider this position. This controversy deserves full investigation, as well as public confirmation that steps are being taken to preserve records consistent with prior investigations of alleged White House wrongdoing. For example, in the fall of 2003, the Department of Justice and White House Counsel both confirmed that document preservation requests were sent to White House personnel relating to the leak of Valerie Plame’s identity. Such actions should be taken in this case. Additionally, the Department should confirm that it is not deferring to internal White House lawyers to conduct a criminal probe of allegations raised by a sitting Congressman.

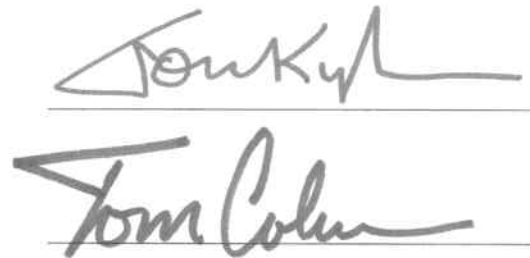
As Attorney General, you have a range of investigatory options, all backed by recent precedent, that would help reassure the public that this matter is being fully and adequately investigated. As mentioned above, we believe the best option is the appointment of a career prosecutor to serve as special counsel consistent with the statutory authority provided in 28 U.S.C. § 515. Such an action would square with the Department’s appointment of Patrick Fitzgerald to investigate suspected White House misconduct in the Plame matter in 2003. Another option would be to refer the matter to the Department’s Public Integrity Section or the U.S. Attorney’s Office for the District of Columbia for investigation. Such action would be fully consistent with the Department’s publicly disclosed action in appointing Acting U.S. Attorney John Durham to investigate the destruction of interrogation tapes in January 2008. Additionally, you could take the minimal step of opening and publicly disclosing a preliminary inquiry into this matter consistent with the last administration’s appointment of the National Security Division to take a preliminary look into the interrogation tape matter in December 2007. Although we believe such an action would be inadequate to respond to the known facts in this case, it would, at least, confirm that the Department is interested in gathering information to inform whether a full criminal investigation should be opened.

Thank you for your attention to this matter. As Attorney General, we realize you bear the difficult task of balancing the need for secrecy in criminal investigations with somewhat conflicting need for transparency to maintain public confidence in the apolitical enforcement of our laws. The need for public confidence in the integrity of an investigation becomes even more important where, as here, there is an alleged “serious breach of the law” involving White House personnel.

Very truly yours,



Eric H. Holder, Jr.



Tom Clapper

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Chuck Grassley

John Cornyn

Orin G. Hatch