

May 20, 2019

Assistant Attorney General Lee J. Lofthus  
Justice Management Division and  
Designated Agency Ethics Official  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W., Room 1111  
Washington, D.C. 20530-0001

Re: Recusal of Attorney General William P. Barr from the Special Counsel and Related Investigations

Dear Mr. Lofthus:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that you withdraw any ethics advice or authorization that Attorney General William P. Barr may be relying on to support his participation in Special Counsel Robert S. Mueller’s investigation into Russian interference in the 2016 Presidential election (“Special Counsel Investigation”) and related investigations, and advise him to recuse from any cases that Special Counsel Mueller transferred or referred to other components of the Department of Justice (“DOJ”) and the Federal Bureau of Investigation (“FBI”) arising out of the Special Counsel Investigation.<sup>1</sup>

CREW previously raised questions about the propriety of Attorney General Barr’s participation in the Special Counsel Investigation because he appeared to have prejudged it based on his prior involvement in the matter while in private practice, and because his decision to issue a four-page letter to Congress about the Mueller Report prior to its public release appeared to be an attempt to skew public opinion in favor of President Donald J. Trump.<sup>2</sup> Attorney General Barr’s conduct since assuming supervisory responsibility for the Special Counsel Investigation continues to raise significant concerns that he is acting without the requisite impartiality necessary to oversee these matters.

The seriousness of these concerns is heightened by recent evidence that Attorney General Barr may have misled Congress and the public about the substance of the Mueller Report in advance of its release. A recently-disclosed March 27 letter from Special Counsel Mueller to Attorney General Barr states that Mr. Barr’s March 24 “summary” letter “did not fully capture

---

<sup>1</sup> Special Counsel Robert S. Mueller, Report On The Investigation Into Russian Interference In The 2016 Presidential Election (“Special Counsel Report” or “Mueller Report”), Mar. 2019, available at <https://www.justice.gov/storage/report.pdf>.

<sup>2</sup> Letter from Noah Bookbinder to Attorney General William P. Barr (“Bookbinder Letter”), Apr. 11, 2019, available at <https://bit.ly/2IN1ZXe> (“CREW letter”); 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 (“March 24 Barr Letter”), Mar. 24, 2019, available at <https://nyti.ms/2HPoauB>.

the context, nature, and substance” of the report.<sup>3</sup> Special Counsel Mueller indicated that this development has led to “public confusion about critical aspects of the results” of the investigation, which “threatens to undermine . . . full public confidence in the outcome of the investigations.”<sup>4</sup> Attorney General Barr has further undermined public confidence by failing to release the Special Counsel Office’s prepared summary in a timely fashion and by misleading members of Congress in recent testimony he gave about the Special Counsel Report.

Attorney General Barr has engaged in a pattern of conduct that calls into question his objectivity on criminal matters that implicate the President or the President’s businesses, associates, or political organizations. Because of the appearance of impropriety caused by Attorney General Barr’s continued involvement in these matters, he should be required to recuse from all of them.

Under these circumstances, the applicable standards of conduct, at 5 C.F.R. § 2635.502 and Justice Manual § 1-4.020, clearly contemplate for him to recuse.<sup>5</sup> Nevertheless, Attorney General Barr, relying on the advice of senior DOJ ethics officials, decided not to recuse from the Special Counsel Investigation. To prevent any further damage to public confidence in the outcome of DOJ’s investigations, CREW respectfully requests you withdraw any previous ethics guidance or authorization given to Attorney General Barr that may apply to these matters and advise him to immediately recuse from overseeing any related investigations.<sup>6</sup>

### **Factual Background**

#### **Attorney General Barr Shared His Written Analysis of the Obstruction Case Prior to His Nomination**

Prior to being nominated as Attorney General, Mr. Barr shared his opinions about the obstruction of justice case against President Trump with Department of Justice officials in a lengthy 19-page memorandum in which he argued that the theory of liability being pursued was “inconceivable” and “fatally misconceived.”<sup>7</sup> In addition to sending this opinion to the Department of Justice, Mr. Barr discussed or provided his legal opinion to members of President Trump’s White House legal team, President Trump’s personal lawyers, and lawyers who represented likely subjects of the investigation.<sup>8</sup> Mr. Barr also confirmed in his Senate

---

<sup>3</sup> Letter from Special Counsel Robert S. Mueller to Attorney General William P. Barr, Mar. 27, 2019 (“March 27 Mueller Letter”), available at <https://wapo.st/2XWbPK3>; Devlin Brett and Matt Zaposky, Mueller complained that Barr’s letter did not capture ‘context’ of Trump probe, *Washington Post*, Apr. 30, 2019, available at <https://wapo.st/2XYPg7r>; Mark Mazzetti and Michael S. Schmidt, Mueller Objected to Barr’s Description of Russia Investigation’s Findings on Trump, *New York Times*, Apr. 30, 2019, available at <https://nyti.ms/2ZOZJnU>.

