United States Senate
WASHINGTON, DC 20510

January 10, 2014

The Honorable Eric Holder
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Attorney General Holder:

Tomorrow marks the anniversary of the tragic death of Aaron Swartz, the brilliant technologist and activist who took his own life while facing an aggressive prosecution by the Department of Justice.

One year ago, Senators Cornyn and Franken and wrote to you asking questions about the conduct of the U.S. Attorney's Office for the District of Massachusetts, which had prosecuted Mr. Swartz for allegedly breaking into the computer networks of the Massachusetts Institute of Technology ("MIT") and downloading without authorization thousands of academic articles from a subscription service. House Oversight and Government Reform Committee Chairman Issa and Ranking Member Cummings also wrote to you at that time about the Swartz prosecution.

We regret that the information your Department has provided to date has not been satisfactory – among other things, it painted a picture of prosecutors unwilling or unable to weigh what charges to pursue against a defendant, something which you have instructed federal prosecutors is "among [their] most fundamental duties."

The account also is inconsistent with findings in the report prepared by MIT about the prosecution of Mr. Swartz, dated July 26, 2013 ("MIT Report"). A letter provided by the Department in May states that "the charging and sentencing decisions made by Department lawyers were properly based on the law and the facts of the case . . . and not on inappropriate considerations, such as Mr. Swartz's exercise of his legal rights as a citizen." The MIT Report indicates that Assistant U.S. Attorney Stephen Heymann considered other factors in advance of the return of the superseding indictment. He told MIT that "the straw that broke the camel's back" was an internet webpage soliciting signatures on Mr. Swartz's behalf by Demand Progress, an activist group founded by Mr. Swartz.[1]

---

[1] In the same conversation, Mr. Heymann also likened Mr. Swartz's apparent plan to call witnesses from MIT "to attacking a rape victim based on sleeping with other men." It is troubling enough to learn of the blithe attitude one federal prosecutor apparently took toward the

Your letter also indicates that the superseding indictment resulted from the elimination of the "exceeding authorized access" theory from the first indictment and regard for how the case would be presented at trial. According to the MIT Report, MIT's attorneys perceived the superseding indictment's return as "an escalation by the USAO."

Inconsistencies such as these require serious responses to the original letter, and indeed raise more questions about the prosecution of Mr. Swartz. One year ago, we sought the basis for the U.S. Attorney Carmen Ortiz's determination that her office's conduct was "appropriate." We have received no such information, not even the sentencing memoranda that surely were prepared in a case such as this.

In March, you testified that Mr. Swartz's case was "a good use of prosecutorial discretion." We respectfully disagree. We hope your response to this letter is fulsome, which would help re-build confidence about the willingness of the Department to examine itself where prosecutorial conduct is concerned.

We appreciate your prompt and thorough answers.

Sincerely,

---

constitutional right to a defense. But Mr. Heymann's comment suggests an unprofessionalism and lack of proportion that, we fear, infected the prosecution in general.