

HOUSE JUDICIARY COMMITTEE – 6/24/20 – MUKASEY STATEMENT

GOOD AFTERNOON, CHAIRMAN NADLER , RANKING MEMBER JORDAN, AND MEMBERS OF THIS COMMITTEE. THANK YOU FOR INVITING ME TO TESTIFY AT THIS HEARING. THE TOPIC OF TODAY’S HEARING – CLAIMS OF POLITICIZATION AT THE JUSTICE DEPARTMENT – IS SERIOUS AND IMPORTANT BECAUSE THE FUNDAMENTAL DUTY OF THE DEPARTMENT IS TO PURSUE EQUAL JUSTICE UNDER THE LAW. WE CAN AND SHOULD EXPECT NO LESS.

AS YOU MAY KNOW, I WAS PRIVILEGED TO LEAD THE MEN AND WOMEN OF THE JUSTICE DEPARTMENT DURING THE GEORGE W.; BUSH ADMINISTRATION. BEFORE THAT, I SERVED FOR OVER 19 YEARS AS A DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK. THAT IS THE PERSPECTIVE I BRING TO MY TESTIMONY TODAY.

THE DEPARTMENT NEEDS CAPABLE, EXPERIENCED AND EVEN-HANDED LEADERSHIP. ITS COMPONENTS AND PROGRAMS HAVE REACH ACROSS THE COUNTRY AND THE WORLD. IT HANDLES MATTERS AS DIVERSE AS ANTITRUST AND ANTITERRORISM. IT TAKES AN EXPERIENCED LAWYER AND LEADER TO MANAGE SUCH A DEPARTMENT EFFECTIVELY. I BELIEVE WITHOUT RESERVATION THAT WILLIAM BARR IS

THAT KIND OF A LEADER , AND THAT THIS COUNTRY IS FORTUNATE THAT HE LEADS ONE OF THE MOST IMPORTANT GOVERNMENT DEPARTMENTS.

I DO NOT HAVE FIRST-HAND INVOLVEMENT IN THE PARTICULAR MATTERS TO BE DISCUSSED TODAY, BUT BASED ON MY OWN EXPERIENCE I ASSURE YOU THAT THESE ARE NOT ISSUES OF FIRST IMPRESSION FOR THE DEPARTMENT OR FOR THE FEDERAL COURTS.

THE JUSTICE DEPARTMENT IS NOT POLITICIZED BECAUSE SENIOR OFFICIALS DISAGREED WITH THE SENTENCING RECOMMENDATION FOR MR. STONE. TRIAL LAWYERS IN THE DEPARTMENT ARE ZEALOUS ADVOCATES; THAT IS THEIR JOB. BUT ZEAL DOES NOT CONFER PERFECTION OR ASSURE JUSTICE. MY VIEWS ON THIS CASE ARE NO SECRET. I SET THEM OUT IN A PIECE WRITTEN WITH ATTORNEY GENERAL MEESE IN THE WALL STREET JOURNAL, WHERE WE POINTED OUT THAT THE SENTENCING GUIDELINES, WHICH WERE ADOPTED IN 1987 INITIALLY AS PRESUMPTIVELY BINDING ON THE COURTS, HAVE BEEN STRICTLY ADVISORY SINCE 2005 UNDER SUPREME COURT LAW. BOTH AS A JUDGE AND AS ATTORNEY GENERAL I HAVE DECLINED TO FOLLOW SENTENCING RECOMMENDATIONS FROM TRIAL ATTORNEYS. AS ATTORNEY GENERAL MEESE AND I WROTE, PROSECUTORS ARE SUPPOSED TO SEEK JUSTICE – NOT TO PLAY THE SENTENCING GUIDELINES LIKE SOME SORT OF PINBALL MACHINE TO SEE HOW MANY TIMES THEY CAN RING THE BELL, OR TO

TRY TO PRESSURE A JUDGE TO IMPOSE A HARSH SENTENCE, AND ALSO CAST DOUBT ON THE COMPETENCE OF THE GOVERNMENT BY READING GUIDELINES IN A DIDACTIC AND HYPERTECHNICAL WAY, WITHOUT APPLYING THE ONE ELEMENT THAT MUST BE PRESENT WHEN READING ANY LAW – WHETHER STATUTES OR GUIDELINES – AND THAT IS COMMON SENSE. IN A HIGHLY PUBLICIZED AND POLITICALLY FRAUGHT CASE, IT WAS NOT ONLY PROPER BUT ALSO ADVISABLE FOR THE ATTORNEY GENERAL TO ASSURE THAT THE GOVERNMENT’S SENTENCING RECOMMENDATION NOT PROMOTE SUCH UNWORTHY ENDS..

THE DECISION TO LOWER THE RECOMMENDATION WAS REACHED BY OTHERS IN THE DEPARTMENT AS WELL, INCLUDING CAREER LAWYERS, ONE OF WHOM SIGNED THE LOWER RECOMMENDATION. ATTORNEY GENERAL BARR SAID PUBLICLY THAT HE BELIEVED MR. STONE’S PROSECUTION WAS WARRANTED AND THAT WITH HIS CONVICTION, THE JAIL SENTENCE ULTIMATELY IMPOSED BY THE TRIAL JUDGE WAS APPROPRIATE. I BELIEVE THE TRIAL JUDGE AGREED THAT THE INITIAL SENTENCING RECOMMENDATION WAS OVERLY HARSH, AS HER SENTENCE PROVED.

