

February 14, 2020

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Michael E. Horowitz
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Re: Request for Investigation into Attorney General William Barr's Public Statements
Prejudicial to Persons Subject to a Pending Department of Justice Investigation

Dear Acting Director Ragsdale and Inspector General Horowitz,

Citizens for Responsibility and Ethics in Washington ("CREW") respectfully requests that your offices investigate public statements made by Attorney General William Barr that are prejudicial to persons who are the focus of a pending Department of Justice ("DOJ") investigation. These statements appear to violate rules intended to protect due process and privacy interests afforded to persons under investigation by DOJ.

U.S. Attorney John Durham currently is conducting an investigation into the origins of the Federal Bureau of Investigation's ("FBI") investigation into Russian interference in the 2016 presidential election ("Durham Investigation"). In response to a report Inspector General Michael Horowitz recently issued about the FBI's Russia investigation, Attorney General Barr strongly criticized the conduct of the FBI and its employees, asserting, among other things, that the investigation was "completely baseless," lacked "sufficient predication," and led to "very serious" and "gross abuses." DOJ's rules prohibit its employees from making any statement that reasonably could have a substantial likelihood of materially prejudicing an adjudicative proceeding or from expressing any opinion as to a defendant's guilt. Attorney General Barr's comments appear to violate those rules and to undermine the independence and integrity of the Durham Investigation. They also are further evidence of Attorney General Barr's lack of impartiality under the Standards of Ethical Conduct for Employees of the Executive Branch ("Standards of Conduct"), mandating that he recuse from the Durham Investigation and any related investigations. By using inflammatory and conclusory language and making his comments in a press statement and in a high-profile television interview, Attorney General Barr increased their prejudicial impact and elevated the seriousness of his misconduct.

Attorney General Barr's prejudicial statements further appear to be part of a pattern of conduct. As CREW highlighted in a prior letter to DOJ, Attorney General Barr similarly made public statements indicating he has prejudged the outcome of DOJ investigations into the origins of the Russia investigation.¹ CREW has also raised questions about Attorney General Barr's impartiality in matters pertaining to Special Counsel Robert S. Mueller's investigation into Russia's interference in the 2016 election and possible obstruction of justice by President Donald J. Trump, in part because of his apparent attempt to skew public opinion in favor of President Trump,² and has questioned the propriety of Attorney General Barr's participation in DOJ matters arising from a whistleblower complaint alleging that President Trump sought political favors from a foreign government for his political benefit.³ Further indicating a pattern of prejudicial conduct, Attorney General Barr also has "take[n] control of legal matters of personal interest" to President Trump,⁴ which resulted in Attorney General Barr reducing the sentencing recommendation for President Trump's long-time associate, Roger Stone.⁵ Attorney General Barr also has opened a backdoor channel for President Trump's personal attorney, Rudy Giuliani, to send damaging information directly to DOJ about one of President Trump's political rivals, former Vice President Joe Biden.⁶ The allegations in this letter should be considered with these recent developments and with the issues previously raised by CREW.

Authority to Investigate Attorney Misconduct

As you know, while the Inspector General is the person in most executive branch agencies responsible for investigating alleged misconduct,⁷ DOJ's Inspector General lacks independent authority to investigate alleged misconduct involving Attorney General Barr or other DOJ attorneys because of a carve-out provision in the Inspector General Act of 1978.⁸ For misconduct allegations against DOJ attorneys, primary responsibility for investigations rests with DOJ's Office of Professional Responsibility ("OPR").⁹ OPR is responsible for receiving, reviewing and investigating "allegations of misconduct involving Department attorneys that relate to the exercise of their authority to investigate, litigate or provide legal advice" and "any

¹ Letter from Noah Bookbinder to Assistant Attorney General Lee J. Lofthus, Sept. 17, 2019, *available at* <https://bit.ly/2lh1KtB>.

² Letter from Noah Bookbinder to Attorney General William P. Barr, Apr. 11, 2019, *available at* <https://bit.ly/2IN1ZXe>; Letter from Noah Bookbinder to Assistant Attorney General Lee J. Lofthus, May 20, 2019, *available at* <https://bit.ly/2Mis3LH>.

