

**Dean Barker** October 15, 2010 at 3:52 am #  
PRESS RELEASE

FROM: Former Prosecutors

DATE: October 13, 2010

RE: Prosecutors Respond To Release of Ayotte Emails

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As former prosecutors, we reviewed with grave concern last week's release of Kelly Ayotte's email correspondence from the time that she served as Attorney General. Ms. Ayotte's email exchange in October of 2006 with her now chief campaign strategist, Robert Varsalone, reveals that her death penalty decision in the Briggs case was motivated, in part, by her political ambitions.

Her conduct runs afoul of the American Bar Association's Standards set by its Criminal Justice Section, which state under section 3-3.9 (d) that "[i]n making the decision to prosecute, the prosecutor should give no weight to the personal or political advantages or disadvantages which might be involved or to a desire to enhance his or her record of convictions" and section 3-1.3 (f), which states that "[a] prosecutor should not permit his or her professional judgment or obligations to be affected by his or her own political, financial business, property, or personal interests." (Emphasis added).

Ms. Ayotte's use of the Office of the Attorney General to create a spring board for her own political future runs counter to these established standards and that office's long held tradition of disciplined independence. Finding its roots in Justice Souter's term as Attorney General, New Hampshire's Attorney General's Office had a unique tradition of autonomy from the partisan pressures that define the Attorney General's Offices of our sister states. Time and again, Attorneys General before Ms. Ayotte made difficult decisions by reference to the facts of the case, the law that applies and the interests of our citizens — an analysis that never included earning political equity. With the evidence in her own words, we fear that Ms. Ayotte abandoned that tradition of integrity by permitting visions of electoral victories to cloud her thinking when considering a subject matter so truly grave — when to put a man to death. We were deeply troubled by what we read.

On October 27, 2006, Mr. Varsalone wrote to Ms. Ayotte's official Attorney General email account to encourage her to seek political office. He

described to her the difficulties that then Congressman Charles Bass faced in his re-election bid against Paul Hodes and the opportunity for her in the Second District if Bass faltered. He even entitled this email: "Get ready to run..." He made clear to her that the Bass campaign was disorganized, out of touch with the Republican base and would likely lose the election. Without a beat, Ms. Ayotte immediately responded by stating: "A police officer was killed and I announced that I would seek the death penalty." Mr. Varsalone then envisioned the theme for her campaign to come, stating: "Where does AG Ayotte stand on the death penalty? BY THE SWITCH."

The connection between her political ambitions and the application of the death penalty is clear and unambiguous. This back and forth devalued the gravity of the death penalty decision that Ms. Ayotte made. Instead of hinging her death penalty decision on notions of justice and the law laced with concern for the victims involved and society at large, her decision turned on self-centered thoughts of political gain. The fact that her analysis of a death penalty decision included the impact that it would have on her political future is a violation of New Hampshire's proud tradition where the Office of the Attorney General is not the place for political dialogue.

The fact that she turned to political operatives such as Mr. Varsalone as a sounding board during her time as Attorney General underscores this point. In Ms. Ayotte's response to Mr. Varsalone, she stated nothing of the facts of the case, the proper application of the death penalty, the loss of an officer or the suffering of the family that he left behind. Instead, she responded to his description of a political opportunity by pointing immediately to the fact that her death penalty decision would be a hallmark of her political career.

While there is room for legitimate debate regarding the application of the death penalty in our State and none of us question the need to bring to justice any person responsible for the death of another, we do not believe that any citizen would support prosecutorial decisions made for political purposes.

Sincerely yours,

John Garvey, Former Military Prosecutor John Malmberg, Former Assistant Attorney General Michael Pignatelli, Former Assistant Attorney General William Shaheen, Former United States Attorney James Rosenberg, Former Assistant Attorney General Mark Abramson, Former Assistant County Attorney Lincoln Soldati, Former County Attorney Paul Maggiotto, Former Assistant Attorney General Steven Gordon, Former Assistant United States Attorney