

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515-6216
One Hundred Sixteenth Congress

July 6, 2020

Mr. Timothy J. Shea
Acting Administrator
U.S. Drug Enforcement Administration
8701 Morrissette Drive
Springfield, VA 22151

Dear Mr. Shea:

On June 24, 2020, the Committee received remote testimony via videoconference from Assistant U.S. Attorney Aaron S.J. Zelinsky about the Justice Department's sentencing recommendation for Roger Stone.¹ Mr. Zelinsky defended his decision to recommend a lengthy prison sentence for Mr. Stone and alleged—without firsthand evidence—that “political” considerations caused the Justice Department to later reduce the recommendation.² Specifically, Mr. Zelinsky alleged that you, as the then-Acting U.S. Attorney for the District of Columbia, were “afraid” of too harshly punishing Mr. Stone.³ Because Mr. Zelinsky's remote appearance and the double-hearsay nature of his statements prevented a careful examination of the facts, we write to request your firsthand recollection of events surrounding Mr. Stone's sentencing.

On February 10, 2020, Mr. Zelinsky filed a memorandum with United States District Judge Amy Berman Jackson recommending a prison sentence of 87 to 108 months for Mr. Stone, a 67-year-old first-time, nonviolent offender.⁴ The next day, prosecutors filed a supplemental memorandum asserting that the initial recommendation was not appropriate and would not serve the interests of justice.⁵ The supplemental memorandum noted that 37 to 46 months of imprisonment was more in line with sentences for similar cases, but deferred to Judge Jackson on the appropriate sentence.⁶ A Department official later said publicly that the initial

¹ See “*Oversight of the Department of Justice: Political Interference and Threats to Prosecutorial Independence*”: Hearing before the H. Comm. on the Judiciary, 116th Cong. (2020) [hereinafter “Oversight hearing”]. Although Chairman Nadler's subpoena—which Mr. Zelinsky requested as a condition of his testimony—required him to appear physically before the Committee, see Subpoena Ad Testificandum to Aaron S.J. Zelinsky, H. Comm. on the Judiciary (June 12, 2020), Mr. Zelinsky instead chose to testify from his attorney's office a half-mile away. Oversight hearing, *supra* note 1 (“Mr. Johnson: So how far are you, approximately, from where we sit right now? Mr. Zelinsky: I would guess about a half mile.”). Due to the remote nature of his appearance, at times it was difficult to understand Mr. Zelinsky's statements.

² Oversight hearing, *supra* note 1.

³ *Id.*

⁴ Government's Sentencing Mem. *U.S. v. Roger J. Stone Jr.* (Feb. 10, 2020).

⁵ Government's Supplemental and Amended Sentencing Mem. *U.S. v. Roger J. Stone Jr.* (Feb. 11, 2020).

⁶ *Id.*

recommendation was “excessive and grossly disproportionate” and that the recommendation “was not what had been briefed to the Department.”⁷

On February 20, 2020, Judge Jackson sentenced Mr. Stone to forty months in prison, saying that she “agree[d] with the . . . government’s second memorandum” and found Mr. Zelinsky’s initial sentencing recommendation to be “greater than necessary.”⁸ Judge Jackson said that she would not have followed Mr. Zelinsky’s initial recommendation, even if the Justice Department had not submitted a revised second memorandum:

I am concerned that seven to nine years, or even the 70 to 87 months, as I calculated the guideline range, **would be greater than necessary. I sincerely doubt that I would have sentenced him within that range**, even if the sentencing had simply proceeded in its typical fashion, without any of the extraneous commentary or the unprecedented actions of the Department of Justice within the past week. **I agree with the defense and with the government's second memorandum, that the eight-level enhancement for threats, while applicable, tends to inflate the guideline level beyond where it fairly reflects the actual conduct involved.**⁹

During his remote appearance, Mr. Zelinsky—without firsthand evidence—accused the Justice Department of politicizing Mr. Stone’s sentencing by departing from his initial recommendation.¹⁰ Mr. Zelinsky alleged that two supervisors, J.P. Cooney and Alessio Evangelista (although he could not initially recall Mr. Evangelista’s surname), told him that you had “political reasons” for disagreeing with Mr. Zelinsky’s initial recommendation.¹¹ Mr. Zelinsky could not state with specificity how Mr. Cooney or Mr. Evangelista came to obtain this impression;¹² however, he suggested that they learned it from meetings with you.¹³ Mr. Zelinsky specifically alleged that he was told that you changed his sentencing recommendation for political reasons because you were “afraid of the President.”¹⁴

⁷ Jake Gibson & David Spunt, *DOJ expected to scale back Roger Stone’s ‘extreme’ sentencing recommendation: official*, Fox News (Feb. 11, 2020).