<sup>4</sup> *Id.*

<sup>5</sup> See also Richard Painter and Virginia Canter, William Barr’s view of Russia recusal could undermine all government ethics programs, *USA Today*, Jan. 29, 2019, available at <https://bit.ly/2HNk07v>.

<sup>6</sup> Special Counsel Report, Appendix D, Special Counsel’s Office Transferred, Referred and Completed Cases, at D-1 - D-6.

<sup>7</sup> Memorandum from Bill Barr to Deputy Attorney General Rod Rosenstein and Assistant Attorney General Steve Engel, Mueller’s “Obstruction” Theory, June 8, 2018 (“Barr Memo”), available at <https://bit.ly/2FrLiwi>.

<sup>8</sup> Michael Balsamo, AG nominee sent memo on Mueller probe to Trump’s lawyers, *Associated Press*, Jan. 14, 2019, available at <https://bit.ly/2Kn7ddX>.

confirmation hearing that he met with President Trump about a potential role on his legal defense team, which he ultimately turned down.<sup>9</sup> As CREW previously explained, Attorney General Barr's prior involvement in the matter while in private practice appears to have compromised his ability to act impartially in overseeing the Special Counsel Investigation.<sup>10</sup>

*Attorney General Barr Decided Not to Recuse from the Special Counsel Investigation Based on Advice from Ethics Officials*

During his Senate confirmation process, Attorney General Barr was questioned about the "unsolicited advice" he gave to President Trump's legal team and to DOJ, and "public concern[s]" about his "unwillingness" to recuse from the Special Counsel Investigation or to "follow the recusal guidance of career DOJ ethics officials, as past attorneys general have generally done."<sup>11</sup> Attorney General Barr "rebuffed" these efforts and declined to "pledge" to follow the advice ethics officials gave him on the issue.<sup>12</sup> While Attorney General Barr committed to be "as transparent as possible," "consult with the Department's career ethics officials," and "review the facts," he represented that he would make his own decision regarding recusal from the Special Counsel Investigation and any other matter.<sup>13</sup>

Notwithstanding the concerns raised about his prior involvement in the matter, the Justice Department announced in early March that Attorney General Barr had decided not to recuse from the Special Counsel Investigation, basing his decision on advice he received from senior career ethics officials not to recuse.<sup>14</sup> However, no documentation of this ethics advice is known to have been made publicly available, notwithstanding Attorney General Barr's commitment to transparency.

*Attorney General Barr's Subsequent Actions Regarding the Special Counsel Report Heightens the Appearance of Impropriety*

After assuming supervision of the Special Counsel Investigation, Attorney General Barr made a series of statements and decisions about the Special Counsel Report that substantially amplify the appearance of impropriety.

---

<sup>9</sup> Barr describes his meeting with Trump in 2017, *CNN*, Jan. 15, 2019, available at <https://bit.ly/2UmDyGw>.

<sup>10</sup> See also CREW Letter; Natasha Bertrand, [Barr gets waiver on case linked to inquiry into Trump's re-election effort](https://politico.com/2KXU8Ic), *Politico*, Apr. 23, 2019, available at <https://politico.com/2KXU8Ic>. Additional concerns about Attorney General Barr's potential conflicts may arise from Mr. Barr's son-in-law working in the White House Counsel's Office and Mr. Barr's ethics waiver by the White House Counsel to allow his participation in a matter related to Trump Victory committee, a political action committee dedicated to re-electing Trump in 2020.

<sup>11</sup> William P. Barr, Responses to Questions for the Record from Senator Sheldon Whitehouse ("Responses to Whitehouse QFRs"), at 20, available at <https://bit.ly/2Jk5Yul>.

<sup>12</sup> Josh Gerstein, [Barr won't recuse himself from Mueller oversight](https://politico.com/2EMKPWp), *Politico*, Mar. 4, 2019, available at <https://politico.com/2EMKPWp>.

<sup>13</sup> Responses to Whitehouse QFRs, at 20.

<sup>14</sup> Laura Jarrett, [Attorney General Bill Barr won't recuse from oversight of Russia investigation](https://cnn.it/2GXOSPK), *CNN*, Mar. 4, 2019, available at <https://cnn.it/2GXOSPK>.

