

April 11, 2019

The Honorable William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

Re: Release of Special Counsel Robert S. Mueller's "Report on the Investigation into Russian Interference in the 2016 Presidential Election"

Dear Attorney General Barr,

Citizens for Responsibility and Ethics in Washington ("CREW") respectfully requests that the Department of Justice ("DOJ") release in its entirety Special Counsel Robert S. Mueller's "Report on the Investigation into Russian Interference in the 2016 Presidential Election" ("Special Counsel Report"). Because of the overwhelming public interest in its full disclosure, any failure by you to release the report in its entirety raises significant questions about your lack of impartiality arising from your prior participation in this matter and undermines the integrity of DOJ's decision-making process.

At its core, Special Counsel Mueller carried out a criminal and counterintelligence investigation into attempts by the Russian government to interfere with our democratic election processes, potential cooperation by any American individuals or entities, and obstruction of justice and related offenses. After 215 criminal charges, 38 indictments or pleas, five prison sentences, nearly 500 search warrants, 2800 subpoenas, and 13 requests to foreign governments for evidence,¹ there is overwhelming public interest in the Special Counsel Report. The American people are entitled to full transparency into the Russian government's attack on the 2016 Presidential election process, any established links between the Russian government and individuals associated with the Trump campaign, and any actions taken by President Trump to obstruct the related federal investigations.

Although you have indicated that the investigation did not establish that members of President Trump's 2016 campaign conspired or coordinated with the Russian government in its election interference activities,² public reports indicate that President Trump and at least 17

¹ See Letter from Attorney General William P. Barr to Senate Judiciary Committee Chairman Lindsey Graham, House Judiciary Committee Chairman Jerrold Nadler, Senate Judiciary Committee Ranking Member Dianne Feinstein, House Judiciary Committee Ranking Member Doug Collins, Mar. 24, 2019 ("Barr Letter"), available at <https://nyti.ms/2HPoauB>; Madeleine Carlisle and Olivia Paschal, *After Mueller: The Ongoing Investigations Surrounding Trump*, *Atlantic*, Mar. 22, 2019, available at <https://bit.ly/2OIF71d>.

² Barr Letter, at 2. According to Attorney General Barr, in assessing potential conspiracy charges, Special Counsel Mueller "also considered whether members of the Trump campaign 'coordinated' with Russian election interference

campaign officials and advisers had more than 100 contacts with Russian nationals during the 2016 presidential campaign and transition.³ The American people deserve a full accounting of Special Counsel Mueller's findings on these links.⁴

There is also a particular need for full transparency on the issue of obstruction of justice. In the four-page summary you released in advance of the Special Counsel Report, you quote Special Counsel Mueller on the issue of obstruction of justice, stating: "while this report does not conclude that the President committed a crime, it also does not exonerate him."⁵ You also indicate that "the report sets out evidence on both sides of the question and leaves unresolved what the Special Counsel views as 'difficult issues' of law and fact concerning whether the President's actions and intent could be viewed as obstruction."⁶

Yet, instead of leaving it to Congress to fulfill its constitutional obligations to assess the Special Counsel Report unfiltered,⁷ you have attempted to interject yourself into that process, only 48 hours after receiving the nearly 400-page Special Counsel Report and while still reviewing its contents.⁸ In particular, as part of the four-page summary you issued, you concluded that "the evidence developed during the Special Counsel's investigation is not sufficient to establish that the President committed an obstruction-of-justice offense."⁹

Not surprisingly, the obstruction-of-justice opinion you have issued as Attorney General is consistent with a legal opinion you gave to DOJ and previewed to the White House in June 2018, when you were still in private practice. In June 2018, you issued to DOJ an unsolicited 19-page legal memorandum solely on the issue of obstruction of justice.¹⁰ In that memorandum, you set forth a detailed analysis of whether President Trump could be interrogated by Special Counsel Mueller on issues of obstruction of justice and outright rejected as "inconceivable" and "fatally misconceived" possible interpretations by Special Counsel Mueller that President Trump could obstruct justice.¹¹ That memorandum was issued when you admittedly were "in the dark"

activities" and defined "coordination" as an "agreement - tacit or express - between the Trump Campaign and the Russian government on election interference."

³ Karen Yourish and Larry Buchanan, Trump and His Associates Had More Than 100 Contacts With Russians Before the Inauguration, *New York Times*, Jan. 26, 2019, available at <https://nyti.ms/2TfXRAF>.

⁴ See Acting Attorney General Rod Rosenstein's Appointment of Special Counsel to Investigate Russian Interference with the 2016 Presidential Election and Related Matters, Order No. 3915-2017, May 5, 2017, available at <https://bit.ly/2Ka4uzN>.

⁵ Barr Letter, at 3.

⁶ *Id.*

⁷ See H. Con. Res. 24; Miles Parks, House Votes Almost Unanimously For Public Release of Mueller Report, *NPR*, Mar. 14, 2019, available at <https://n.pr/2HYrxiv>; Letter to Attorney General William P. Barr from House Judiciary Committee Chairman Jerrold Nadler, Committee on Oversight and Reform Chairman Elijah E. Cummings, Permanent Select Committee on Intelligence Chairman Adam B. Schiff, Committee on Financial Services Chairwoman Maxine Waters, Committee on Ways and Means Chairman Richard E. Neal and Committee on Foreign Affairs Chairman Eliot L. Engel, Mar. 25, 2019, available at <https://bit.ly/2Ww51AW>.

⁸ Oliver Laughland, What we learned from Barr's summary of the Mueller report, *The Guardian*, Mar. 29, 2019, available at <https://bit.ly/2U6FF0d>.

