

United States Senate

WASHINGTON, DC 20510

April 30, 2019

The Honorable Michael E. Horowitz
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Corey R. Amundson
Director and Chief Counsel
Office of Professional Responsibility
U.S. Department of Justice
950 Pennsylvania Avenue, NW, Suite 3266
Washington, D.C. 20530

Dear Inspector General Horowitz and Director Amundson:

We write regarding the serious concerns that have been raised about the actions of Attorney General William Barr with respect to his handling of Special Counsel Robert Mueller's report. Attorney General Barr's actions raise significant questions about his decision not to recuse himself from overseeing the Special Counsel's investigation, whether his actions with respect to the release of the report complied with Department of Justice policies and practices, and whether he has demonstrated sufficient impartiality to continue overseeing the fourteen criminal matters related to the Special Counsel's investigation that were referred principally to other components of the Department of Justice and the Federal Bureau of Investigation (FBI).¹ In light of these concerns, we respectfully request that the Office of the Inspector General and the Office of Professional Responsibility immediately begin investigations of these issues.

Six months before his nomination to be Attorney General, Mr. Barr wrote an unsolicited 19-page memo to Deputy Attorney General Rod Rosenstein and Assistant Attorney General for the Office of Legal Counsel Steve Engel criticizing Special Counsel Mueller's investigation of obstruction of justice by Donald Trump.² In his memo, Mr. Barr conceded that he was "in the dark about many facts," and yet he asserted that "Mueller's obstruction theory is fatally misconceived" and premised on a "legally insupportable reading of the law."³ Mr. Barr also argued that "Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction."⁴ Despite this memo, which presents, at the very least, an appearance of bias, Mr. Barr refused to recuse himself from directly overseeing Special Counsel Mueller's investigation when he was confirmed as Attorney General.⁵ While the Justice Department stated that Attorney General Barr's decision to not recuse was consistent with the advice of senior ethics attorneys, it provided few details about the nature of this seemingly anomalous decision. Given the Attorney General's subsequent troubling actions in handling the Special Counsel's report, further investigation of the process leading to his non-recusal decision is warranted.

¹ Department of Justice, *Report On The Investigation Into Russian Interference In The 2016 Presidential Election*, Appendix D, <https://www.justice.gov/storage/report.pdf>.

² Memo from Bill Barr to Deputy Attorney General Rod Rosenstein and Assistant Attorney General Steve Engel, June 8, 2018, available at <https://int.nyt.com/data/documenthelper/549-june-2018-barr-memo-to-doj-mue/b4c05e39318dd2d136b3/optimized/full.pdf#page=1>.

³ *Id.* at 1.

⁴ *Ibid.*

⁵ See Josh Gerstein, *Barr won't recuse himself from Mueller oversight*, POLITICO (March 4, 2019), <https://www.politico.com/story/2019/03/04/barr-wont-recuse-mueller-1203210>.

Attorney General Barr's actions following the completion of Special Counsel Mueller's report raise further questions regarding his impartiality towards the Special Counsel's investigation and the appropriateness of his conduct as the chief law enforcement officer of the United States. After notifying Congress and the public on Friday, March 22, 2019, that he had received the Special Counsel's report,⁶ Attorney General Barr released a four-page letter on March 24, 2019, that purported "to summarize the principal conclusions reached by the Special Counsel."⁷ The letter, however, selectively quoted fragments from the Special Counsel's report. Moreover, the subsequent release of the redacted report revealed that the Attorney General's letter had presented quotations from the report out of context or with key words omitted to suggest that the President had been cleared of wrongdoing.⁸ Given that the Special Counsel's report included executive summaries that seem to have been readily available for public release, we found the letter particularly concerning as a possible effort to mislead the public.