Attorney General Barr's March 24 Letter to Congress

Attorney General Barr issued the March 24 Barr Letter, which purported to “summarize” in four pages the “principal conclusions reached by the Special Counsel and the results of his investigation.”<sup>15</sup> In the letter, Attorney General Barr announced, among other things, that Special Counsel Mueller had determined not to reach a traditional prosecutorial judgment on the question of whether President Trump obstructed justice; nevertheless, Attorney General Barr stated that he and Deputy Attorney General Rod Rosenstein “have 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.”<sup>16</sup>

Attorney General Barr reached those conclusions even though he had received a copy of the 448-page confidential report less than 48 hours earlier.<sup>17</sup> He also issued the March 24 Barr Letter despite being told by the Special Counsel Office on two prior occasions, March 5 and in the early afternoon of March 24, that the introduction and executive summaries contained in the Special Counsel Report “accurately summarize[d]” the Special Counsel Office’s work and conclusions (“Mueller Summary Materials”).<sup>18</sup>

Special Counsel Mueller’s Communications to Attorney General Barr About Deficiencies in the March 24 Barr Letter

Beginning the next day, March 25, Special Counsel Mueller expressed dissatisfaction with the contents of the March 24 Barr Letter through a series of communications with Attorney General Barr and DOJ, culminating in a March 27 letter requesting that the Attorney General Barr publicly release the “accurate” summary that had been prepared by his office.<sup>19</sup> The relevant communications are as follows:

- On March 25, the Special Counsel Office communicated to DOJ that the March 24 Barr Letter did not fully capture “the context, nature, and substance” of the Special Counsel Office’s work and conclusions.<sup>20</sup>
- Separately that same day, Special Counsel Mueller sent a letter to Attorney General Barr enclosing a redacted version of the Mueller Summary Materials, with two sentences still under review.<sup>21</sup>

---

<sup>15</sup> March 24 Barr Letter, at 1.

<sup>16</sup> *Id.* at 3.

<sup>17</sup> Oliver Laughland, What we learned from Barr’s summary of the Mueller report, *The Guardian*, Mar. 29, 2019, available at <https://bit.ly/2U6FF0d>.

<sup>18</sup> March 27 Mueller Letter.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

- On March 27, Special Counsel Mueller sent a second letter to Attorney General Barr, enclosing the final redacted version of the Mueller Summary Materials with the two remaining sentences cleared for public release.<sup>22</sup>
- Special Counsel Mueller explicitly requested in that letter, for Barr to “provide these materials to Congress and authorize their public release at this time.”<sup>23</sup>
- Most significantly, Special Counsel Mueller gave a damning review of the March 24 Barr Letter, explaining that it “did not fully capture the context, nature, and substance” of the Office’s work and conclusions, and “[t]here is now public confusion about critical aspects of the results of our investigation,” which “threatens to undermine a central purpose for which the Department appointed the Special Counsel: to assure public confidence in the outcome of the investigations.”<sup>24</sup>
- Finally, Special Counsel Mueller explained that release of the Mueller Summary Materials “at this time would alleviate the misunderstandings that have arisen and would answer congressional and public questions about the nature and outcome of our investigation.”<sup>25</sup>

On March 28, Attorney General Barr called Special Counsel Mueller to discuss the March 27 Mueller Letter.<sup>26</sup> Special Counsel Mueller reportedly expressed concern that “media coverage of the obstruction probe was misguided and creating public misunderstandings about the office’s work.”<sup>27</sup> While a Justice Department spokeswoman subsequently stated that Special Counsel Mueller “emphasized” during that call that nothing in the March 24 Barr Letter was “inaccurate or misleading,”<sup>28</sup> that statement seems to be at odds with the messages previously conveyed to Attorney General Barr by Special Counsel Mueller.<sup>29</sup>

In a March 29 letter to the chairs of the House and Senate Judiciary Committees, Attorney General Barr explained that the March 24 Barr Letter “was not, and did not purport to be, an exhaustive recounting of the Special Counsel’s investigation or report.”<sup>30</sup> Attorney General Barr further wrote that he “[did] not believe it would be in the public’s interest for me to attempt to summarize the full report or to release it in serial or piecemeal fashion.”<sup>31</sup> Yet, that

---

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Devlin Brett and Matt Zapatosky, Mueller complained that Barr’s letter did not capture ‘context’ of Trump probe, *Washington Post*, Apr. 30, 2019, available at <https://wapo.st/2XYPg7r>; Mark Mazzetti and Michael S. Schmidt, Mueller Objected to Barr’s Description of Russia Investigation’s Findings on Trump, *New York Times*, Apr. 30, 2019, available at <https://nyti.ms/2ZOZJnU>.

