



NEW YORK
CITY BAR

February 12, 2020

Hon. Jerrold Nadler
Chair, Judiciary Committee
U.S. House of Representatives
2132 Rayburn House Office Building
Washington, D.C. 20510

Hon. Doug Collins
Ranking Member, Judiciary Committee
U.S. House of Representatives
1504 Longworth House Office Building
Washington, D.C. 20510

Hon. Lindsey Graham
Chair, Judiciary Committee
U.S. Senate
290 Russell Senate Office Building
Washington, D.C. 20510

Hon. Dianne Feinstein
Ranking Member, Judiciary Committee
U.S. Senate
331 Hart Senate Office Building
Washington, D.C. 20510

Hon. Michael Horowitz
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Re: The Prosecution of Roger Stone and Related Actions by the Department of Justice

Dear Representative Nadler, Representative Collins, Senator Graham, Senator Feinstein and Inspector General Horowitz:

We write to express our deep concerns about the impartial administration of justice in connection with the prosecution of Roger Stone in federal court in Washington, D.C., and to call for immediate investigations by Congress and by the Department of Justice Office of the Inspector General. Recent actions by the U.S. Attorney's Office for the District of Columbia, a component of the United States Department of Justice, raise serious questions about whether the Department of Justice is making prosecutorial decisions based not on neutral principles but in order to protect President Trump's supporters and friends. In our criminal justice system, a single standard must apply to all who are accused or convicted of violating the law—unequal treatment based on political influence is to be deplored in all cases but is especially dangerous if it emanates from the presidency.

The Stone Sentencing

Roger Stone was convicted after a jury trial in 2019 and is scheduled to be sentenced later in February 2020. On Monday, the federal prosecutors responsible for the Stone prosecution filed a sentencing brief endorsing the imposition of a sentence of between 87 and 108 months, consistent with the Federal Sentencing Guidelines (the “Guidelines”) range recommended by the United States Probation Office.¹ This is consistent with usual Department of Justice practice, which is to ask the district court to follow the advisory Guidelines. Early on Tuesday morning, just after 1:00 a.m., President Trump tweeted that a sentence of this length would be “horrible and very unfair.”²

Just a few hours later, an unidentified Department of Justice spokesperson stated that the Department of Justice found the recommendation “extreme and excessive and disproportionate to Stone’s offenses.” Later on Tuesday, the Department of Justice filed a new sentencing brief that stated—without explanation—that the prior sentencing brief “does not accurately reflect the Department of Justice’s position on what would be a reasonable sentence in this matter.” The new brief stated that the Guidelines range of 87 to 108 months’ imprisonment “would not be appropriate or serve the interests of justice.”³

In the aftermath of these events, the four career prosecutors involved in the Stone prosecution filed notices of withdrawal from the case; one of them also resigned from the Department of Justice. The Department of Justice has acknowledged that these withdrawals were meant to protest the about-face in Tuesday’s sentencing submission. Later on Tuesday, the former U.S. Attorney for the District of Columbia, Jessie Liu, who had supervised the Stone prosecution after Special Counsel Mueller completed his tenure, was withdrawn as the Administration’s nominee for a senior position in the Department of Treasury. It was further reported on Tuesday evening that Attorney General Barr has taken personal control over cases of interest to President Trump, including the prosecution of Michael Flynn, in which prosecutors originally sought a sentence of imprisonment, but then in a reply brief advised the court that a sentence of probation would also be reasonable. It has been reported that this notable change of position came only after the intervention of senior Department of Justice officials.⁴

These Unusual Events Reflect Disregard for the Rule of Law

The events that have transpired in the past two days are highly unusual and irregular. The Department of Justice is not in the habit of taking one position in court and then, without explanation, taking a startling different position on the very next day. This sudden turnabout is itself disturbing. In addition, the Department of Justice is known for rarely asking the sentencing court to impose a sentence below the Guidelines range, other than when the defendant is a cooperating witness or when the defendant’s case presents unusual mitigating factors. Neither

¹ United States Sentencing Commission Guidelines, <https://www.ussc.gov/guidelines>.