We are also troubled by the Attorney General's use of his March 24 letter to summarily conclude 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 The letter asserts, without any justification, that the Special Counsel's decision not to reach "any legal conclusions leaves it to the Attorney General to determine whether the conduct described in the report constitutes a crime."¹⁰ It is unclear what statute, regulation, or policy led the Attorney General to interject his own conclusion that the President's conduct did not amount to obstruction of justice, particularly when he had not yet released the redacted Special Counsel's report, which explicitly noted that "if we had confidence after a thorough investigation of the facts that the President clearly did not commit obstruction of justice, we would so state."¹¹ The Attorney General's conduct is even more concerning given that the report itself identifies Congress's impeachment authority and future prosecution once the President leaves office as possible ways to address the obstruction of justice evidence. But the report does not refer to a purported role of the Attorney General to make legal conclusions that the Special Counsel expressly declined to make.¹²

In addition, we found disturbing that Attorney General Barr provided the President's personal attorneys access to the Special Counsel's report before Congress and the public. News reports indicate that the Attorney General granted Rudy Giuliani, Jay Sekulow and two other Trump lawyers access to review the full redacted report for two days before providing the redacted report to Congress and the public.¹³ While the Attorney General asserted that the President's personal attorneys' *request* to review the redacted report before its public release "was consistent with the practice followed under the Ethics in Government Act," we have serious concerns about

⁶ Letter from Attorney General William Barr (March 22, 2019), available at <https://int.nyt.com/data/documenthelper/708-attorney-general-william-barr-letter-mueller/b7fd3a05ab618bad8544/optimized/full.pdf#page=1>.

⁷ Letter from Attorney General William Barr (March 24, 2019), available at <https://www.documentcloud.org/documents/5779688-AG-March-24-2019-Letter-to-House-and-Senate.html>.

⁸ See Charlie Savage, *How Barr's Excerpts Compare to the Mueller Report's Findings*, N.Y. TIMES (April 20, 2019), <https://www.nytimes.com/2019/04/19/us/politics/mueller-report-william-barr-excerpts.html>.

⁹ *Supra* note 7.

¹⁰ *Ibid.*

¹¹ *Supra* note 1, at vol. 2, p. 8.

¹² See, e.g., *supra* note 1, at vol. 2, p. 8, 178.

¹³ See, e.g., Karen Freifeld, *Trump lawyers reviewed Mueller report for 10 hours before it was made public*, REUTERS (April 19, 2019), <https://www.reuters.com/article/us-usa-trump-russia-lawyers-idUSKCN1RV18M>.

the propriety of the Attorney General's decision to grant access to the full redacted report, particularly when he did not appear to grant other individuals named in the report similar access and he did not limit review to the portions of the report referencing Donald Trump.¹⁴ This decision to purportedly act "consistent with the practice" under an expired law merits exacting review to determine whether the Attorney General's action was appropriate and justified, given that he ignored other provisions of this law, such as those requiring Congress to be provided with information necessary to enable it to conduct proper oversight.¹⁵

We further believe that Attorney General Barr's decision to hold a press conference to assert his own views regarding the report well before releasing the redacted report and his statements at the press conference warrant serious scrutiny as to whether they were proper and consistent with Justice Department policies and practices. At the press conference, Attorney General Barr appeared to make statements that were inconsistent with the Special Counsel's findings and demonstrated a lack of impartiality. For example, the Attorney General claimed that "the White House fully cooperated with the Special Counsel's investigation," despite the Special Counsel's detailed findings of President Trump's efforts to obstruct the investigation, refusal to be interviewed by the Special Counsel, and submission of "inadequate" written responses.¹⁶ The Attorney General also repeatedly asserted that there was "no collusion," defending the President as "frustrated and angered by a sincere belief that the investigation was undermining his presidency."¹⁷