⁸ Sentencing Tr. of Roger Stone, *U.S. v. Roger J. Stone* (Feb. 20, 2020), pp. 77-78 (statement of Judge Amy Berman Jackson).

⁹ *Id.*

¹⁰ Oversight hearing, *supra* note 1 (opening statement of Mr. Aaron S. J. Zelinsky).

¹¹ *Id.* at 9 (“In response, we were told by a supervisor that the U.S. Attorney had political reasons for his instructions, which our supervisor agreed was unethical and wrong. However, we were instructed that we should go along with the U.S. Attorney’s instructions, because this case was ‘not the hill worth dying on’ and that we could ‘lose our jobs’ if we did not toe the line.”).

¹² *Id.* (“I know that he was in meetings with senior leadership. I do not know the source of his information.”).

¹³ *Id.* (“My understanding is that all of the people I mentioned, those supervisors, were all in meetings with Acting U.S. Attorney Shea.”).

¹⁴ *Id.* (“Ultimately, we refused to modify our memorandum to ask for a substantially lower sentence. Again, I was told that the U.S. Attorney’s instructions had nothing to do with Mr. Stone, the facts of the case, the law, or Department policy. Instead, I was explicitly told that the motivation for changing the sentencing memo was political, and because the U.S. Attorney was ‘afraid of the President.’”).

Setting aside the inherently unreliable nature of Mr. Zelinsky's double-hearsay accusations, former federal judge and Attorney General Michael B. Mukasey offered valuable perspective about the appropriateness of the Department's actions in recommending a sentence for Mr. Stone. He explained:

Both as a judge and as Attorney General, I have declined to follow sentencing recommendations from trial attorneys. . . . [P]rosecutors 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 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.¹⁵

Attorney General Mukasey also explained that the initial sentencing recommendation, made by Mr. Zelinsky, "cast doubt on the competence of the government" by reading sentencing guidelines in a "didactic and hypertechnical way, without applying the one element that must be present when reading any law . . . and that is common sense."¹⁶

Mr. Zelinsky's remote appearance before the Committee is just another part of Chairman Nadler's oddly personal campaign against Attorney General William Barr. After the embarrassing spectacle of the Democrats' sham impeachment proceedings, Chairman Nadler has directed his ire at Attorney General Barr, accusing him of "politicizing" the Department. Potential politicization occurs when a displaced prosecutor like Mr. Zelinsky brings unreliable and narrow allegations to a partisan Committee hearing called by House Democrats. The Chairman ignores that Attorney General Barr allowed Special Counsel Mueller to complete his investigation, despite disagreeing with the predicate for the investigation. The Chairman ignores that the Special Counsel's investigation found no collusion between Russia and the Trump campaign. Most startling, the Chairman ignores the growing evidence that the Obama-Biden Administration weaponized the Justice Department to target the Trump campaign, and that Attorney General Barr is trying to clean up this mess.

¹⁵ *Id.* (Opening statement of Judge Michael B. Mukasey).

¹⁶ *Id.*

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The Chairman's personal animus seems to have clouded his view and prevents him from realizing the inherently unreliable nature of Mr. Zelinsky's double-hearsay statements. Therefore, because you were the senior official within the U.S. Attorney's Office at the relevant time, we ask you please provide your recollection of events surrounding the sentencing of Mr. Stone. Please provide this information as soon as possible but no later than 5:00 p.m. on July 20, 2020.

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in blue ink that reads "Jim Jordan". The signature is written in a cursive, flowing style.

Jim Jordan
Ranking Member

cc: The Honorable Jerrold Nadler, Chairman