³ Letter from Noah Bookbinder to Inspector General Michael E. Horowitz, Oct. 7, 2019 *available at* <https://go.aws/36lAM5u>.

⁴ Carol E. Lee, Ken Dilanian, and Peter Alexander, Barr takes control of legal matters of interest to Trump, including Stone sentencing, *NBC News*, Feb. 11, 2020, *available at* <https://nbcnews.to/2tRNVG5>.

⁵ Matt Zapotosky, Devlin Barrett, Ann E. Marimow, and Spencer S. Hsu, Prosecutors quit amid escalating Justice Dept. fight over Roger Stone's prison term, *Washington Post*, Feb. 11, 2020, *available at* <https://wapo.st/37ocNTs>.

⁶ Matt Zapotosky and Devlin Barrett, Barr acknowledges Justice Dept. has created 'intake process' to vet Giuliani's information on Bidens, *Washington Post*, Feb. 10, 2020, *available at* <https://wapo.st/2UMGvik>.

⁷ Walter M. Shaub, Jr., OGE and the Inspector General Community, July 17, 2015, Office of Government Ethics website, *available at* <https://www.oge.gov/web/oge.nsf/Resources/OGE+and+the+Inspector+General+Community>.

⁸ Inspector General Act of 1978, Pub. L. 95-452, 8E, Oct. 12, 1978, 92 Stat. 1101 ("In carrying out the duties and responsibilities specified in the Act, the Inspector General of the Department of Justice . . . shall refer to the Counsel, Office of Professional Responsibility of the Department of Justice, allegations of misconduct involving Department attorneys, investigators, or law enforcement personnel, where the allegations relate to the exercise of the authority of an attorney to investigate, litigate, or provide legal advice. . . .").

⁹ *Id.*; OPR website, "About OPR" page, *available at* <https://www.justice.gov/opr/about-opr>.

information concerning conduct by a Department employee that may be in violation of law, regulations or orders, or applicable standards of conduct.”¹⁰

To ensure that Attorney General Barr is held to the highest professional standards consistent with what is expected of our nation’s principal law enforcement agency,¹¹ CREW requests that your offices jointly conduct an investigation into Attorney General Barr’s conduct consistent with past investigations involving the alleged misconduct of an attorney general.¹²

Background

The Durham Investigation

Attorney General Barr launched the Durham Investigation in May 2019,¹³ reportedly to review “why the FBI opened a counterintelligence investigation into the Trump campaign” and to determine whether “law enforcement officials abused their power.”¹⁴ The review also was expected to take a “critical look” at the Central Intelligence Agency’s (“CIA”) and other intelligence agencies’ work on Russia’s election interference.¹⁵

Attorney General Barr opened the Durham Investigation despite a similar investigation being carried out at the time by Inspector General Horowitz into actions taken by the FBI and DOJ in the investigation known as “Crossfire Hurricane.”¹⁶ Crossfire Hurricane was undertaken by the FBI to determine “whether individuals associated with the Donald J. Trump for President Campaign were coordinating, wittingly or unwittingly, with the Russian government’s efforts to interfere in the 2016 U.S. presidential election.”¹⁷ Crossfire Hurricane ultimately led to the appointment of Special Counsel Mueller, whose investigation resulted in 37 indictments, 7 guilty pleas or convictions, 14 criminal referrals, and evidence that President Trump obstructed justice.¹⁸

¹⁰ *Id.*; 28 C.F.R. § 0.39a.

¹¹ OPR website, “About OPR” page.

¹² *See, e.g.*, DOJ Office of the Inspector General and DOJ Office of Professional Responsibility, An Investigation into the Removal of Nine U.S. Attorneys in 2006, Sept. 2008, available at <https://oig.justice.gov/special/s0809a/final.pdf>.

¹³ Adam Goldman, Charlie Savage, and Michael S. Schmidt, Barr Assigns U.S. Attorney in Connecticut to Review Origins of Russia Inquiry, *New York Times*, May 13, 2019, available at <https://nyti.ms/2LIIMtf>; Matt Zapotosky and Felicia Sonmez, Barr taps U.S. attorney in Connecticut to investigate the origins of Russia probe, *Washington Post*, May 13, 2019, available at <https://wapo.st/2xGIPfj>.