Moreover, the Attorney General's statements at the press conference compounded the misleading impression he created in his March 24 letter regarding the Special Counsel's determinations regarding the criminality of the President's conduct. In both his March 24 letter and his statements at the press conference, Attorney General Barr gave the misimpression that the guidelines from the Justice Department's Office of Legal Counsel (OLC) against indicting a sitting president played little to no role in the Special Counsel's decision to not charge the President with obstruction of justice.¹⁸ The redacted report, however, makes clear that the OLC's guidelines played a significant role in the Special Counsel's decision, stating that the Special Counsel's office "accepted OLC's legal conclusion for the purpose of exercising prosecutorial jurisdiction."¹⁹ These statements and actions, along with the Attorney General's prior statements, such as his claim that the federal government's investigation of the Trump campaign constituted "spying," also indicate that he lacks the impartiality to continue overseeing ongoing matters stemming from the Special Counsel's investigation.²⁰

¹⁴ *Attorney General William P. Barr Delivers Remarks on the Release of the Report on the Investigation into Russian Interference in the 2016 Presidential Election*, April 18, 2019, <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-remarks-release-report-investigation-russian>.

¹⁵ *See, e.g.*, 28 U.S.C. 595(c); 28 U.S.C. 594(h).

¹⁶ *Compare ibid. with supra* note 1, Appendix C.

¹⁷ *Supra* note 15.

¹⁸ Aaron Blake, *How William Barr successfully pre-spun the Mueller report for Trump*, N.Y. TIMES (April 19, 2019), https://www.washingtonpost.com/politics/2019/04/19/how-william-barr-successfully-pre-spun-mueller-report-trump/?utm_term=.122c1c6362ba.

¹⁹ *Supra* note 1, at vol. 1, p. 1.

²⁰ *See, e.g.*, Nicholas Fandos and Adam Goldman, *Barr Asserts Intelligence Agencies Spied on the Trump Campaign*, N.Y. TIMES (April 10, 2019), <https://www.nytimes.com/2019/04/10/us/politics/barr-trump-campaign-spying.html>.

Given these concerns, we therefore urge the Office of the Inspector General and the Office of Professional Responsibility to initiate immediately investigations of the following matters:

- Whether Attorney General Barr's decision not to recuse himself from overseeing the Special Counsel's investigation was proper and consistent with ethical rules and practices within the Department of Justice;
- Whether Attorney General Barr's four-page letter dated March 24, 2019, regarding Special Counsel Mueller's report was misleading and whether it was consistent with Department of Justice policies and practices;
- Whether Attorney General Barr's actions in permitting President Trump's private attorneys to review the entire Special Counsel's report at length before sharing the report with Congress, other individuals named in the report, and the public, was appropriate and consistent with Department of Justice policies and practices;
- Whether Attorney General Barr's press conference on April 18, 2019, regarding Special Counsel Mueller's report, which took place well before he released a redacted version of the report, was misleading and consistent with Department of Justice policies and practices;
- Whether Attorney General Barr has demonstrated sufficient impartiality to continue overseeing the ongoing matters related to the Special Counsel's investigation referenced in Appendix D of the Special Counsel's report;
- Whether Attorney General Barr took any steps related to the transfers and referrals listed in Appendix D of the report that were contrary to the advice of career prosecutors at the Justice Department or the Department's policies; and
- Whether any of Attorney General Barr's other actions or statements call into question his impartiality such that they warrant his recusal from particular matters or are relevant to the Senate Judiciary Committee's oversight into the Department of Justice.

Thank you for your consideration of this important matter. We look forward to a prompt response.

Sincerely,



MAZIE K. HIRONO
United States Senator



RICHARD BLUMENTHAL
United States Senator



KAMALA D. HARRIS
United States Senator




EDWARD J. MARKEY
United States Senator


TOM UDALL
United States Senator


RON WYDEN
United States Senator



SHELDON WHITEHOUSE
United States Senator


PATTY MURRAY
United States Senator


CORY A. BOOKER
United States Senator


JACK REED
United States Senator


KIRSTEN GILLIBRAND
United States Senator


AMY KLOBUCHAR
United States Senator