

Opening Statement of Geoffrey S. Berman
Before the House Judiciary Committee

I am appearing before this Committee at its request to testify regarding the events of June 19th and 20th, 2020 that resulted in my departure as U.S. Attorney for the Southern District of New York.

In order to accommodate the Committee's desire for information concerning my departure while also ensuring that my testimony does not impact in any way the work of the Southern District, I have, in consultation with the Department of Justice, established parameters for my testimony that have been shared with the Committee.

On June 18, 2020, I received an email from a member of the Attorney General's staff stating that the Attorney General wanted to meet me the next day at the Pierre Hotel in New York. I was not told the purpose of the meeting.

The meeting took roughly 45 minutes and was held in the Attorney General's hotel suite. It began at approximately 12:10 pm on June 19. The Attorney General's Chief of Staff, Will Levy, was present with me and the Attorney General, but he did not speak. There were sandwiches on the table, but nobody ate.

The Attorney General began the meeting by saying that he wanted to make a change in the Southern District of New York. He said that there was an opening in DOJ's Civil Division created by the recently announced departure of Assistant Attorney General Jody Hunt. He asked me to resign my position and take that job, saying that it would create an opening for SEC Chairman Jay Clayton to be nominated for U.S. Attorney for the Southern District of New York.

I responded that I loved my job and my colleagues at the Southern District and that I was thankful every day for the privilege of being part of that Office. I asked the Attorney General if he was in any way dissatisfied with my performance as U.S. Attorney. He said that he was not at all dissatisfied. He said the move was solely prompted by Jay Clayton's desire to move back to New York and the Administration's desire to keep him on the team. I told the Attorney General that I knew and liked Jay Clayton but he was an unqualified choice for U.S. Attorney for the Southern District of New York because he was never an AUSA and had no criminal experience.

I told the Attorney General that I was not interested in overseeing DOJ's Civil Division or in resigning. I said that I would leave whenever a nominee is confirmed by the Senate, as set forth in the statute under which I was appointed. I asked the Attorney General why I was being asked to resign prior to a nominee being confirmed. He

said it was because the Administration wanted to get Jay Clayton into that position.

The Attorney General pressed me to take the Civil Division position, saying that the role would be a good resume builder. He said that I should want to create a book of business once I returned to the private sector, which that role would help achieve. He also stated that I would just have to sit there for five months and see who won the election before deciding what came next for me. As part of this exchange he asked if I had done civil work at my prior law firm. I confirmed that I had indeed done civil work but that I did not want to lead the Department's Civil Division.

I told the Attorney General that there were important investigations in the Office that I wanted to see through to completion. I also said that I wanted to help lead the Office through the COVID crisis and get the Office back to normal functioning.

The Attorney General repeatedly urged me to take the Civil Division position. At one point I compared his request for my resignation to what happened with the U.S. Attorney's Office in the District of Columbia where the U.S. Attorney resigned and was replaced with someone from outside that office instead of the First Assistant. By referring to that resignation I intended to signal the Attorney General that I was not going to resign

so that he could disregard normal procedure and appoint someone from outside the Southern District as acting head instead of our Deputy U.S. Attorney.

The Attorney General said that if I did not resign from my position I would be fired. He added that getting fired from my job would not be good for my resume or future job prospects. I told him that while I did not want to get fired, I would not resign.

The Attorney General said that he was trying to think of other jobs in the Administration that might be of interest to me. I said that there was no job offer that would entice me to resign from my position.

The Attorney General asked me to write down my cell phone number so that he could call me later that day to give me some time to mull over the offer. I gave him my personal cell phone number and told him that while I was always available to talk to him I did not want to create any inaccurate expectations on his part. I told him that my position would not change this afternoon or in the future.

Immediately after I left the meeting I called members of my Executive Staff. I also called attorneys to represent me in a private capacity in case I was fired. I wanted to be ready to challenge the firing in court on the ground that I was appointed by the Court of the Southern District of

New York and therefore could not be fired by the Attorney General or the president.

At 4:44 pm, I missed a call from a number with a 202 area code that I did not recognize. The caller did not leave a voice message. At 7:21 pm I called that number back and had a conversation with the Attorney General lasting about three minutes. I told the Attorney General that my mind was the same and that I wanted until Monday to have a final conversation with him which would allow me to discuss the situation with my entire Executive Staff. The Attorney General then asked me whether I would be interested in becoming Chairman of the Securities and Exchange Commission. I told him my position was unchanged and that I wanted to wait until Monday to have our final conversation. He asked why I needed to talk to my Executive Staff. He said this is about you. I said it is about the Office. He refused my request to call me on Monday and said that he would call me the next day, Saturday, June 20th. He did not give me a specific time for the call. That is the last time I spoke to the Attorney General or anyone on his staff.

Sometime after 9:14 pm on Friday I became aware that DOJ issued a press release that I would be “stepping down”. That statement was false. In addition, the press release said, among other things, that the United States Attorney for the District of New Jersey, Craig Carpenito, had been appointed by the president as Acting U.S.

Attorney of the Southern District of New York effective July 3rd pending Jay Clayton's nomination and confirmation for that position.

The appointment of Craig Carpenito as Acting U.S. Attorney, or anyone from outside of the Office, would have been unprecedented, unnecessary and unexplained.

The Attorney General further stated: "With tenacity and savvy, Geoff has done an excellent job leading" the Southern District.

Later on Friday I issued a press release saying that I had not resigned and had no intention of resigning and that I intended to ensure that our Office's important cases continue unimpeded.

On Saturday morning and afternoon I had several calls with members of my Executive Staff and with my private attorneys. At approximately 3:30 pm, the Attorney General publicly released a letter addressed to me saying that I had been fired by the President. The letter also contained a critical concession by the Attorney General. The Attorney General stated that Audrey Strauss, my hand-picked and trusted Deputy, and not Craig Carpenito, would be Acting U.S. Attorney and was expected to serve in that capacity until a permanent successor is in place. With that concession, and having full confidence that Audrey would continue the important

work of the Office, I decided to step down and not litigate my removal.

Over the course of Friday and Saturday the interests of the Office were my sole concern as I endeavored to serve the immensely talented and dedicated AUSAs and staff of the Southern District in fulfilling their mission.