¹⁴ Julian E. Barnes, Katie Benner, Adam Goldman, and Michael S. Schmidt, Justice Dept. Seeks to Question C.I.A. in Its Own Russia Investigation, *New York Times*, June 12, 2019, available at <https://nyti.ms/2IbDWzK>.

¹⁵ *Id.*

¹⁶ Office of the Inspector General, U.S. Department of Justice, DOJ OIG Announces Initiation of Review, Mar. 28, 2018, available at <https://oig.justice.gov/press/2018/2018-03-28b.pdf>; Office of the DOJ Inspector General, Review of Four FISA Applications and Other Aspects of the FBI’s Crossfire Hurricane Investigation, Dec. 2019 (“Horowitz Report”), at i, available at <https://www.justice.gov/storage/120919-examination.pdf>.

¹⁷ *Id.*

¹⁸ American Constitution Society and Citizens for Responsibility and Ethics in Washington, Key Findings from the Mueller Report, available at <https://www.acslaw.org/wp-content/uploads/2019/07/ACS-CREW-Final-Mueller-Report-Highlights.7.19.pdf>.

Attorney General Barr has taken an active role in the Durham Investigation. For instance, Attorney General Barr traveled with U.S. Attorney Durham to the United Kingdom in July 2019 and Italy in September 2019 to personally solicit assistance from those countries in private meetings with their representatives.¹⁹ Attorney General Barr also urged President Trump to seek similar assistance from Australian officials.²⁰

The Durham Investigation shifted to a “criminal inquiry” in October 2019, according to contemporaneous news reports.²¹ That change gave U.S. Attorney Durham the power to issue subpoenas for “witness testimony and documents, [and] to convene a grand jury and to file criminal charges,” although it was not known what “potential crime” is being investigated.²² News reporting also indicated that U.S. Attorney Durham’s investigators interviewed “more than two dozen former and current F.B.I. and intelligence officials” to ask them about “any anti-Trump bias among officials who worked on the Russia investigation,” about the Foreign Intelligence Surveillance Act (“FISA”) application seeking a court order to surveil former Trump campaign foreign policy advisor Carter Page, and “whether CIA officials might have somehow tricked the FBI into opening the Russia investigation.”²³ U.S. Attorney Durham also reportedly wants to “interview former officials who ran the CIA in 2016,” but as of October 2019 had yet to question either former CIA Director John Brennan or former Director of National Intelligence James R. Clapper Jr.²⁴

On December 9, Inspector General Horowitz released his report on the Crossfire Hurricane investigation (“Horowitz Report”). In that report, he determined that the “exercise of discretion” made by the FBI’s assistant director for counterintelligence “in opening the investigation was in compliance with Department and FBI policies.”²⁵ Inspector General Horowitz also stated that he “did not find documentary or testimonial evidence that political bias or improper motivation influenced his decision.”²⁶ However, Inspector General Horowitz “identified significant concerns with how certain aspects of the investigation were conducted and supervised, particularly the FBI’s failure to adhere to its own standards of accuracy and completeness when filing applications for Foreign Intelligence Surveillance Act (FISA) authority to surveil Carter Page, a U.S. person who was connected to the Donald J. Trump for President Campaign” and “also identified what we believe is an absence of sufficient policies to ensure appropriate Department oversight of significant investigative decisions that could affect constitutionally protected activity.”²⁷ Notably, Inspector General Horowitz reported that he had

¹⁹ Devlin Barrett, Shane Harris, and Matt Zapotosky, Barr personally asked foreign officials to aid inquiry into CIA, FBI activities in 2016, *Washington Post*, Sept. 30, 2019, available at <https://wapo.st/36hgvxS>; Patrick Wintour and Luke Harding, William Barr discussed FBI Russia inquiry with UK intelligence, *Guardian*, Oct. 1, 2019, available at <https://bit.ly/37pvmro>. See also Katie Benner and Adam Goldman, Justice Dept. Is Said to Open Criminal Inquiry Into Its Own Russia Investigation, *New York Times*, Oct. 24, 2019 (describing Attorney Barr as “closely managing” the Durham Investigation), available at <https://nyti.ms/3aKo4Rh>.