<sup>27</sup> Brett and Zapatosky, *Washington Post*, Apr. 30, 2019.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Letter from Attorney General William P. Barr to Senate Judiciary Committee Chairman Lindsey Graham and House Judiciary Committee Chairman Jerrold Nadler, Mar. 29, 2019, available at <https://bit.ly/2H51Ifa>.

<sup>31</sup> *Id.*

statement is inconsistent with his own characterization of the March 24 Barr Letter, in which he referred to it as having “summarize[d]” the “principal conclusions” of the Mueller Report.<sup>32</sup>

Rather than agreeing to the Special Counsel’s request to send the Mueller Summary Materials to Congress and for public release within the requested time frame, Attorney General Barr withheld this material for another three weeks, until April 18, when he released it as part of the larger Special Counsel Report.

#### Attorney General Barr’s April 9 and 10 Congressional Testimony

In the meantime, Attorney General Barr also appears to have given misleading testimony on April 9 and 10, in response to questions raised by members of Congress about the Special Counsel’s reaction to the March 24 Barr Letter.

In an appropriations subcommittee hearing, on April 9, Representative Charlie Crist noted that there were reports that “members of the special counsel’s team are frustrated . . . with the limited information included in your March 24th letter, that it does not adequately or accurately, necessarily, portray the report’s findings.”<sup>33</sup> He then asked Barr, “do you know what they’re referencing with that?”<sup>34</sup> Attorney General Barr responded “No, I don’t. I think, I think, I suspect that they probably wanted, you know, more put out. But in my view, I was not interested in putting out summaries or trying to summarize, because I think any summary regardless of who prepares it not only runs the risk of, you know, being under-inclusive or over-inclusive but also, you know, would trigger a lot of discussion and analysis that really should await everything coming out at once.”<sup>35</sup>

On April 10, when asked by Senator Chris Van Hollen about whether Special Counsel Mueller supported the conclusion reached by Attorney General Barr on the question of whether President Trump had obstructed justice, Barr responded “I do not know whether Bob Mueller supported my conclusion.”<sup>36</sup>

Attorney General Barr’s responses to these questions appear to be misleading since he indisputably knew of Special Counsel Mueller’s dissatisfaction with the March 24 Barr Letter from having received the March 27 Mueller Letter, which included an explicit request that the Mueller Summary Materials be released at that time, and from his other communications with Special Counsel Mueller. Attorney General Barr also knew Special Counsel Mueller likely disagreed with the conclusion Mr. Barr reached on obstruction of justice since it materially differed from the analysis presented by Special Counsel Mueller on that issue.

---

<sup>32</sup> March 24 Barr Letter, at 1.

<sup>33</sup> Testimony of William P. Barr Responding to Questions by Representative Charlie Crist, Hearing before the House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies, Apr. 9, 2019, available at <https://cs.pn/2vxCh0l>.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Testimony of William P. Barr Responding to Questions by Senator Chris Van Hollen, Hearing before the Senate Appropriations Subcommittee on Commerce, Justice, Science and Related Agencies, Apr. 10, 2019, available at <https://cs.pn/2GXCVeh>.

In particular, Attorney General Barr knew from the Mueller Report that the Special Counsel had examined multiple instances of possible obstruction of justice and determined that President Trump could not be exonerated based on the evidence, and the report appeared to conclude that the elements of obstruction had been met in multiple instances.<sup>37</sup> The Special Counsel also determined not to make a traditional prosecutorial judgment based on a DOJ opinion issued by the Office of Legal Counsel (“OLC”) that a sitting President could not be indicted and because of other fairness considerations.<sup>38</sup> The Special Counsel Report left open the possibility of Congressional action and a post-Presidency indictment.<sup>39</sup> These conclusions are materially different from, and possibly undermined by, the conclusion presented in the March 24 Barr Letter that the evidence was insufficient to establish that the President obstructed justice.

The actions taken by Attorney General Barr to expeditiously release his own summary of the Mueller Report while forestalling the release of the Mueller Summary Materials appear to be deliberate, and may have helped President Trump, his communications team, and personal attorneys shape the narrative during the critical three-week period following these events and before damaging evidence against President Trump would be made publicly available through release of the Special Counsel Report. In this light, Attorney General Barr’s actions appear to be inconsistent with the independence expected of a Justice Department official and jeopardize any appearance of impartiality.

