



April 15, 2019

Corey R. Amundson  
Director  
Office of Professional Responsibility  
U.S. Department of Justice  
Suite 3266  
950 Pennsylvania Avenue N.W.  
Washington, DC 20530

Dear Director Amundson:

Democracy 21 is filing this complaint to request that the Office of Professional Responsibility (OPR) investigate whether Attorney General William Barr has violated Justice Department (DOJ) norms and standards of conduct by publicly testifying, without any substantiation, that FBI and Justice Department officials engaged in “spying” on the Trump campaign during the 2016 presidential election.

We urge you to take appropriate action if such improper conduct by Attorney General Barr is found.

There is precedent for OPR investigating an Attorney General. Following a complaint I filed with OPR in 1988 on behalf of Common Cause against Attorney General Edward Meese, OPR conducted an investigation and [found](#) that Meese had violated Justice Department ethical standards.

Attorney General Barr made his [charge](#) about “spying” during public testimony at a congressional hearing on April 10, 2019 before a Senate Appropriations sub-committee. According to [a report](#) in *The New York Times*:

Attorney General William P. Barr said on Wednesday that he would scrutinize the F.B.I.’s investigation of the Trump campaign’s ties to Russia, including whether “spying” conducted by American intelligence agencies on the campaign’s associates had been properly carried out.

“I think spying on a political campaign is a big deal,” Mr. Barr said during testimony before a Senate Appropriations subcommittee, adding that he wanted to look into both “the genesis and the conduct” of the F.B.I. inquiry. He cast his interest as a matter of protecting civil liberties from potential abuse by the government.

“I think spying did occur,” Mr. Barr said. “The question is whether it was adequately predicated. And I’m not suggesting that it wasn’t adequately predicated. But I need to explore that.”

The remarks of the Attorney General and his explosive allegation that “spying” occurred did not take place in a vacuum. Instead, they were made in the context of a heated political attack by President Trump and his allies on the lawfulness of the Special Counsel investigation into whether a hostile foreign power illegally interfered in the 2016 presidential election to benefit the Trump campaign, and whether it did so in coordination with members of the Trump campaign.

Attorney General Barr knew or certainly should have known that his unsubstantiated allegation would be publicly used by President Trump to validate his claim that illegal “spying” on his campaign had occurred and that the whole investigation by Special Counsel Robert Mueller was tainted as a result.

Attorney General Barr’s use of the alternative term “unauthorized surveillance” later in his testimony did not cure the problem he created. Barr still left standing the public impression that he believed improper conduct had occurred, while providing no evidence to back up this view. In doing so, he questioned the honesty and integrity of the FBI and of the Justice Department which he leads, without providing any basis for his allegations, and he provided fresh ammunition for President Trump to use to attack the legitimacy of the Mueller investigation.

Furthermore, the Attorney General has not retracted his unsubstantiated claim that “spying” had occurred, leaving President Trump free to use the Attorney General’s testimony as support for Trump’s false attacks on the Mueller investigation as illegal.

This is not a proper role for an Attorney General to play. Attorney General Barr has injected himself into a fierce public debate in a way can only be interpreted as siding with President Trump in the President’s repeated false [attacks](#) on the legality of the Mueller investigation.

It is improper conduct for the Attorney General of the United States to charge that “spying” has occurred by the FBI and Justice Department when he has no evidence to back up his claim. These statements by Attorney General Barr can only be understood as an attack on the integrity and credibility of Justice Department and FBI officials without providing a scintilla of evidence to back up his explosive allegation. OPR has a duty to hold the Attorney General accountable for his improper conduct.

The President and his political allies have long taken the position that the Special Counsel’s investigation into potential foreign interference in the 2016 election has been both unlawful and unnecessary. The President has repeatedly [alleged](#) that the Justice Department and FBI engaged in “spying” on his campaign, and he and his allies have argued that this “spying” has fatally tainted the legality of the Mueller investigation.

For example, on May 23, 2018, President Trump [charged](#) federal investigators “with using a spy inside his campaign, repeating unconfirmed claims,” and [tweeted](#) that “SPYGATE could be one of the biggest political scandals in history.”