²⁰ Mark Mazzetti and Katie Benner, Trump Pressed Australian Leader to Help Barr Investigate Mueller Inquiry’s Origins, *New York Times*, Sept. 30, 2019, available at <https://nyti.ms/2vk2LFQ>.

²¹ Benner and Goldman, *New York Times*, Oct. 24, 2019.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Horowitz Report, at iii.

²⁶ *Id.*

²⁷ *Id.* at 410.

made at least one referral to Attorney General Barr and FBI Director Christopher Wray regarding an FBI attorney who was found to have altered emails used to support the FISA application against Mr. Page.²⁸

Following the release of the Horowitz Report, U.S. Attorney Durham issued a statement that contradicted key findings made by Inspector General Horowitz.²⁹ The statement also revealed both the existence of the pending DOJ investigation and its broad scope.³⁰ Specifically, U.S. Attorney Durham asserted:

I have the utmost respect for the mission of the Office of Inspector General and the comprehensive work that went into the report prepared by Mr. Horowitz and his staff. However, our investigation is not limited to developing information from within component parts of the Justice Department. Our investigation has included developing information from other persons and entities, both in the U.S. and outside of the U.S. Based on the evidence collected to date, and while our investigation is ongoing, last month we advised the Inspector General that we do not agree with some of the report's conclusions as to predication and how the FBI case was opened.³¹

Also in response to the Horowitz Report, FBI Director Wray sent a letter to Inspector General Horowitz on December 6 in which he accepted the report's findings and embraced the "need for thoughtful, meaningful remedial action [by ordering] more than 40 corrective steps to address the Report's recommendations" and "also making improvements beyond those recommended by the OIG."³² FBI Director Wray noted that "where certain individuals have been referred by the OIG for review of their conduct, the FBI will not hesitate to take appropriate disciplinary action if warranted at the completion of the required procedures for disciplinary review."³³

Attorney General Barr's Public Statements

In contrast to FBI Director Wray's measured statement, Attorney General Barr used inflammatory language in his own December 9 statement to criticize the conduct of the FBI and its employees. According to Attorney General Barr, the FBI's "intrusive investigation" into a U.S. presidential campaign was carried out on the "thinnest of suspicions" that were "insufficient to justify the steps taken."³⁴ Attorney General Barr further alleged that "in the rush to obtain and

²⁸ *Id.* at 256.

²⁹ Statement of U.S. Attorney John H. Durham, Dec. 9, 2019, available at <https://www.justice.gov/usao-ct/pr/statement-us-attorney-john-h-durham>.

³⁰ *Id.*

³¹ *Id.*

³² Letter from FBI Director Christopher Wray to Inspector General Horowitz, Dec. 6, 2019, available at <https://www.fbi.gov/news/pressrel/press-releases/fbi-director-christopher-wray-response-to-inspector-general-report>.

³³ *Id.*

³⁴ Attorney General William P. Barr, Statement on the Inspector General's Report of the Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation, Dec. 9, 2019, available at <https://www.justice.gov/opa/pr/statement-attorney-general-william-p-barr-inspector-generals-report-review-four-fisa>.

maintain FISA surveillance of Trump campaign associates. FBI officials misled the FISA court, omitted critical exculpatory facts from their filings, and suppressed or ignored information negating the reliability of their principal source.”³⁵ Attorney General Barr concluded that “while most of the misconduct identified by the Inspector General was committed in 2016 and 2017 by a small group of now-former FBI officials, malfeasance and misfeasance detailed in the Inspector General’s report reflects a clear abuse of the FISA process.”³⁶

