

Rich's fugitive status and the charges for arms trading.

In the FALN commutations matter, press accounts indicate the Mr. Holder submitted a recommendation in favor of those clemency requests even though the initial recommendation by Pardon Attorney Margaret Love opposed the commutations and the grants were opposed by the FBI, the Federal Bureau of Prisons, the Fraternal Order of Police, victims of the FALN bombings, and two United States Attorneys.

Finally, while the record is unclear as to Mr. Holder's precise role in the campaign finance investigation, it is clear that Attorney General Reno consulted Mr. Holder on these matters and that the recommendations of the heads of the campaign finance special task force, Charles LaBella and Robert Conrad, as well as the recommendation of FBI Director Louis Freeh, for the appointment of Independent Counsel were overruled.

These matters require further questioning. In two of them, Mr. Holder appears to be serving the interests of his superiors. There is an underlying issue about Mr. Holder not following the recommendations of career attorneys. As Senator Leahy and I noted in our op-ed "the attorney general must be someone who deeply appreciates and respects the work and commitment of the thousands of men and women who work in the branches and divisions of the Justice Department day in and day out, without regard to politics or ideology, doing their best to enforce the law and promote justice." It is to be expected that politically appointed federal officers will not always follow the advice of career staff, but this pattern is troubling.

In raising these concerns, I am not passing judgment on the nominee. I am prepared to give Mr. Holder a full opportunity to explain his past actions and convince the Committee and the Senate that his record warrants confirmation. Indeed, it may be helpful for him to have advance notice of these specific concerns of mine to give him notice so he can prepare for the hearing. With considerable experience in confirmation hearings, including eleven Supreme Court nominations, I have learned to keep an open mind without prejudgment until the nominees have had their "day in court"—that is in the Judiciary Committee hearing.

SEC INVESTIGATION INTO PEQUOT CAPITAL MANAGEMENT TRADING

Mr. SPECTER. Mr. President, the Finance Committee, under the chairmanship of Senator GRASSLEY in the 109th Congress, and the Judiciary Committee, under my chairmanship in the 109th Congress, conducted an extensive inquiry into allegations of insider trading. The issue is succinctly framed in a letter which I wrote to Christopher Cox, Chairman of the Securities and Exchange Commission, in a letter dated December 24, 2008. I ask unanimous consent that the full text of this letter be printed in the RECORD at the conclusion of my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See Exhibit 1.)

Mr. SPECTER. The matter could be most succinctly articulated by quoting from parts of this letter as follows:

Dear Chairman Cox:

Senator Charles Grassley and I have already issued public findings concerning the Securities and Exchange Commission's . . . investigation into Pequot Capital Management's . . . suspicious trading.

Referring to insider trading.

These findings also criticized the original Office of Inspector General's report, which essentially ignored former SEC investigator Gary Aguirre's complaints of political influence in the Pequot investigation . . . after the new SEC Inspector General, David Kotz, largely agreed with our findings and recommended disciplinary action against Mr. Aguirre's supervisors up to the Director of Enforcement, the SEC selected an initiating official who, in a matter of days, found that disciplinary action was unwarranted. That official was described in press accounts as an Administrative Law Judge, and it was not until further inquiry that the SEC admitted she was not acting in a judicial capacity in issuing her decision. I am now writing because recent events provide the SEC with an opportunity to make good on its Pequot investigation, despite having . . . closed the case in November 2006.

. . . The investigation centered, in part, on evidence that David Zilkha, a Microsoft employee who joined Pequot in April 2001 and separated from Pequot in November 2001, may have given Arthur Samberg, Pequot's CEO, inside information regarding Microsoft.

Documents recently filed in a Connecticut divorce case (*Zilkha v. Zilkha*) disclose that Pequot has made or promised to make payments of \$2.1 million to Mr. David Zilkha. On December 1, 2008, and December 16, 2008, Pequot and Pequot CEO Arthur Samberg filed motions for protective orders, and the state court has scheduled the hearing on those motions for January 16, 2009.

On December 10, 2008, Senator GRASSLEY and I requested from Pequot and Mr. Samberg all records related to the payments to Mr. Zilkha, as well as an explanation of the payments. On December 17, 2008, Mr. Samberg responded that the payments to Mr. Zilkha were for the purpose of "settling a civil claim related to his employment and termination by Pequot." Mr. Samberg enclosed a few documents, but we have requested additional records, and have asked for a complete production.

Given the troubled history of this case, the SEC should also be seeking answers as to any payments made to Mr. Zilkha by Pequot. I therefore write to strongly urge the SEC to consider filing pleadings in the Connecticut action, so that the court will have all relevant information when it considers the Pequot and Samberg motions for protective orders.

In essence, we have serious allegations of insider trading. We have the Inspector General of the SEC recommending serious disciplinary action. We have the matter being papered over by the SEC on what purported to be new conclusions reached by the administrative law judge where, in fact, the individual was not an administrative law judge. And now we find \$2.1 million in payments or promised payments to an individual who may have been in the position to provide insider information. The matter is coming before a court in a domestic relations case, but that provides an opportunity to find those facts.