The President's allegations of Departmental misconduct by "spying" has been repeatedly denied by the FBI and by the Justice Department. But these allegations of improper "spying" have been repetitively made by the President, and amplified by his congressional and media allies, as a kind of original sin to attack the appointment of Special Counsel Mueller and to attempt to discredit the Special Counsel's investigation and findings.

It was in this context that Attorney General Barr made his remarks that "spying did occur." The Attorney General had to have known the incendiary effect this statement would have, and that it would be used as "validation" by the President for his discredited claims that the Special Counsel investigation has been improper and illegitimate since its inception because of such "spying."

And, as *The Washington Post* [stated](#) about the Attorney General's remarks:

Barr's surprising comments echo unsubstantiated claims President Trump has made about the FBI, and though the attorney general later clarified that he was concerned about the legal basis for surveilling political figures, his words provided fresh ammunition to those who have branded the Russia investigation an illegitimate attempt to derail Trump's presidency.

Indeed, the Attorney General's comments have already had this effect.

President Trump has [repeated](#) his claim that the Special Counsel investigation was "started illegally" and that "[e]verything about it was crooked." The President [called](#) the investigation "an attempted coup." Further, [he said](#), "Everything about it was crooked — every single thing about it. There were dirty cops. These were bad people." In [another comment](#) made after the Attorney General's Senate testimony, President Trump specifically embraced the testimony as support for his attack on the Special Counsel investigation:

There was absolutely spying into my campaign. I'll go a step further: In my opinion, it was illegal spying, unprecedented spying, and something that should never be allowed to happen in our country again. And I think his answer was actually a very accurate one. And a lot of people saw that, and a lot of people understand -- many, many people understand the situation and want to be open to that situation. Hard to believe it could have happened, but it did. There was spying in my campaign.

Furthermore, Attorney General Barr has not retracted his unsubstantiated claim of "spying" nor stated that he should not have made this pejorative charge. Whatever clarifying comments Attorney General Barr made following his use of the word "spying," he has left standing his statement that "spying" occurred, enabling President Trump and his allies to cite the Attorney General as support for their continuing attacks on the Mueller investigation.

In light of this backdrop, we urge you to conclude that the Attorney General's remarks were improper and did not comply with the norms and standards of conduct that apply to Justice Department officials, and especially to the nation's chief law enforcement official.

This conclusion is warranted for several reasons.

First, in response to a question about whether he had “evidence that there was anything improper in those investigations,” Barr [responded](#), “I have no specific evidence that I would cite right now. I do have questions about it.”

Thus, Barr made remarks that he knew or should have known would be used by the President and his allies as a public finding by the Attorney General that improper “spying” on the Trump campaign had occurred. Barr also knew or should have known that his remarks would be used as a political weapon to attack the legitimacy of the Special Counsel investigation, the Justice Department and the FBI — when Barr himself said he had “no specific evidence” to support those remarks.

It is improper conduct for the Attorney General to make an inflammatory statement that “spying” on the Trump campaign occurred, while admitting that he has “no specific evidence” that there was anything improper about the FBI investigation that led to the appointment of the Special Counsel.

In the heightened partisan context of President Trump’s repeated attacks on the Special Counsel, the Attorney General allowed his office to be used to validate a discredited line of attack on the legitimacy of the Special Counsel investigation. Attorney General Barr also allowed his office to be used in a partisan battle attacking the very Department he is leading.

The Attorney General knew, or certainly should have known, that by using the loaded term “spying,” his remarks would feed conspiracy theorists and critics of the Special Counsel — including the President — who have been seeking to undermine and discredit the Mueller investigation since its beginning.

This problem is only exacerbated by the specific timing of the Attorney General’s remarks — just days before his release to Congress and the public of his redacted version of the Special Counsel’s report. To the extent the Mueller report contains findings critical of the President or his campaign, which it surely will, the President and his allies will renew and intensify their attacks on the legitimacy of the Special Counsel investigation, as a way to distract public attention from and undermine any critical findings made by the Special Counsel.

