



U.S. Department of Justice

Office of the Deputy Attorney General

Bradley Weinsheimer
Associate Deputy Attorney General

Washington, D.C. 20530

June 22, 2020

Robert S. Litt
Morrison Foerster
2000 Pennsylvania Avenue, NW
Washington, D.C. 20006
By email: rlitt@mofo.com

Dear Mr. Litt:

I write in response to your June 19, 2020 letter concerning the written statement that your client, Aaron Zelinsky, an Assistant U.S. Attorney in the U.S. Attorney's Office for the District of Maryland, proposes to submit in connection with his appearance before the Committee on the Judiciary of the U.S. House of Representatives (Committee) on June 24, 2020.

As explained in my June 18, 2020 letter, the Department of Justice (Department) has a strong and long-standing interest in protecting the confidentiality of prosecutorial deliberations. Your letter does not challenge the legitimacy of that interest, but offers several reasons why you believe that neither those confidentiality interests nor the deliberative process privilege precludes the testimony your client wishes to present in his written statement.

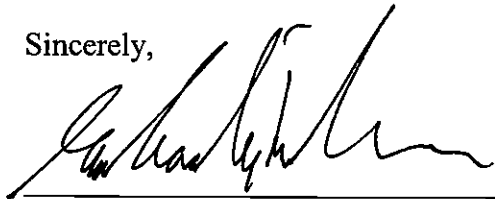
The Department disagrees with your suggestion that none of the internal discussions addressed in AUSA Zelinsky's draft statement are pre-decisional under the deliberative process privilege. Your client's testimony includes deliberations within the U.S. Attorney's Office concerning the initial decision to file a sentencing memorandum in the *Stone* case and the subsequent decision to file a second filing in the *Stone* case. Those discussions are pre-decisional and covered by privilege.

The Department also disagrees with the suggestion that the deliberative process privilege does not apply merely because someone describes what he or she views to be "political influence" in a matter. That is not the law, and the Department does not waive its important confidentiality interests in prosecutorial deliberations simply because someone alleges that a particular decision was political in nature. Given the frequency in which such allegations are made during congressional oversight, accepting that proposition would destroy the Department's confidentiality interests and threaten itself to politicize the criminal-justice process by inviting congressional intrusion into prosecutorial deliberations in many, if not virtually all, high-profile investigations and prosecutions.

That said, the Department does not object to your client submitting the proposed statement and to providing oral testimony that does not go beyond the scope of the statement. Much of what is contained in the statement constitutes your client's opinions of actions that were

taken in *Stone*. The opinions he holds on these matters (as opposed to how he may have expressed his opinions to others during his Office's deliberations) are not privileged, and he is free to express them, limited only by the rules of professional responsibility. As for deliberative information, the two sentencing memoranda in *Stone* are a matter of public record, and the Attorney General has publicly disclosed general information concerning the Department's deliberations. As drafted, the proposed statement is similarly limited to a high level of generality about the deliberations. The statement does not reveal the content of specific deliberative communications, and we do not authorize your client to reveal that kind of specific information in the statement or his oral testimony. Accordingly, consistent with the guidance in my June 18 letter, the Department expects that AUSA Zelinsky will decline to respond at the hearing to questions seeking such information and will advise the Committee to contact the Department's Office of Legislative Affairs should it seek information that he is unable to provide.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bradley Weinsheimer', written over a horizontal line.

Bradley Weinsheimer
Associate Deputy Attorney General