² @realDonaldTrump. (Feb. 11, 2020) “This is a horrible and very unfair situation. The real crimes were on the other side, as nothing happens to them. Cannot allow this miscarriage of justice!” [Tweet]. <https://twitter.com/realDonaldTrump/status/1227122206783811585?s=20>.

³ *United States v. Stone*, 19-cr-18 (ABJ) (D.D.C.), Dkt. No. 286, at 1.

⁴ Carol Lee et al., “Barr takes control of legal matters of interest to Trump, including stone Sentencing,” NBC News (Feb. 11, 2020), at <https://www.nbcnews.com/politics/justice-department/barr-takes-control-legal-matters-interest-trump-including-stone-sentencing-n1135231>.

circumstance exists here. To be clear, the Guidelines can produce recommendations of incarceration that exceed what is warranted. We would applaud a generalized initiative by the Department of Justice that encourages judges to depart from those recommendations when justice requires.

But this is not what the Department of Justice has done here. There is no broad effort to address the over-punishment of the Guidelines. Rather, this appears from all external circumstances to be an instance of President Trump and Attorney General Barr acting in concert to protect Stone from punishment. Stone is a lifelong friend and advisor of President Trump. Indeed, Stone's conviction was for obstructing an investigation into President Trump, his family, and his advisors for encouraging Russian interference with the 2016 election. While the connecting events may never be fully known, the mere fact and timing of the Department of Justice decision to overrule the prosecutors who handled the case—just hours after President Trump's tweet—is itself suggestive of improper influence. Even this appearance of improper influence is detrimental to the fair administration of justice, the rule of law and the public's trust in the justice system.

The City Bar Calls for Investigation of these Events

The City Bar has previously criticized the Attorney General for his failure to recuse himself from the Department of Justice's review of the whistleblower complaint, in which the Attorney General was himself mentioned during the Trump-Zelensky phone call of July 25, 2019.⁵ We also have also called for congressional investigation of several public pronouncements by the Attorney General that we believe were inconsistent with the independence required of his office.⁶ The present case raises more direct, and more serious, questions concerning the role of presidential influence in prosecuting individual criminal cases. All prior Presidents, at least since Watergate, made it a practice to decline to comment on ongoing cases being handled by the Department of Justice. This practice protected the criminal justice system from improper presidential influence. The new practice, in which the President makes public comments that are critical of prosecutions of his allies and in which the Department of Justice contradicts the sentencing recommendations of the prosecutors who handled the case to advance the President's personal and political ends, cannot be tolerated. If it is tolerated, it will undermine the rule of law on which our nation was founded and on which we rely as a foundation of our democracy.

For this reason, we call for Congress and the Department of Justice Office of the Inspector General to begin immediate investigations into these unusual and troubling events. Only a thorough public investigation can lay bare the true facts relating to the Stone sentencing. Nothing is more important to safeguarding the proper functioning and reputation of our criminal justice system than its commitment—and ability—to deliver justice impartially for all. Special treatment for the President's friends cannot be reconciled with the ideals that govern that system.

⁵ Attorney General Barr Should Recuse Himself from Department of Justice Review of Ukraine Matter, Statement of the New York City Bar Association (Oct. 23, 2019), <https://www.nycbar.org/media-listing/media/detail/attorney-general-barr-should-recuse-himself-from-department-of-justice-review-of-ukraine-matter>.

⁶ Letter requesting formal Congressional inquiries into conduct of Attorney General William P. Barr (Jan. 9, 2020), http://documents.nycbar.org/files/Exercising_Congressional_Oversight_AG_Barr_01082020.pdf.

Respectfully,

Roger Juan Maldonado
President

Harry Sandick
Chair, Committee on Federal Courts

Stephen L. Kass
Chair, Task Force on the Rule of Law

Christopher M. Pioch
Jessenia Vazcones-Yagual
Co-Chairs, Task Force on the Independence
of Lawyers and Judges⁷

Cc: Hon. William P. Barr
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20515

⁷ The signatory committees and task forces are comprised of lawyers occupying a wide range of positions within the profession, including, law firm and nonprofit attorneys, solo practitioners, former federal and state prosecutors, defense attorneys, and academics.