The Attorney General has now wittingly contributed to this strategy by providing the imprimatur of his office to validate a key tenet of the President’s sustained attack on the Special Counsel investigation — that “spying” on the Trump campaign occurred. Attorney General Barr did this right at the moment when this validation would be most useful to the President.

Second, the Attorney General’s remarks were particularly inappropriate because they were not only inflammatory, but also unnecessary.

The gravamen of the Attorney General’s position is that “spying” occurred and that he wants to investigate “[t]he question [of] whether it was adequately predicated.” [According to The](#)

*Washington Post*, the Attorney General “told House lawmakers that he would review how the FBI launched a counterintelligence investigation in its effort to determine whether Trump’s associates were conspiring with Russians to interfere in the election.” He said he was assembling a “team” to conduct this investigation.

Yet, the Department’s Inspector General is already conducting an investigation into the origins of the FBI counterintelligence inquiry. [According to \*The New York Times\*](#), “[T]he inspector general has previously confirmed that he was looking into the early stages of the Russia inquiry, including wiretap applications, informants and whether any political bias against Mr. Trump influenced investigative decisions.” The Attorney General, on the day before his Senate testimony, [told](#) a House Appropriations subcommittee:

The office of the inspector general has a pending investigation of the FISA process in the Russia investigation. I expect that will be complete in probably May or June, I am told. So hopefully we’ll have some answers from Inspector General Horowitz on the issue of the FISA warrants.

Thus, the Department has already been conducting — and is nearing the completion of — the same investigation that the Attorney General announced he is separately planning to undertake.

Instead of announcing that he was undertaking his own separate investigation into the legality of the FBI’s “spying” on the Trump campaign, the responsible course of action would have been for the Attorney General simply to state that there is a pending Inspector General investigation of the FISA process that is almost complete, and that he will wait for “some answers” from that investigation.

Had Attorney General Barr done that and gone no further, he would have taken the position that the Department needed to review the origins of the FBI investigation while avoiding his reckless remark that “spying” had occurred — a statement that Barr had to know would be seized upon by the President and his allies to attack and to discredit the Special Counsel investigation just days before the release of the redacted final report.

Finally, the Attorney General wrongly created the public impression that there may have been an extensive practice of domestic spying on the Trump campaign. As discussed above, the Inspector General is already reviewing the origins of the FBI investigation and the Special Counsel appointment.

Given that, and in advance of the results of the Inspector General investigation, there was no good reason for the Attorney General to announce that “spying” on the Trump campaign had occurred, thereby providing partisan political ammunition to the President, and no good reason to announce the creation of his own additional investigation. By announcing his own investigation, the Attorney General has created the public impression that improper behavior by Departmental officials may have led to extensive domestic “spying.” Yet having made the claim of impropriety, Barr also said he has “no specific evidence” to support his position.

This is an improper way for the Attorney General to exercise the authority of his office.

If the Attorney General is aware of possible Departmental misconduct, he certainly has the responsibility to ensure that the matter is investigated appropriately, either by the Inspector General or other Department officials. But the Attorney General should not announce to a congressional committee that he is creating a team to undertake an internal investigation of a matter as serious as domestic political “spying” by the FBI, in the absence of any “specific evidence” that impropriety occurred.

To proceed as the Attorney General did serves to inflame public debate and feed conspiracy theories in a fashion that undermines the Special Counsel investigation, the Justice Department, the FBI and, more generally, the rule of law. It is inappropriate and improper conduct for the Nation’s chief law enforcement officer.

Democracy 21 urges OPR to investigate our complaint and to find that the Attorney General has engaged in improper conduct that fails to comply with the norms and standards of conduct applicable to all Justice Department officials, and most importantly to the Attorney General himself.

We urge you to uphold the Department’s commitment to the highest standards of conduct for all officials of the Justice Department by finding it was improper for the Attorney General to publicly charge, without any evidence to support the charge, that the FBI and Justice Department had engaged in “spying” on the Trump campaign, and by then failing to retract this unsubstantiated and inflammatory charge.

Sincerely,



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President, Democracy 21

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