This letter has not been answered, and I am taking this occasion to put it into the CONGRESSIONAL RECORD in the hopes that we may have some action by the SEC which will be calculated to get to the bottom of this matter. Certainly, this is something that ought to be of major concern to the Securities and Exchange Commissioners, to the Chairman, and to the SEC, generally.

The Finance Committee and the Judiciary Committee, through the efforts of Senator GRASSLEY and myself, have gone to very substantial lengths to deal with this issue. Oversight by the Congress is very hard to pick up these complex matters and get into them, but a lot of work has been done, and we are still undertaking to try to get to the bottom of the allegations of insider trading. The issue now has turned to be greater than insider trading on one specific matter, but to the integrity of the SEC itself, in pursuing these kinds of allegations and in following the facts wherever they may lead.

Chairman Cox has limited additional tenure, but there is sufficient time for him to act if he will, and if he will not, Senator GRASSLEY and I may seek to intervene ourselves. This is something which is the primary responsibility of the SEC, and it would be my hope that Chairman Cox would act on this matter to intervene, file an amicus brief, find out what the facts are on that \$2.1 million to get to the bottom of these serious allegations of insider trading.

EXHIBIT 1

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, December 24, 2008.

Hon. CHRISTOPHER COX,

Chairman, U.S. Securities and Exchange Commission, 100 F. Street, N.E., Washington, DC.

DEAR CHAIRMAN COX: Senator Charles Grassley and I have already issued public findings concerning the Securities and Exchange Commission's ("SEC") bungled investigation into Pequot Capital Management's ("Pequot") suspicious trading. These findings also criticized the original Office of Inspector General's report, which essentially ignored former SEC investigator Gary Aguirre's complaints of political influence in the Pequot investigation. You welcomed our findings and worked to implement our recommendations. Nonetheless, after the new SEC Inspector General, David Kotz, largely agreed with our findings and recommended disciplinary action against Mr. Aguirre's supervisors up to the Director of Enforcement, the SEC selected an initiating official who, in a matter of days, found that disciplinary action was unwarranted. That official was described in press accounts as an Administrative Law Judge, and it was not until further inquiry that the SEC admitted she was not acting in a judicial capacity in issuing her decision. I am now writing because recent events provide the SEC with an opportunity to make good on its Pequot investigation, despite having precipitously and unjustifiably closed the case in November 2006.

In 2006, the SEC closed its investigation of April 2001 trading by Pequot in Microsoft stock. The investigation centered, in part, on evidence that David Zilkha, a Microsoft employee who joined Pequot in April 2001 and separated from Pequot in November 2001, may have given Arthur Samberg, Pequot's CEO, inside information regarding Microsoft.

Documents recently filed in a Connecticut divorce case (*Zilkha v. Zilkha*) disclose that Pequot has made or promised to make payments of \$2.1 million to David Zilkha. On December 1, 2008, and December 16, 2008, Pequot and Pequot CEO Arthur Samberg filed motions for protective orders, and the state court has scheduled the hearing on those motions for January 16, 2009.

On December 10, 2008, Senator Grassley and I requested from Pequot and Mr. Samberg all

records related to the payments to Mr. Zilkha, as well as an explanation of the payments. On December 17, 2008, Mr. Samberg responded that the payments to Mr. Zilkha were for the purpose of "settling a civil claim related to his employment and termination by Pequot." Mr. Samberg enclosed a few documents, but we have requested additional records, and have asked for a complete production.

Given the troubled history of this case, the SEC should also be seeking answers as to any payments made to Mr. Zilkha by Pequot. I therefore write to strongly urge the SEC to consider filing pleadings in the Connecticut action, so that the court will have all relevant information when it considers the Pequot and Samberg motions for protective orders. Please respond as to whether the SEC will take such an action. I also ask that you notify me immediately if the SEC reopens its investigation or takes any enforcement action in light of this new evidence.

Sincerely,

ARLEN SPECTER.

Mr. SPECTER. Madam President, in the absence of any other Senator on the floor seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mrs. MCCASKILL). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ISAKSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SALAZAR.) Without objection, it is so ordered.

ISRAEL AND GRIFFIN BELL

Mr. ISAKSON. Mr. President, I rise for a few moments to address two subjects, the first will be about Israel and the second about the passing of Griffin Bell.

All of us are deeply concerned with the conditions in the Middle East, most recently in the last 12 days, the actions in Gaza, the loss of human life and the conflict.

But there is a necessary perspective we all must understand. In November of 2007, I stood at the last Israeli outpost overlooking Gaza. In fact, if you watch Fox or CNN or NBC or ABC tonight, where you will see those reports coming from, I stood on that very spot just a little over a year ago.