In a subsequent 24-minute television interview aired on December 10, Attorney General Barr made more prejudicial comments using incendiary language to conclude that the FBI “spied upon”³⁷ the Trump presidential campaign,³⁸ echoing language he previously used to describe the FBI’s conduct.³⁹ Attorney General Barr asserted that the FBI’s Russia investigation was “completely baseless,”⁴⁰ built on “speculation”⁴¹ and a “bogus narrative.”⁴² With regard to the FISA warrant, Attorney General Barr said it lacked “sufficient predication,”⁴³ describing the “flimsy” evidence⁴⁴ the FBI relied on as “rubbish”⁴⁵ and a “complete sham”⁴⁶ that led to “very serious”⁴⁷ and “gross abuses” of the FISA process.⁴⁸ He also alleged that the FBI engaged in “damning”⁴⁹ and “inexplicable” behavior,⁵⁰ and that the investigation uncovered “not one incriminatory bit of evidence.”⁵¹

Attorney General Barr also made prejudicial statements suggesting that government officials inside and outside the FBI were acting in “bad faith”⁵² with improper “motivations,”⁵³ even though the Horowitz Report came to a contrary conclusion about the FBI. While he did not publicly disclose the names of his targets, Attorney General Barr publicly identified former FBI Director Comey as a possible witness whose testimony could be compelled by U.S. Attorney Durham.⁵⁴

³⁵ *Id.*

³⁶ *Id.*

³⁷ NBC News, [Barr Criticizes Inspector General Report on the Russia Investigation](https://www.youtube.com/watch?v=LRKFo0JmuBc), Dec. 10, 2019, at 12:10 (“NBC News Interview”), available at <https://www.youtube.com/watch?v=LRKFo0JmuBc>.

³⁸ *Id.* at 5:20.

³⁹ Nick Fandos and Adam Goldman, [Barr Asserts Intelligence Agencies Spied on the Trump Campaign](https://nyti.ms/2IroH6i), *New York Times*, Apr. 10, 2019, available at <https://nyti.ms/2IroH6i>.

⁴⁰ NBC News Interview, at 2:45.

⁴¹ *Id.* at 10:12.

⁴² *Id.* at 17:45.

⁴³ *Id.* at 0:35.

⁴⁴ *Id.* at 1:15.

⁴⁵ NBC News Interview, at 10:12.

⁴⁶ *Id.* at 9:10.

⁴⁷ *Id.* at 0:20.

⁴⁸ *Id.* at 17:45.

⁴⁹ *Id.* at 10:12.

⁵⁰ NBC News Interview, at 5:45.

⁵¹ *Id.* at 8:30.

⁵² *Id.* at 10:56.

⁵³ *Id.* at 10:45.

⁵⁴ *Id.* at 7:30.

Attorney General Barr further asserted that the Durham Investigation may “reach an important watershed” in late spring or early summer this year.⁵⁵ This statement should be viewed in the context of President Trump’s political agenda in calling for Attorney General Barr to “INVESTIGATE THE INVESTIGATORS”,⁵⁶ repeatedly criticizing the Mueller Investigation as a “witch hunt” and “hoax,” and declaring that the Mueller Investigation will hurt Democrats in the 2020 election.⁵⁷ If the Durham Investigation reaches an “important watershed” in “late spring, early summer” favorable to President Trump, as telegraphed by Attorney General Barr, it would appear to be consistent with President Trump’s political goals of undermining the legitimacy of the FBI Russia investigation before the 2020 presidential election. That investigation was the basis for the Mueller Investigation which, as noted, resulted in compelling evidence of President Trump’s obstruction of justice, and a substantial number of indictments, guilty pleas, convictions, and referrals.

Legal Analysis

Attorney General Barr’s statements about the conduct of persons who are the subject of an ongoing DOJ investigation appear to violate DOJ policies intended to protect due process and privacy interests, as well as ethics principles intended to preserve and protect the independence and integrity of DOJ prosecutions. By using inflammatory and conclusory language and making these comments in a press statement and in a high-profile television interview, Attorney General Barr increased their prejudicial impact and elevated the seriousness of his misconduct.

For executive branch employees, public service is a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain.⁵⁸ The 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.⁵⁹ 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.”⁶⁰ 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.”⁶¹

DOJ further maintains a media policy that governs the protection and release of information obtained in the course of its work. The purpose of the policy is to balance an individual’s due process rights and privacy interests, the government’s ability to administer

⁵⁵ *Id.* at 22:41.

