

Testimony of

John S. Martin

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Mr. Chairman and members of the Committee, I am honored to be here and to have the opportunity to express publicly my high regard and affection for the nominee for Attorney General, the Honorable Michael B. Mukasey. I have known Judge Mukasey for over 30 years. However, I came to know him best during the period when we served together on the United States District Court for the Southern District of New York, particularly after he became the Chief Judge of our court. During that time I served as the chair of our Committee on the Clerk's Office and we had occasion to work closely together on personnel matters as well as the complex problem of preparing our court for the migration to an electronic filing system.

At the outset, I should point out that Judge Mukasey and I are of different faiths. He was recommended for his judgeship by Senator D'Amato whereas I was recommended by Senator Moynihan. Other than the fact that I'm sure we both voted for Senator Schumer, I doubt that Judge Mukasey and I have voted often for the same political candidate. But these political differences do not cause me to hesitate for a moment in recommending him to you as a highly qualified candidate for the office of Attorney General.

Michael Mukasey is one of the most decent human beings I know and he possesses the qualities of intellect and humanity that we should want in someone who holds that important office. When we worked together on the problems of our clerk's office, I saw firsthand his compassion and his leadership. During that period our Clerk of Court died after a long battle with cancer. No one could have been more caring than Judge Mukasey was in that situation. In addition, he was an able leader, who sought advice and who inspired those around him to do their best. He also had the unenviable task of trying to organize and lead more than 40 United States District Judges, each of whom enjoyed life tenure. Judge Mukasey handled this task with grace and, when he stepped down as Chief Judge, he left with a respect and admiration of all of his colleagues.

To some extent no one individual is qualified to be Attorney General. The same can be said of a United States District Judge. In both cases one becomes responsible for dealing with important questions of law in areas in which he has had no prior experience. The Attorney General must preside over the Department of Justice and decide policy in areas as diverse as antitrust, terrorism, land utilization, immigration and treaty rights of native Americans. A United States District Judge must decide cases involving all of these issues and even the more arcane areas of law such as admiralty and bankruptcy. Serving as a District Judge you learn how to listen to those who are expert in the field and to judge the merits of their argument. Most important, for someone who would become the Attorney General, you learn that the law is above politics and that your personal political views have no place in the administration of justice.

Michael B. Mukasey was a superb United States District Judge and I do not doubt that, if confirmed, he will be a superb Attorney General. He possesses both an intellectual ability and an openness of mind that will serve him well in formulating the policies to be carried out by the attorneys in the Department of Justice. While I never had the pleasure of appearing in Judge Mukasey's court, I have had the pleasure of reading his opinions. He was a thoughtful and intelligent jurist. I also had one experience with him that demonstrates one of the most important qualities a judge or Attorney General should have- the willingness to rethink a position. Several years ago I had a case which raised an issue that I cannot recall, but the only opinion on point was written by Judge Mukasey. In my case I disagreed with him and wrote an opinion in which I said that, while I have great respect for Judge Mukasey, on this issue we disagree. Sometime later Judge Mukasey sent me a copy of an opinion he wrote in a new case raising the same issue. In that opinion he referred to his prior opinion and my opinion and said that he had persuaded that his original

decision was wrong. I know few judges who would have had the self-confidence or the humility to admit publicly that they were changing a prior position. Yet, that is the type of openness of mind that is most needed in those whose decisions can affect the lives of many of their fellow citizens.

Finally, as you might expect, Judge Mukasey's nomination has been the subject of considerable comment in the New York legal community. The unanimous view of those with whom I have spoken, friends of Judge Mukasey, his former colleagues and lawyers who had the pleasure of appearing before him, is that the President made an excellent selection when he chose to nominate Michael B. Mukasey and that he will provide the type of leadership necessary to ensure that the American people have confidence that justice is being administered fairly and with integrity.

Again I thank you for the opportunity to appear before you and I am, of course, happy to answer any questions you might have.