*Attorney General Barr Shared an Advance Copy of the Mueller Report with President Trump’s Personal Attorneys*

Attorney General Barr made available an advance copy of the Mueller Report to President Trump’s personal attorneys earlier that week before copies were provided to Congress and released to the general public. On the morning of April 18, the day he publicly released the Mueller Report, Attorney General Barr held a press conference in which he revealed that he allowed President Trump’s personal legal counsel to review the report earlier that week before its public release.<sup>40</sup> Although Attorney General Barr explained that his decision was “consistent with the practice followed under the Ethics in Government Act,”<sup>41</sup> he also knew that that the relevant provisions of that law were removed by Congress when it reviewed the Independent Counsel provisions in 1999.<sup>42</sup>

The actions taken by Attorney General Barr gave President Trump’s personal attorneys advance knowledge about the contents of the Special Counsel Report and likely helped them develop their public relations strategy when responding to questions in the immediate aftermath of its release. Since Attorney General Barr was under no apparent legal obligation to give the

---

<sup>37</sup> Special Counsel Report, Vol. II, at 2, 8.

<sup>38</sup> *Id.* at 1-8.

<sup>39</sup> *Id.* at 177-78.

<sup>40</sup> Transcript of William P. Barr Press Conference, *Politico*, Apr. 18, 2019 (“Barr Press Conference”), available at <https://politi.co/2XM2owL>.

<sup>41</sup> *Id.*

<sup>42</sup> *See, e.g.*, 28 U.S.C. § 599 (termination of Independent Counsel statute).

President's personal attorneys an advance copy and the Special Counsel was not at the April 18 press conference to weigh in contemporaneously, Attorney General Barr's actions detract from the perception of impartiality that is expected of the Department of Justice.<sup>43</sup>

*Attorney General Barr Made Misleading Statements About the Special Counsel Report in His March 24 Letter and April 18 Press Conference*

In the March 24 Barr Letter and April 18 press conference, Attorney General Barr appears to have repeatedly misled the American people about the contents of the Mueller report. These efforts included the following:

- Attorney General Barr misled the public when he claimed that the White House “fully cooperated” with the investigation.<sup>44</sup> To the contrary, the record from the Mueller Report shows that President Trump was not cooperative. President Trump declined to be voluntarily interviewed after more than a year of discussion.<sup>45</sup> In fact, rather than being “fully” cooperative, President Trump imposed significant limitations on Special Counsel Mueller’s ability to question him. After more than a year of “extensive discussions,” President Trump did not sit for an in-person interview for the investigation on any subject; did not respond to any questions – either written or oral – about obstruction of justice; only submitted to written questions about Russia-related topics; provided insufficient responses on more than 30 occasions by stating he “does not recall” or “remember” or have an “independent recollection” of information called for by the questions; and gave other “incomplete or imprecise” answers.<sup>46</sup>
- Attorney General Barr misled the public when he suggested that the Special Counsel recognized that the absence of charges against President Trump for misconduct relating to Russia’s interference and hacking campaigns, while “not determinative,” was a reason to conclude that the President lacked the requisite intent to obstruct justice.<sup>47</sup> In fact, the Special Counsel Report makes clear that obstruction does not require proof of a crime. Rather, the “absence of that evidence” only “affects the analysis of the President’s intent and requires consideration of other possible motives for his conduct,” including “a desire to protect non-criminal personal interests, to protect against investigations where underlying criminal liability falls into a gray area, or to avoid personal embarrassment. . . . regardless of whether a person committed an underlying wrong.”<sup>48</sup>
- Attorney General Barr misled the public when he suggested that the Special Counsel did not decide against making a determination about the crime of obstruction of justice based

---

<sup>43</sup> Barr Press Conference.

<sup>44</sup> *Id.*

<sup>45</sup> Special Counsel Report, Vol. II pg. 13, Appendix C-1.

<sup>46</sup> *Id.*

<sup>47</sup> March 24 Barr Letter (“[W]e noted that the special counsel recognized that ‘the evidence does not establish that the president was involved in an underlying crime related to Russian election interference,’ and that, while not determinative, the absence of such evidence bears upon the president’s intent with respect to obstruction.”).