⁵⁶ Donald J. Trump (@realDonaldTrump), Twitter, Apr. 15, 2019, 4:15 AM, available at <https://twitter.com/realDonaldTrump/status/1117748268820201472>.

⁵⁷ Jonathan Lemire, *Watch: Trump on Mueller testimony: ‘there was no defense to this ridiculous hoax’*, *Associated Press*, July 24, 2019, available at <https://www.pbs.org/newshour/politics/trump-on-mueller-testimony-there-was-no-defense-to-this-ridiculous-hoax>; Michael D. Shear and Lola Fadulu, *Trump Says Mueller Was ‘Horrible’ and Republicans ‘Had a Good Day’*, *New York Times*, July 24, 2019, available at <https://www.nytimes.com/2019/07/24/us/politics/trump-mueller.html>.

⁵⁸ 5 C.F.R. §§ 2635.101(a), (b)(1), (7); 2635.701; 2635.702(a).

⁵⁹ 5 C.F.R. §§ 2635.101(b)(8), (14); 2635.501-.502(a)(2).

⁶⁰ Justice Manual § 9-27.001.

⁶¹ *Id.*

justice and promote public safety, and the public's right to access information about DOJ.⁶² Under this policy, "DOJ personnel shall not make any statement or disclose any information that reasonably could have a substantial likelihood of materially prejudicing an adjudicative proceeding."⁶³ DOJ personnel also are required to refrain from disclosing observations about a party's character and any opinion as to the defendant's guilt.⁶⁴

In public statements that contradicted key findings of the Horowitz Report, Attorney General Barr indisputably made inflammatory and conclusory comments about the FBI's decision to open the Crossfire Hurricane investigation and to pursue the FISA warrant. For example, Attorney General Barr asserted that the campaign was "spied upon," and that the investigation was "completely baseless" and built on a "bogus narrative" and "speculation." He also opined that the FISA warrant lacked "sufficient predication," concluding that the FBI's "inexplicable" conduct resulted in "very serious" and "gross abuses" of the FISA process. Notwithstanding the findings of the Horowitz Report, Attorney General Barr openly questioned the "motivation" of actors both inside and outside of the FBI and suggested that some of these persons may have been acting in "bad faith."

Those statements unquestionably were directed at the FBI and implicated FBI officials. When U.S. Attorney Durham took the unusual step of confirming an ongoing investigation and publicly stating his disagreement with the key conclusions reached by Inspector General Horowitz on predication and on how the case was opened, he indicated that the conduct of persons involved in these events are the focus of an ongoing criminal investigation. U.S. Attorney Durham has not publicly disclosed the specific names of those persons under investigation, but their identities may be gleaned from information Attorney General Barr has disclosed publicly, as well as from the Horowitz Report and various news reporting.

For example, Inspector General Horowitz publicly disclosed that he made at least one referral involving an FBI attorney based on evidence that the attorney altered an email used to support the FISA applications.⁶⁵ The Horowitz Report also examined the roles that various FBI officials played in the decisions to open Crossfire Hurricane and pursue the FISA warrant. These include former FBI Director Comey, Former Deputy Director Andrew McCabe, Assistant Director E.W. "Bill" Priestap, Section Chief Peter Strzok, FBI Attorney Bruce Ohr, and Special Counsel Lisa Page.⁶⁶ Separate reporting has indicated that U.S. Attorney Durham wants to

⁶² Justice Manual § 1-7.001.

⁶³ Justice Manual § 1-7.600.

⁶⁴ Justice Manual § 1-7.610. *See also* ABA Model Rules of Professional Conduct Rule 3.8(f) ("The prosecutor in a criminal case shall . . . except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule."); ABA Model Rules of Professional Conduct Rule 3.6 ("A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.").

⁶⁵ Horowitz Report, at 256.

⁶⁶ *See, e.g.*, Horowitz Report, at i, iii, v, x, xiv, and 52.

interview Mr. Brennan and Mr. Clapper.⁶⁷ For his part, in his *NBC News* interview Attorney General Barr expressly called out former FBI Director Comey as a potential witness whose testimony should be compelled.⁶⁸ The likelihood that persons involved in these events are the focus of the Durham Investigation is further buttressed by comments made by Attorney General Barr when he openly questioned the motivation of actors both inside and outside of the FBI and suggested that some of these persons may have been acting in “bad faith” with improper “motivations.”