THE JUSTICE DEPARTMENT IS NOT POLITICIZED BECAUSE PROSECUTORS DROPPED CHARGES AGAINST GENERAL FLYNN. AS I UNDERSTAND IT, THE FORMER FBI DIRECTOR TALKED PUBLICLY ABOUT

HAVING SENT AGENTS TO INTERVIEW GENERAL FLYNN WITHOUT FOLLOWING APPLICABLE PROTOCOLS. NOT USING PROPER PROTOCOLS WAS NOT SIMPLY A DELICATE PROBLEM OF ETIQUETTE == USING THE FISH FORK INSTEAD OF THE SALAD FORK; IT FOLLOWED THE DEPUTY FBI DIRECTOR HAVING ASSURED GENERAL FLYNN THAT HE NEED NOT HAVE A LAWYER PRESENT AND HAVING AGENTS BASE THEIR INVESTIGATION ON A POTENTIAL VIOLATION OF A LAW – THE LOGAN ACT -- THAT HAS NEVER BEEN PROSECUTED SUCCESSFULLY SINCE ITS ADOPTION IN THE 18TH CENTURY, IS PROBABLY UNCONSTITUTIONAL, AND THAT NO RATIONAL PERSON WOULD APPLY TO A POTENTIAL NATIONAL SECURITY ADVISOR IN ANY EVENT. WHICH IS TO SAY, THE INTERVIEW WAS A PRETEXT FOR GETTING GENERAL FLYNN , AS ONE SENIOR FBI OFFICIAL PUT IT, TO EITHER LIE OR ADMIT TO SOMETHING THAT COULD GET HIM FIRED.

THE DUTY OF THE DEPARTMENT IS TO DO JUSTICE, AND THAT DOES NOT END AFTER A GUILTY PLEA, PARTICULARLY WHEN THAT PLEA IS PROCURED WITH A THREAT TO PROSECUTE THE DEFENDANT’S SON THAT IS CONCEALED FROM THE COURT AND THE PROBATION DEPARTMENT SO THAT IT WOULD NOT HAVE TO BE DISCLOSED TO FUTURE DEFENDANTS AGAINST WHOM GENERAL FLYNN MIGHT TESTIFY – A PARTICULARLY GAG-INDUCING FEATURE OF THIS EPISODE TO ME AS A FORMER

DISTRICT JUDGE. IT IS NOT UNHEARD OF FOR A PROSECUTION TO BE DROPPED EVEN AFTER A GUILTY PLEA FOLLOWING THE DISCLOSURE OF NEW INFORMATION THAT SHOWS CONTINUED PROSECUTION WOULD BE A MISCARRIAGE OF JUSTICE.

THERE SEEMS TO BE A TENDENCY THESE DAYS TO READ ULTERIOR MOTIVES INTO EVERY ACTION OF ATTORNEY GENERAL BARR. AS ATTORNEY GENERAL MEESE AND I NOTED IN OUR ARTICLE, IT IS HELPFUL TO CONSIDER A FEW DATA POINTS FROM ATTORNEY GENERAL BARR'S TENURE. FIRST, DESPITE HIS OWN SKEPTICISM ABOUT ASPECTS OF SPECIAL COUNSEL ROBERT MUELLER'S INVESTIGATION, HE ALLOWED THAT INVESTIGATION TO RUN ITS COURSE. SECOND, HE SUPPORTED THE DECISION NOT TO PROSECUTE FORMER DEPUTY FBI DIRECTOR ANDREW MCCABE, A FREQUENT CRITIC OF THE PRESIDENT, DESPITE EVIDENCE THAT HE NOT ONLY LIED WHEN HE DENIED LEAKING INFORMATION BUT ALSO BERATED OTHERS FOR THE LEAKS SO AS TO DEFLECT SUSPICION FROM HIMSELF.

I HAVE COME TO KNOW ATTORNEY GENERAL BARR OVER THE YEARS, AND HAVE HAD MANY DISCUSSIONS WITH HIM ABOUT THE LAW AND ABOUT PUBLIC POLICY ISSUES. BASED ON THAT, I HAVE NO DOUBT THAT THE WELFARE OF THIS COUNTRY, UPHOLD THROUGH THE EVEN-HANDED APPLICATION OF LAW SO AS TO ACHIEVE JUSTICE, IS WHAT

MOTIVATES HIS DECISIONS AS ATTORNEY GENERAL, AND ALL THAT
MOTIVATES THOSE DECISIONS. I THINK WE ARE FORTUNATE TO HAVE A
PERSON OF HIS TEMPERAMENT, TALENTS AND CONVICTIONS IN OFFICE
DURING THIS DIFFICULT TIME IN OUR HISTORY.

THANK YOU.