<sup>48</sup> Special Counsel Report, Vol. II, at. 7, 157.



on the OLC opinion,<sup>49</sup> when the Special Counsel Report clearly indicates it was a material factor. The Special Counsel accepted the conclusion of the OLC opinion, which was used as a basis for declining to make a traditional prosecutorial judgment:

A traditional prosecution or declination decision entails a binary determination to initiate or decline a prosecution, but we determined not to make a traditional prosecutorial judgment. The Office of Legal Counsel (OLC) has issued an opinion finding that ‘the indictment or criminal prosecution of a sitting president would impermissibly undermine the capacity of the executive branch to perform its constitutionally assigned functions in violation of the constitutional separation of powers.’ Given the role of the Special Counsel as an attorney in the Department of Justice and the framework of the Special Counsel regulations, see 28 .S.C. § 515; 28 C.F.R. § 600.7(a), this Office accepted OLC’s legal conclusion for the purpose of exercising prosecutorial jurisdiction.<sup>50</sup>

- Attorney General Barr misled the public when he 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.”<sup>51</sup> The Special Counsel Report explicitly states that “while this report does not conclude that the President committed a crime, it also does not exonerate him.”<sup>52</sup> Special Counsel Mueller also noted that his office “conducted a thorough factual investigation in order to preserve the evidence when memories were fresh and documentary materials were available,”<sup>53</sup> and asserted that if his office “had confidence after a thorough investigation of the facts that the President clearly did not commit obstruction of justice, [they] would so state.”<sup>54</sup> The report analyzed multiple instances of obstruction of justice,<sup>55</sup> and found substantial, supporting or similar evidence of obstruction of justice in at least eight instances.<sup>56</sup> Attorney General Barr’s conclusion also is at odds with the views of more than 900 prosecutors who signed a letter stating that the conduct attributed to President Trump, “would, in the case of any other person not covered by the Office of Legal Counsel policy against indicting a sitting President, result in multiple felony charges for obstruction of justice.”<sup>57</sup> Moreover,

---

<sup>49</sup> Zachary Basu, *Transcript: Bill Barr answers questions about Mueller report*, *Axios*, Apr. 18, 2019, available at <https://bit.ly/2LOi69z> (“We specifically asked him about the OLC opinion and whether or not he was taking a position that he would have found a crime but for the existence of the OLC opinion. And he made it very clear several times that that was not his position. He was not saying that but for the OLC opinion, he would have found a crime.”).

<sup>50</sup> Special Counsel Report, Vol. II, at 1.

<sup>51</sup> March 24 Barr Letter.

<sup>52</sup> Special Counsel Report, Vol. II, at 2, 8.

<sup>53</sup> *Id.*, Vol. II, at 2.

<sup>54</sup> *Id.*, Vol. II, at 1.

<sup>55</sup> *Id.*, Vol. II, at 15-158.

<sup>56</sup> See Quinta Jerecic, *Obstruction of Justice in the Mueller Report: A Heat Map*, *Lawfare*, Apr. 21, 2019, available at <https://bit.ly/2Gxfirg>.

<sup>57</sup> DOJ Alumni Statement, *Statement by Former Federal Prosecutors*, *Medium*, May 20, 2019, available at <https://medium.com/@dojalumni/statement-by-former-federal-prosecutors-8ab7691c2aa1>. The figure of reported former prosecutors is calculated based on more than 900 signatures being registered as of May 20, 2019.

Attorney General Barr reached his conclusion without the benefit of having personally reviewed any of the underlying evidence.<sup>58</sup>

- Attorney General Barr misled the public when he conveyed that the determination of whether President Trump’s conduct constituted a crime of obstruction of justice was left to him because Special Counsel Mueller could not reach a conclusion due to “difficult issues” of fact and law.<sup>59</sup> First, there is no language in the Mueller Report that would indicate that the Special Counsel left those “difficult issues” to the Attorney General to resolve. Rather, the Special Counsel Report suggests other avenues for addressing presidential misconduct after setting forth a detailed and comprehensive analysis of why a traditional prosecutorial judgment was not determined appropriate in this case.<sup>60</sup> The Special Counsel explicitly identifies Congress’s role in making assessments involving the President’s official conduct:

In the case of the obstruction-of-justice statutes, our assessment of the weighing of interests leads us to conclude that Congress has the authority to impose the limited restrictions contained in those statutes on the President’s official conduct to protect the integrity of important functions of other branches of government.<sup>61</sup>

The Mueller Report also leaves open the possibility of a post-presidency indictment. As discussed above, Special Counsel Mueller made clear that the report “does not exonerate” President Trump.<sup>62</sup> And after finding evidence of obstruction of justice in at least eight instances, he discussed more avenues for addressing presidential misconduct, including legal action against a former president:

