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THE HONORABLE JOHN E. SPRIZZO AWARD ACCEPTANCE SPEECH

HON. MICHAEL B. MUKASEY[†]

I am privileged in at least three ways to be here this evening. First, it is a privilege to receive an award from the Alumni Association of St. John's Law School, an institution that has contributed so much to the welfare and the governance of this city, this state, and this nation. Second, it is a privilege to be included in the list of those who have received this award in the past. Most personally of all, it is a privilege for me to receive an award named after my late colleague and friend John Sprizzo. Fittingly, he was the award's first recipient because he set the standard it represents. Sadly, this is the first time it has been presented when he is no longer among us.¹

I know that my remarks are what stand between you and further refreshment and conversation, two of the many pleasures he enjoyed, so I will discuss only two related subjects briefly: One is Judge Sprizzo himself; the second is how much we have need in these times to keep in mind his directness and his clarity of thought.

I first got to see Judge Sprizzo in action when he appeared, then as Mr. Sprizzo, in a case styled *United States v. John N. Mitchell and Maurice H. Stans*.² He stood up to argue a motion

[†] Partner, Debevoise & Plimpton, LLP; former Judge of the United States District Court for the Southern District of New York (1987-2006); former Attorney General of the United States (2007-09). Mr. Mukasey delivered these remarks, which have been edited for publication, on April 28, 2009, at the Loeb Boathouse in Central Park, when he accepted the Judge John E. Sprizzo Award from the Manhattan Chapter of the St. John's University School of Law Alumni Association.

¹ John Emilio Sprizzo, who was born in Brooklyn in 1934 and received his B.A. from St. John's University in 1956 and his LL.B. from St. John's University School of Law in 1959, served as a Judge of the United States District Court for the Southern District of New York from 1981 until his death on December 16, 2008.

² 372 F.Supp 1239 (S.D.N.Y. 1973). Beginning in September 1973, former Attorney General of the United States John N. Mitchell and former Commerce Secretary of the United States Maurice H. Stans, who had, respectively, directed and served as chief fundraiser for Richard Nixon's 1968 and 1972 presidential campaigns, were tried in the Southern District of New York on Watergate-related

before the trial judge in that case, the late Lee P. Gagliardi. A few moments into then-Mister Sprizzo's machine-gun style delivery, Judge Gagliardi frowned and looked down at the court reporter, a man named Eddie Baron, who had won several national speed competitions among court reporters. Judge Gagliardi asked him, "Are you getting this?" Without hesitating, Mr. Baron answered, "Every other word, Your Honor."

When I joined the court in 1988, Judge Sprizzo's chambers were just across the hall on the sixth floor of "The Courthouse," as he regarded it. I made several pilgrimages to his chambers for advice, having to keep in mind all the while that you always had to be careful about trying to follow advice to do things that only Judge Sprizzo could do.

He has often been described as larger than life, and I can understand the temptation of the phrase since he was large in both size and presence. But I always thought that he was more life than larger than life, in the sense that he illustrated and savored personally just about all the possibilities that life had to offer, including good music, good food and drink, good conversation, and a piercing intellect that allowed him to offer sometimes stunning insights into what was going on around him long before those insights occurred to others.

I recall, for example, walking with him on Pearl Street in the mid-1990s, during one or another of the terrorism trials that were going on at the time. We encountered the heavily armed marshals and other law enforcement officers who surrounded the United States Courthouse. He looked at the scene for a minute, and said: "I don't understand this. What are we doing with these cases? This isn't a job for the courts, this is a job for the military." That was several years before September 11, 2001.

That piercing intellect sometimes could be a disadvantage to lawyers appearing before him because he could think of the counterargument to every argument they presented to him—sometimes, even arguments that, on balance, perhaps should have prevailed. I was advised the first time I appeared before him to say as little as possible and to try to avoid being the last

charges of conspiracy, obstruction of justice, and perjury. See Arnold H. Lubasch, *Mitchell and Stans Face Historic Trial on Tuesday*, N.Y. TIMES, Sept. 9, 1973, at 44. John Sprizzo served as one of Mitchell's defense attorneys. In April 1974, the jury returned not guilty verdicts on all counts. See Martin Arnold, *Mitchell and Stans Are Acquitted on All Counts After 48-Day Trial*, N.Y. TIMES, Apr. 29, 1974, at 1, 38.

lawyer to speak because, since he could always come up with a counterargument, the lawyer who made the last argument might, for that reason alone, be more likely to lose.

His written decisions were spare, brief, and to the point, but his skill as a judge was most apparent in the courtroom and in his ability to respond to anything that came up in that setting and, sometimes, even outside it. I recall being in his chambers when he learned that one well-heeled defendant, who owned a string of race horses, was trying to get the Judge to recuse himself on the ground that the defendant had named one of them after the Judge—"Sprizzo's Honor." The Judge said he was going to deny the application and then added one additional thought: he shook his head and said, "I just hope it's not a gelding."³

It was, I think, a French philosopher—although Judge Sprizzo, as proud of his heritage as he was, probably would have been able to find an Italian source that that philosopher relied on—who said that the first rule of morality is to think clearly. Certainly Judge Sprizzo observed that rule when he pointed out, long before September 11, 2001, that terrorism presented, principally, a job that was well beyond the capacity and function of courts.

What the military is doing now is not permitted to be referred to by anyone in government as a war but only as an overseas contingency operation. Unlawful combatants in our custody are not permitted to be referred to any longer as unlawful combatants. Terrorism is to be referred to as a man-caused disaster. All of this has the effect of hiding reality, not only from the public at large, but also from those who are supposed to be making policy in the first place. In doing so, it makes it that much harder to know who and what it is we are facing and to summon up the political will and the moral authority to prevail.

We all miss John Sprizzo for a variety of reasons, but one substantial reason for me is that he would inject both clarity of thought and clarity of expression into the discussion, were he only here to join in it.

³ In the end, Judge Sprizzo did transfer this case, *SEC v. First Jersey Sec., Inc.*, No. 85 Civ. 8585 (RO), 1995 WL 366334 (S.D.N.Y. June 20, 1995), to another Judge. See Diana B. Henriques, *New Jersey Financier Used Fraud at Firm, Judge Rules*, N.Y. TIMES, June 21, 1995, at D4.

Again, I am honored to accept this award named for him and to be able to use this occasion to recall some of what made him remarkable. That recollection makes me realize that I will always be grateful to have this award as a constant reminder of the man and the standards he set and followed.