



June 2, 2010

The Honorable Robert Bauer
Counsel to the President
The White House
Washington, DC 20500

Dear Mr. Bauer:

On Friday, May 28, 2010, you issued a memorandum (the “Sestak Memorandum”) purporting to resolve allegations of criminal misconduct by White House officials. The allegations addressed in the Sestak Memorandum stem from claims by Rep. Joe Sestak that he was offered a job in exchange for his withdrawal from Pennsylvania’s Democratic Primary for the United States Senate.

The Sestak Memorandum was released in response to overwhelming bipartisan pressure that mounted while the White House refused for three months to address Rep. Sestak’s serious allegations.¹ Rather than definitively resolve this matter, the memorandum had precisely the opposite effect: it appears to catalog a violation of the federal criminal code, witness and evidence tampering, and evasion of the legal process.

The Sestak Memorandum revealed that White House Chief of Staff Rahm Emanuel dispatched former President Bill Clinton to offer Rep. Sestak a position on a Presidential or other Senior Executive Branch Advisory Board in exchange for abandoning the Pennsylvania Democratic Primary.² The White House’s dismissal of these actions as part of an effort to identify “alternative paths to service for [a] qualified [individual] considering campaigns for public office” is inconsistent with Rep. Sestak’s own characterization of his conversations with Administration officials.³ In an interview taped on February 18, 2010, Rep. Sestak stated that the Administration offered him a

¹ See, e.g., Ted Barrett, *Durbin: Sestak Must Come Clean About Job Offer*, CNN, May 25, 2010; Amy Worden, *Rendell to White House and Sestak: Time to Detail Alleged Job Offer*, PHILA. INQUIRER, May 26, 2010, Letter from Republican Members of the S. Judiciary Comm. to Attorney Gen. Eric H. Holder, Jr., May 26, 2010.

² Memorandum from White House Counsel Robert F. Bauer, “Review of Discussion Relating to Congressman Sestak,” May 28, 2010 at 1 [hereinafter **Bauer Memorandum**].

³ Bauer Memorandum at 2.

“high-ranking” federal job if he would not challenge Sen. Arlen Specter in the Pennsylvania Democratic Primary.⁴ Rep. Sestak reaffirmed his allegations of February 18, 2010 on several occasions.⁵

Even if we suspend our disbelief that the White House asked a former U.S. President to call on a Member of Congress to offer a mere unpaid advisory position in exchange for dropping out of a Senate race, the facts alleged in the Sestak Memorandum still appear to violate several sections of the United States Code.⁶

The President has taken to stating his preference for transparency and open government. In his January 21, 2009 Memorandum, he stated:

My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government.

Government should be transparent. Transparency promotes accountability and provides information for citizens about what their Government is doing. Information maintained by the Federal Government is a national asset. **My Administration will** take appropriate action, consistent with law and policy, to **disclose information rapidly** in forms that the public can readily find and use.⁷

The White House continues to dismiss this matter as politics as usual. As recently as this morning, a White House official told *Politico*:

Congressman Issa can continue to chase his tail all he wants, but President Bush's own ethics attorney [Richard Painter] said this was a 'non issue' and called on Republicans to 'move on.' Nothing here is unusual or ever thought to be illegal, as evidenced by the experience of the Bush, Clinton and Reagan administrations.⁸

For a President who campaigned by assailing the policies and practices of the Bush Administration to justify his actions by invoking his predecessor is ironic. This

⁴ “Larry Kane: Voice of Reason,” Comcast, Feb. 18, 2010.

⁵ See, e.g., “America’s Newsroom,” Fox News, Feb. 19, 2010; Jessica Taylor, *Sestak: W.H. offered federal job not to run*, POLITICO, Feb. 19, 2010; “Special Report,” Fox News, Mar. 10, 2010.

⁶ See 18 U.S.C. §§ 211, 595, and 600, 5 U.S.C. § 1501 – 1508.

⁷ The President, *Memorandum for the Heads of Executive Departments and Agencies*, Jan. 21, 2009 (emphasis supplied).

⁸ Mike Allen, *Politico Playbook*, POLITICO, Jun. 2, 2010.

White House has frequently blamed the policies of the Bush Administration when addressing problems,⁹ and yet in this case when those policies align with the President's agenda, the White House did not hesitate to embrace them. The American people elected a President who promised to change the status quo and business-as-usual practices of Washington. Has this White House become a part of the establishment they once opposed?

The Sestak matter represents a chance for this White House to live up to the high standard of transparency and accountability they set for themselves. In light of the President's oft-stated goal of promoting unprecedented levels of openness and transparency, we believe that the American people are entitled to review the substance of your investigation of this matter themselves. If the American people are to have any meaningful degree of confidence in the legitimacy of the conclusions drawn in the Sestak memorandum, they must have access to the underlying information. To facilitate an effort to resolve the apparent inconsistencies between the conclusions contained in the Sestak memorandum and the publicly-available evidence, please produce the following by June 9, 2010:

1. All records and documents created by or produced to the Office of the White House Counsel in the course of the investigation of the Sestak matter.
2. All records and documents created or produced to the Office of the White House Press Secretary in the course of the investigation of the Sestak matter.
3. All notes or transcripts of interviews conducted by lawyers in the Office of the White House Counsel with witnesses in the Sestak matter, including but not limited to White House Chief of Staff Rahm Emanuel, President Bill Clinton, Rep. Joe Sestak and Richard Sestak.
4. All notes or transcripts of interviews conducted by staff in the Office of the White House Press Secretary with witnesses in the Sestak matter, including but not limited to White House Chief of Staff Rahm Emanuel, President Bill Clinton, Rep. Joe Sestak and Richard Sestak.

⁹ See, e.g., FoxNews.com, *'Blame Bush' Strategy Wears Thin as Obama Enters Second Year*, Fox News, Jan. 25, 2010 ("When the president walked in the door, he was handed the worst economic downturn since the Great Depression, a financial crisis that held out the prospect of the collapse of the financial system and a fiscal crisis," Axelrod said on *This Week*. "President Clinton left a \$237 billion surplus; President Obama received a \$1.3 trillion deficit."); Joseph Hebert, *Interior Secretary Acknowledges Lax Oil Regulation*, Assoc. Press, May 18, 2010 ("...my guess is you guys did some stories in the previous decade on what was going on at MMS, which is what caused Secretary Salazar, when he came in, to begin reforming that," Gibbs told reporters.)

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5. All records, documents, interview notes or transcripts referred to either explicitly or implicitly or otherwise relied on to draft the May 28, 2010 Sestak Memorandum.
6. All documents, emails and phone records related to conversations White House staff had with or about Rep. Sestak and any members of Rep. Sestak's campaign.

Please contact Jonathan Skladany of the Oversight and Government Reform staff at (202) 225-5074 or Caroline Lynch of the Judiciary staff at (202) 225-6906 with any questions about this request. Thank you for your attention to this important matter.

Sincerely,



Lamar Smith
Ranking Member
House Committee on the Judiciary



Darrell Issa
Ranking Member
House Committee on
Oversight and Government
Reform



James Sensenbrenner
Ranking Member
Constitution Subcommittee
House Committee on the Judiciary

Cc: The Honorable Edolphus Towns, Chairman
Committee on Oversight and Government Reform
The Honorable John Conyers, Jr., Chairman
Committee on the Judiciary