A possible remedy through impeachment for abuses of power would not substitute for potential criminal liability after a President leaves office. Impeachment would remove a President from office, but would not address the underlying culpability of the conduct or serve the usual purposes of the criminal law. Indeed, the Impeachment Judgment Clause recognizes that criminal law plays an independent role in addressing an official’s conduct, distinct from the political remedy of impeachment. See U.S. CONST. ART. I, § 3, cl. 7. Impeachment is also a drastic and rarely invoked remedy, and Congress is not restricted to relying only on impeachment, rather than making criminal law applicable to a former President, as OLC has recognized. *A Sitting President’s Amenability to Indictment and Criminal Prosecution*, 24 Op. O.L.C. at 255 (“Recognizing an immunity from prosecution for a sitting President would not preclude

---

<sup>58</sup> Testimony of Attorney General Barr, Senate Judiciary Committee, *C-SPAN*, May 1, 2019, available at <https://bit.ly/2UY7PGQ> (Question Posed by Senator Kamala Harris, at approximately 1:05 minute mark).

<sup>59</sup> March 24 Barr Letter, at 3.

<sup>60</sup> Special Counsel Report, Vol. II, at 1.

<sup>61</sup> *Id.*, Vol. II, at 177.

<sup>62</sup> *Id.*, Vol. II, at 2, 8.

such prosecution once the President's term is over or he is otherwise removed from office by resignation or impeachment."').<sup>63</sup>

Attorney General Barr's conduct also must be considered in the context of the loyalty demanded by President Trump and his repeated attempts to interfere with investigations that could implicate him. President Trump has made it known that he expects his Attorney General to protect him in the image of Roy Cohn, his former personal lawyer and fixer.<sup>64</sup> President Trump has openly and privately made it clear that he will exert political and personal pressure on the Department of Justice to obtain loyalty.<sup>65</sup> His pattern of conduct towards the office of the Attorney General, as detailed in Special Counsel Mueller's report, makes it particularly critical that the Attorney General not be tainted by the appearance of bias towards the President. Special Counsel Mueller detailed numerous instances where the President attempted to impede the ongoing Russia investigation by threatening and attacking former Attorney General Jeff Sessions. Those include:

- Expressing anger at Attorney General Sessions's decision to recuse from the Russia investigation and declaring that he should have "an Attorney general who would protect him";<sup>66</sup>
- Urging Attorney General Sessions to "unrecuse" from the investigation;<sup>67</sup>
- Directing his former campaign manager to demand that Attorney General Sessions "end the existing investigation into the President and his campaign" and permit the Special Counsel to "move forward with investigating election meddling in future elections";<sup>68</sup>
- Telling Attorney General Sessions to take back supervision of the Russia investigation and become a "hero";<sup>69</sup>
- Directing Attorney General Sessions to "take [a] look" at investigating his political opponent Hillary Clinton.<sup>70</sup>

---

<sup>63</sup> *Id.*, Vol. II, at 178, n. 1091.

<sup>64</sup> Michael S. Schmidt, Obstruction Inquiry Shows Trump's Struggle to Keep Grip on Russia Investigation, *New York Times*, Jan. 4, 2018, available at <https://nyti.ms/2IVq6oR>.

<sup>65</sup> See, e.g., Jennifer Hansler, Trump's Twitter attacks on Sessions: an annotated timeline, *CNN*, Aug. 25, 2018, available at <https://www.cnn.com/2018/08/25/politics/trump-sessions-twitter-timeline/index.html> (detailing all of the President's public attacks on the Attorney General).

<sup>66</sup> Special Counsel Report, Vol. II, at 3.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*, Vol. II, at 97.

<sup>69</sup> *Id.*, Vol. II, at 5.

<sup>70</sup> *Id.*

### Legal Analysis

“Public service is a public trust,” which means that “decisions and actions that federal employees take must be made in the best interests of the American people.”<sup>71</sup> Putting that objective into practice, the government-wide Standards of Conduct require all executive branch employees to act impartially and to avoid any actions creating the appearance that they are violating the applicable ethical standards.<sup>72</sup> Similarly, the core principles of federal prosecution require federal prosecutors to “promote confidence that important prosecutorial decisions will be made rationally and objectively on the merits of each case.”<sup>73</sup> The success of the federal prosecutorial system “must rely ultimately on the character, integrity, sensitivity, and competence of those men and women who are selected to represent the public interest in the federal criminal justice process.”<sup>74</sup>

For these reasons, an executive branch employee who is aware of circumstances that would raise a question regarding his impartiality is expected to consult with the agency ethics official to determine whether to participate in a particular matter.<sup>75</sup> DOJ’s standards of conduct further make explicit the requirement that “an employee should contact his or her ethics official for advice or approval when the employee . . . is asked to participate in a matter that might cause a reasonable person to question his or her impartiality.”<sup>76</sup>

For a criminal investigation that affects the President, his business, associates, and political organizations, the stakes could not be higher, and the Attorney General is expected to act with the highest degree of independence and integrity. Yet, Attorney General Barr’s conduct reveals a disturbing pattern that suggests his impartiality has been materially impaired.

