

Testimony of
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Subcommittee on Regulatory Affairs, Stimulus Oversight and Government
Spending

“The Obama Administration’s Investigation of Alleged IRS Targeting”

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Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify before you today. My name is Glenn Ivey and I am a partner at the Washington law firm of Leftwich & Ludaway, where I specialize in civil and criminal litigation. I am a former Federal prosecutor, an elected state prosecutor, and an adjunct professor of law. I am very familiar with the types of issues you are considering today in this oversight hearing.

Introduction

By way of introduction, I spent about half of my career as a prosecutor. I served as an Assistant U.S. Attorney in Washington, DC from 1990-1994, first under U.S. Attorney Jay Stephens, and then for two years under U.S. Attorney Eric Holder. Before leaving, I handled about 45 criminal jury trials, argued about a dozen appeals and conducted numerous grand jury investigations.

In 2002, I was elected State's Attorney for Prince George's County, Maryland, a jurisdiction of about 850,000 people that covers the eastern border of Washington, DC. I was elected to two terms, during which we handled a variety of very high profile investigations that sometimes overlapped with investigations conducted by the U.S. Department of Justice. I also became the founding chairman of the Association of Prosecuting Attorneys (APA), a private non-profit entity which supports and enhances prosecutors in their efforts to create safer communities. APA is the only national organization to include and support all

prosecutors, including appointed and elected. Finally, for the past 17 years, I have taught courses on advanced criminal procedure, white collar crime, Congressional investigations and federal criminal law at the University of Maryland School of Law.

Length of the Investigation

I understand from my review of statements by Subcommittee members and hearing testimony that there is concern about the length of this investigation. While I was State's Attorney, my office conducted several investigations that took long periods of time to complete. Sometimes I was accused of taking longer than I should. But, as my father used to say, you measure twice and cut once. It is critical for prosecutors to be extremely careful and thorough in conducting their investigation, because they might not get a second chance to do it right. Certainly, when it comes to a matter as sensitive as this one, where the public confidence in a federal agency has been shaken, there should be no rush to judgment, and no pressure to cut corners. It is more important to do it right than to do it fast.

Moreover, I also had the experience of waiting for the Department of Justice to complete investigations my office had referred. In one case, an accused cop killer was found dead in his prison cell just two days after he was arrested for the murder. In another, a college student was beaten by local police officers when a college celebration spun out of control. In these and other cases, my office

sometimes waited months, or even years, before the federal investigation was completed. So I understand there can be frustration in awaiting the results of Justice Department investigations, especially in high profile matters that have captured a good deal of public attention. Sometimes, long investigations lead the public to question how the prosecutors are conducting the investigation or whether it could be completed more quickly. Nevertheless, I think it is critical to give prosecutors the time they need to conduct a careful and thorough investigation—particularly in matters with this degree of sensitivity. That is especially true when the investigation is complex, involves a large number of witnesses, and potentially implicates criminal laws where intent is the primary issue in determining whether criminal charges are appropriate.

Confidentiality

I know from personal experience that there can be a great deal of pressure on prosecutors to release information while an investigation is ongoing. But it is important for prosecutors to control the flow of information made public during the course of their investigations for several reasons. First, prematurely disclosed information can undermine an investigation by tipping off potential witnesses about the scope, direction and details of the investigation. Second, individuals who might be named in the course of an investigation, but ultimately cleared of wrongdoing, should be shielded from the negative impact of disclosing incorrect

information. In this age where everything lives forever on the Internet, protecting the reputations of the innocent is especially important.

Finally, any information that is gathered pursuant to laws that require secrecy, like Rule 6(e) of the Federal Rules of Criminal Procedure, might require a court order to be released. That reflects the longstanding view, held by both Congress and the courts, that matters before a grand jury should largely remain secret before trial.

In the short run, these secrecy rules may conflict with the goal of transparency and disclosure. Elected officials want updates. The public and the media want real-time information. But in the long run, it usually makes more sense to allow the criminal investigation to run its course before public disclosures are made that might undermine or even preclude a criminal prosecution. At this point, I believe that is the case with the Justice Department's investigation of how the IRS handled this matter.

Politics and Prosecutors

A hallmark of the Justice Department is that it allows its line prosecutors to do their jobs without forcing them to disclose their political views or bend to political considerations. That is why the Department has career prosecutors who sometimes have spent decades in office, despite the changes in Presidents and Attorneys General. This provides consistency in the handling of cases, retains top

talent and preserves institutional memory. It also helps to reassure the public that, regardless of who is at the top, the line prosecutors will wield their power and handle their cases based solely on the merits.

I know the Committee has received letters from Fordham law Professor Bruce Green and Columbia Law School Professor Daniel Richman explaining the legal nuances of recusal and conflict of interest. I want to take a more personal approach. I saw these principles in action while I worked at the Department. Fortunately, during the transition from the first Bush administration to the Clinton administration, line prosecutors like me were insulated from the politics of the day, and allowed to conduct our work in an apolitical environment.

After my election, I brought that approach to my state office. I worked hard to reduce the politics that swirled around the office—where line prosecutors had been expected, essentially as a condition of employment, to donate to their bosses' campaigns and to work for their re-election as well. Eventually, my line prosecutors realized that they did not have to contribute to my campaign, and that I was not going to check whether they worked on political campaigns or made political contributions. My line prosecutors learned that they did not have to sacrifice their constitutional rights to work for me, and that they could handle their cases based solely on the merits. That's the way it ought to be, even in high-profile matters like this.

Conclusion

Thank you again for allowing me to testify at this hearing today. I would be more than happy to answer any questions the Members may have.