⁹ Barr Letter, at 3.

¹⁰ Memorandum from Bill Barr to Deputy Attorney General Rod Rosenstein and Assistant Attorney General Steve Engel, June 8, 2018 ("Barr Memo"), available at <https://bit.ly/2FrLiwi>.

¹¹ *Id.* at 1, 3.

on all the facts.¹² Furthermore, you reportedly provided or discussed that legal opinion with members of President Trump's White House legal team, President Trump's personal lawyers, and lawyers who represented likely subjects of the investigation.¹³ You also confirmed in your Senate confirmation hearing that you met with President Trump about a potential role on his legal defense team, which you ultimately turned down.¹⁴ Recent reports that your son-in-law has joined the White House Counsel's Office create additional potential conflicts of interest.¹⁵

Your prior involvement in this matter can reasonably be viewed as personal and substantial participation while in private practice, and your subsequent decision as Attorney General to release a four-page summary in which you conclude that President Trump did not obstruct justice further contributed to the impression that you prejudged the matter based on your prior involvement and undermines public confidence in DOJ's decision-making process. This action appeared to be an attempt to skew public opinion in advance of the full release of the report. Your actions in this matter have already damaged the public's trust in your service as Attorney General on a matter with national security implications.

For these reasons, your participation in this matter raises significant questions that cause a reasonable person to question your impartiality in this matter.¹⁶ Under these circumstances, the Standards of Ethical Conduct for Employees of the Executive Branch, at 5 C.F.R. § 2635.502, contemplate for you to recuse, unless agency ethics officials determine that the interest of the government in your participation is outweighed by the concern that a reasonable person may question the integrity of the agency's programs and operations.¹⁷ While we understand from news reports in early March that DOJ ethics officials concluded that you should not recuse from the Special Counsel investigation,¹⁸ that determination must now be called into question in light of all relevant circumstances.

The overwhelming public interest in the Special Counsel Report mandates full disclosure. Proposed redactions must be kept to an absolute minimum. If not released in its entirety, the report must be accompanied by an index justifying the alleged basis for each redaction, including: (1) material subject to Federal Rule of Criminal Procedure 6(e); (2) classified material that the intelligence community has identified as compromising sources and methods; (3)

¹² *Id.* at 1.

¹³ Michael Balsamo, [AG nominee sent memo on Mueller probe to Trump's lawyers](https://bit.ly/2Kn7ddX), *Associated Press*, Jan. 14, 2019, available at <https://bit.ly/2Kn7ddX>.

¹⁴ Relevant Transcript from Barr's Senate Confirmation Hearing, [Barr describes his meeting with Trump in 2017](https://bit.ly/2UmDyGw), *CNN*, Jan. 15, 2019, available at <https://bit.ly/2UmDyGw>.

¹⁵ David Shortell, Laura Jarrett, and Pamela Brown, [Daughter and son-in-law of AG nominee leaving the Justice Department](https://cnn.it/2Z4jKX9), *CNN*, Feb. 14, 2019, available at <https://cnn.it/2Z4jKX9>.

¹⁶ See Richard Painter and Virginia Canter, [William Barr's view of Russia recusal could undermine all government ethics programs](https://bit.ly/2HNk07v), *USA Today*, Jan. 29, 2019, available at <https://bit.ly/2HNk07v>.

¹⁷ See also Rule 1.11 of the American Bar Association Rules of Professional Responsibility ("A lawyer currently serving as a public officer . . . shall not participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing.").

¹⁸ Julia Ainsley, [Attorney General William Barr will not recuse himself from overseeing Mueller probe](https://nbcnews.to/2HVRj8x), *NBC*, Mar. 5, 2019, available at <https://nbcnews.to/2HVRj8x>.

material that the Special Counsel determines could affect ongoing investigations or cases; and (4) any privacy interests that allegedly outweigh the public interest in disclosure.¹⁹

DOJ should seek an appropriate court order necessary to provide Congressional access to Rule 6(e) grand jury material²⁰ and should ensure that the House and Senate Intelligence Committees have full access to any material marked classified. Congressional access to material involving pending cases should be similarly released to Congress consistent with protocols established by Congress with Special Counsel Mueller. However, given the importance of this issue to our national security, we urge that no information be withheld from Congress or the public based on privacy considerations or executive privilege.

Because legitimate questions have been raised about your impartiality in the matter and in light of the overwhelming public interest in full disclosure, we urge you to defer to Special Counsel Mueller on any possible redactions of the report's contents, including its tables, section and subsection summaries, and appendices. The Special Counsel Report must be released in its entirety and unfiltered for Congress and the American people to understand the scope and nature of Russia's interference in the 2016 election and the role if any of U.S. persons, including members and associates of the Trump campaign, in those operations.²¹

Sincerely,



Noah Bookbinder
Executive Director

¹⁹ Letter from Attorney General William P. Barr to Senate Judiciary Committee Chairman Lindsey Graham and House Judiciary Committee Chairman Jerrold Nadler, Mar. 29, 2019 ("Barr March 29, 2019 Letter"), available at <https://bit.ly/2G7cBMO>.

²⁰ See Barry H. Berke, Noah Bookbinder, and Norman L. Eisen, *Presidential Obstruction of Justice: The Case of Donald J. Trump*, *Brookings Institution (2nd Edition)*, Aug. 22, 2018, available at <https://brook.gs/2owsofN>.

²¹ Noah Bookbinder, *Release the Whole Mueller Report*, *New York Times*, Mar. 22, 2019, available at <https://nyti.ms/2uy1BTB>.