In addition to having been previously involved in the matter while in private practice, Attorney General Barr has taken numerous actions since being confirmed that have undermined public confidence in his handling of the Special Counsel Report. By issuing the March 24 Barr Letter, Attorney General Barr appears to have misled Congress and the public about the substance of the Special Counsel Report. Even after having been expressly warned about the shortcomings of the March 24 Barr Letter, Attorney General Barr failed to timely release the Mueller Summary Materials as requested by the Special Counsel so as to ensure that an accurate summary of the report was made available to the public to immediately address misunderstandings that arose from his summary letter.

As a consequence of these actions, questions raised about the Special Counsel Report were left unanswered and various misunderstandings about its work and conclusions were left unaddressed. This situation continued for at least three more weeks until April 18 when the

---

<sup>71</sup> Justice Manual § 1-4.010.

<sup>72</sup> 5 C.F.R. §§ 2635.101(b)(8), (14).

<sup>73</sup> Justice Manual § 9-27.001.

<sup>74</sup> *Id.*

<sup>75</sup> 5 C.F.R. §§ 2635.502(a)(2), (d).

<sup>76</sup> Justice Manual § 1-4.020. *See* 5 C.F.R. 2635.102(b) (“Where the conduct in issue is that of the agency head” any required “determination, approval or action” is to “be made or taken by the agency head in consultation with the designated agency ethics official.”)

Special Counsel Report was released in its entirety, with redactions. Attorney General Barr also appears to have misled Congress in his April 9 and 10 testimony by not revealing relevant information he knew from the March 27 Mueller Letter and to have made additional misleading statements about the Special Counsel Report in the April 18 press conference.

By taking these and other actions, Attorney General Barr appears to have unduly favored President Trump over the interests of the American people who were entitled to an independent and unfiltered accounting of the work and conclusions of the Special Counsel. Attorney General Barr's decision-making regarding obstruction of justice evidences a bias that compromises his ability to place the interests of the American people before the interests of President Trump.

Under these circumstances, the applicable standards of conduct, at 5 C.F.R. § 2635.502 and Justice Manual § 1-4.020, contemplate for Attorney General Barr to recuse. However, in announcing Attorney General Barr's decision in early March not to recuse from the Special Counsel Investigation, the Justice Department indicated that career DOJ ethics officials advised Attorney General Barr not to recuse himself. To the extent that your office previously advised Attorney General Barr that he could participate in the Special Counsel Investigation and related matters, we urge you to withdraw that advice or authorization and advise Attorney General Barr to recuse from those matters so as avoid any further damage to public confidence in DOJ's investigations.

### **Conclusion**

In overseeing the Special Counsel investigation, Attorney General Barr appears to have improperly placed President Trump's personal interests ahead of his obligations to the American people. As the designated agency ethics official for the Justice Department, you have a unique and overriding obligation to the American public to ensure that public confidence in the integrity of DOJ investigations is not further undermined by actions undertaken by Attorney General Barr due to his evident lack of impartiality.

In unparalleled circumstances such as these, public interest in maintaining confidence in the fairness and impartiality of DOJ processes demands the highest form of ethical leadership; that is, for you to provide clear and unambiguous advice to the Attorney General when his conduct undermines public confidence in DOJ's investigative process and outcomes.

Any further reliance by Attorney General Barr on ethics advice provided by your office undermines public confidence in DOJ's handling of the Special Counsel Report and the related investigations. To prevent any further damage, CREW respectfully requests you withdraw your previous ethics advice or authorization regarding the Special Counsel Investigation and related

Assistant Attorney General Lee J. Lofthus

May 20, 2019

Page 14

investigations and advise Attorney General Barr to immediately recuse from overseeing these matters.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Noah Bookbinder', with a long horizontal flourish at the end.

Noah Bookbinder  
Executive Director

cc: Attorney General William P. Barr  
Michael E. Horowitz, Inspector General, Department of Justice  
Corey Amundson, Director and Chief Counsel, Office of Professional Responsibility,  
Department of Justice