Also, I went to Sderot, the Israeli settlement outside Gaza, that since mid year last year has received 1, 2, 3, 10, 15 missile attacks, random attacks coming out of Gaza dropping on this Israeli settlement for no reason at all but the absolute ability or desire to terrorize the Israeli people and destroy that settlement.

What Israel has done by moving into Gaza is a major military operation. In some reports that you see on television or you read about in the papers, you would think it was unprovoked and unnecessary. The opposite is true. It has been provoked for 15 months by Hamas in Gaza. The Israelis have finally drawn a line in the sand and they have

moved in to try to protect the best interests of their citizens.

For perspective, Gaza and Sderot are a little bit like Arlington and Washington. You are not talking about a large land mass, you are talking about a very narrow, tight area. It would be similar to South Carolina and Georgia lobbing missiles back and forth.

What would happen if one of those States did it? We would immediately react to protect our citizens and protect their lives and their livelihoods. That is what Israel is doing.

I pray every night that somehow and some way we can be a catalyst for ultimately a lasting peace in the Middle East. But surrendering to terrorism or the acts of terrorism such as Hamas has been taking out on the Israeli people is no way to go. I support the Nation of Israel. I believe they are doing the right thing to confront head-on the terror that has been imposed on them.

It should not be lost on any of us that the supplies that have gotten into Gaza through what is known as the Eisenhower Passageway, which is from Egypt into Gaza, have been military materials being flown in and then taken in through tunnels basically by operatives of Iran. Just as what happened in Lebanon a year ago with Hezbollah and the Lebanese, the same thing is happening today between Gaza and the Palestinians and the Israelis.

The catalyst for the conflict is another nation, Iran. It wants to diffuse the focus on its producing of nuclear weapons and instead keep turmoil in the Middle East to use it to its benefit.

As a member of the Foreign Relations Committee, I take very seriously my responsibility to look upon every nation in this world as a nation we should respect, as a nation we should dialogue with, and as a nation we should work with. But we cannot and we must not turn our head away from a nation that is causing terror to be invoked against innocent people such as Iran is doing against Israel through the Palestinians in Gaza.

So I hope and pray these difficulties end tonight. I hope and pray there is not another loss of life. But as long as Hamas is unwilling to enter into a meaningful peace, a meaningful effort to stop the terror, one that can be trusted and verified, then Israel is doing precisely what it should be doing in the best interests of its people. It is doing no less than we in this Congress and America would do were we attacked in the same way in the same time. In the first part of my remarks, I stand in solidarity with the people of Israel in hope and prayer that the hostilities end but not because of surrender; because ultimately we confront terror and get people to lay down their arms, not for a day, not for a cease-fire but for generations to come.

The second subject is, for me, a very sad subject but also a subject that brings a lot of joy to my heart. There is a great American by the name of Griffin Bell, known to many people in

this room. I know you, Mr. President, being a former Attorney General in the State of Colorado, are familiar with Griffin Bell's record and jurisprudence in the United States for the last 75 years.

Griffin Bell first rose to prominence in America when Jimmy Carter brought him from Georgia to become the Attorney General of the United States of America. He brought him in at a critical time in our country's history because Griffin Bell had done unbelievable things as a lawyer during difficult times in the South.

Griffin Bell was the man whom Andy Young and the civil rights leadership of Atlanta and Ivan Allen, the mayor of Atlanta, turned to to write the plan for the desegregation of the Atlanta public schools. It was Griffin Bell who, as a lawyer but more so as a human being, worked through the difficult stress of those times of integration and the enforcement of the Brown v. Board of Education ruling, to see to it that separate but equal ended and equal access to education prevailed for all.

He did it in a way where Atlanta was one of the few major cities in America that had no violence, no conflict, and no academic loss because of the imposition of the desegregation guidelines that were imposed by the courts.

Griffin Bell did something no one thought could be done. It was because of his ability to do that and find common ground and find understanding that Jimmy Carter brought him to Washington, DC, and appointed him Attorney General.

When Griffin left and went back to his law firm of King & Spalding in Atlanta, there was not a single thing that happened in our major capital city and our State for four decades that Griffin Bell was not a major player and a major part of.

During Olympics, when they came to Atlanta in 1996 and there were difficulties, to whom did the Olympic committee go to weed through the minefield of Washington to get the security assistance necessary for the Olympics and Atlanta? It was Griffin Bell.

When there was a company that was in need of a forensic audit by a legal man who would come in and clean up a problem in their company, such as E.F. Hutton did, whom did they call? They called Griffin Bell. For the better part of the last six decades, Griffin Bell has been the most prominent lawyer in the State of Georgia and I would suggest one of the most prominent lawyers in the United States of America. His mark has been left on countless hundreds of thousands of lives in our country. Sadly, at 9:45 a.m. yesterday morning in Piedmont Hospital, Griffin Bell passed away. I know where he is now. He is in heaven and he is looking down. He would be the last person to want anybody in the Senate or the House or anywhere else bragging about him. But I sing his praise for the greatness he did for our State and the greatness he did for his country.