While the specific crimes being investigated by U.S. Attorney Durham are not known, abuse of the FISA process carries criminal sanctions and civil liability.⁶⁹ Federal law also prohibits anyone from knowingly and willfully making “any materially false, fictitious, or fraudulent statement or representation” in any matter within the jurisdiction of the executive branch.⁷⁰ Thus, there is a real possibility that DOJ could pursue civil or criminal actions in adjudicative proceedings against persons involved in these events.

Since the conduct of current and former FBI and intelligence officials involved in these events appears to be a focus of an ongoing criminal investigation, Attorney General Barr’s inflammatory comments and conclusions, made in a press statement and a high-profile television interview, reasonably could have a substantial likelihood of materially prejudicing adjudicative proceedings that may arise out of the Durham Investigation. Likewise, Attorney General Barr’s conclusion that there was not sufficient predication to authorize the FISA warrant resulting in a gross abuse of the FISA process is tantamount to opining on the guilt of persons who are the focus of the Durham Investigation in apparent violation of DOJ policy.⁷¹

Attorney General Barr’s comments further appear to violate the Standards of Conduct. Not only would his statements cause a reasonable person to question his impartiality,⁷² but they also give rise to legitimate concerns that he is using his public office to further President Trump’s personal political interests.⁷³ Attorney General Barr’s conduct is further evidence that he lacks the requisite impartiality to participate in the Durham Investigation, mandating his recusal under the Standards of Conduct.⁷⁴

Conclusion

As CREW has repeatedly explained in prior letters, Attorney General Barr’s conduct and public statements call into serious question his impartiality and threaten to prejudice DOJ

⁶⁷ Benner and Goldman, *New York Times*, Oct. 24, 2019.

⁶⁸ NBC News Interview, at 7:30.

⁶⁹ 18 U.S.C. § 1809(a) (“A person is guilty of an offense if he intentionally—(1) engages in electronic surveillance under color of law except as authorized by this chapter, chapter 119, 121, or 206 of title 18, or any express statutory authorization that is an additional exclusive means for conducting electronic surveillance under section 1812 of this title.”); 18 U.S.C. § 1810.

⁷⁰ 18 U.S.C. § 1001.

⁷¹ Justice Manual § 1-7.610. *See also* ABA Model Rules of Professional Conduct, Rules 3.6, 3.8(f).

⁷² 5 C.F.R. §§ 2635.101(b)(8), (14); 2635.501-.502(a)(2).

⁷³ 5 C.F.R. §§ 2635.101(a), (b)(1), (7); 2635.701; 2635.702(a).

⁷⁴ 5 C.F.R. §§ 2635.501-.502(a)(2).

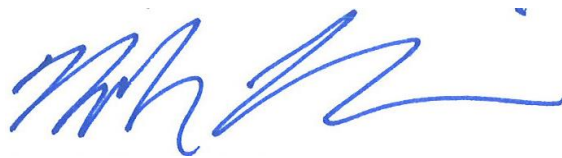
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investigations. Here, his inflammatory and conclusory statements, made in high-profile public settings, are prejudicial to persons who are the focus of the Durham Investigation, create a substantial likelihood of materially prejudicing adjudicative proceedings arising from the investigation, and are tantamount to opinions on the guilt of those persons on whom the investigation is focused. As a result, his public comments appear to violate rules intended to protect due process and privacy interests afforded to persons under investigation by DOJ, as well as the Standards of Conduct. CREW therefore respectfully requests that your offices investigate Attorney General Barr's statements.

As the head of our nation's principal law enforcement agency, Attorney General Barr's conduct not only undermines the independence and integrity of the Durham Investigation, but also irreparably harms public confidence in DOJ's ability to carry out prosecutions independently, and with the integrity and professional standards expected of our nation's principal law enforcement agency.

Sincerely,



Noah Bookbinder
Executive Director



Virginia Canter
Chief Ethics Counsel