



May 7, 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 calls on the Office of Professional Responsibility (OPR) to inform Attorney General William Barr that he must recuse himself from any supervision of, or other involvement in, the [14](#) active Justice Department matters that stem from Special Counsel Robert Mueller's investigation into Russian interference in the 2016 presidential election. (See Report of the Office of Special Counsel at App. D-Sec. B.)

The basis for this recusal is Attorney General Barr's demonstrated bias in his handling of the report issued by Special Counsel Mueller, and Barr's public statements and congressional testimony, which have mischaracterized the Mueller report and misled the American people.

The Attorney General's actions and statements relating to the Mueller report have collectively demonstrated a pattern of favoritism to President Trump that has created the clear public impression that the Attorney General is serving more as President Trump's defense counsel than as the nation's chief law enforcement officer. This raises serious public credibility problems for the Attorney General and the Department of Justice (DOJ) if the Attorney General continues to serve as the final decision-maker in the 14 pending DOJ cases that stem from the Mueller investigation.

This is a matter that needs to be addressed by your office. The "[primary mission](#)" of the Office of Professional Responsibility is, among other things, to ensure "that DOJ attorneys perform their duties in accordance with the high professional standards expected of the nation's principal law enforcement agency." The "[mission](#)" of the Justice Department is "to ensure fair and impartial administration of justice for all Americans."

Attorney General Barr's actions regarding Special Counsel Mueller and his report have not complied with this core Justice Department mission and have not met the Department's "high professional standards." The Attorney General has publicly misrepresented the work of the

Special Counsel. He has publicly favored President Trump without basis at the expense of the Special Counsel and his report.

Given his record, the Attorney General does not have the public credibility to supervise the 14 investigations that flow from the work of the Special Counsel and should be required to recuse himself from playing any role in these investigations.

There are numerous examples of Attorney General Barr's actions and statements that have misled the public regarding the Mueller investigation and report.

In a four page [letter](#) describing the [Mueller report](#) that he sent to Congress and released to the public on March 24, 2019, Attorney General Barr mischaracterized the report and then left that mischaracterization as the only information available to Congress and to the public for almost a month prior to releasing the Mueller report.

Barr's March 24 letter allowed President Trump to claim, without contradiction by the Attorney General, that the Special Counsel report exonerated Trump on collusion and obstruction of justice. In fact, the report did not do so: it did not deal with collusion at all, but only with the legal issues of conspiracy and coordination, and it explicitly stated that it did not exonerate President Trump on obstruction of justice.

Instead the report said Mueller had accepted the position of the Justice Department's Office of Legal Counsel (OLC) that a sitting President could not be indicted. The [report](#) said:

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 U.S.C. § 515; 28 C.F.R. § 600.7(a), this Office accepted OLC's legal conclusion for the purpose of exercising prosecutorial jurisdiction.

The strength of the case compiled by Special Counsel Mueller against Trump on obstruction of justice is illustrated by a [public statement](#) signed by more than 600 former Justice Department prosecutors who worked in every Republican and Democratic presidential administration since President Eisenhower. The prosecutors [state](#) that the evidence shown in the Mueller report would "result in multiple felony charges for obstruction of justice" for "any other person not covered by the Office of Legal Counsel policy against indicting a sitting President." This has raised further serious public credibility problems for Attorney General Barr and his role in these matters.

Barr's inaccurate description of the Mueller report on March 24 resulted in Mueller sending a [letter](#) to Barr three days later, on March 27, protesting Barr's characterization of the report. In his letter to Barr, Mueller said of Barr's memo:

The summary letter the Department sent to Congress and released to the public late in the afternoon of March 24 did not fully capture the context, nature and substance of this office's work and conclusions. [...] There is now public confusion about critical aspects of the results of our investigation. This threatens

to undermine a central purpose for which the Department appointed the Special Counsel: to assure full public confidence in the outcome of the investigations.

Mueller also urged Barr to release the summaries contained in the Special Counsel report that would have provided an accurate picture of the contents of the report. Mueller said that releasing the summaries “would alleviate the misunderstandings that have arisen and would answer congressional and public questions about the nature and outcome of our investigation.”

Barr refused Mueller’s request to release the summaries. This refusal left in place Barr’s mischaracterization of the report, which allowed President Trump to continue to publicly claim that he had been totally exonerated by the report. Barr never corrected the President’s untrue claim, even though he knew or should have known that the President was using his March 24 letter as the basis for making inaccurate public claims about the Mueller report.

Barr subsequently stated in public [testimony](#) to congressional committees on April 9 and April 10, 2019 that he did not know if Mueller and his office disagreed with the portrayal of the report contained in Barr’s March 24 letter.

However, given Mueller’s March 27, 2019 letter to him, Barr clearly did know at the time of his testimony that Mueller objected to his characterization of the report. Barr later [claimed](#) that in a telephone call on March 28, Mueller expressed concern only about the media coverage of Barr’s letter, not its substance. But Mueller clearly had done more than complain about press coverage by telling Barr in writing that Barr’s March 24 letter “did not fully capture the context, nature and substance” of his report and in failing to do so had caused “public confusion.”

On April 18, 2019, hours before the public release of the redacted report, Barr [held](#) a lengthy press conference in which he again mischaracterized the Mueller report. Once again the Attorney General presented the report to the media and the public in the light most favorable to President Trump at the expense of what the Mueller report actually said.

In the press conference, Barr repeated the President’s “no collusion” refrain a number of times in saying that the report found there was “no collusion” between the Trump campaign and Russia. However, Barr knew that the report explicitly said it was not addressing “collusion” and instead was dealing only with the legal issues of coordination and conspiracy. By using Trump’s invented framing of the investigation as a question of “collusion,” Barr knowingly mischaracterized the analysis in the report and validated Trump’s repeated claims of “no collusion.”

Finally, and perhaps most egregiously, Barr’s testimony before the Senate Judiciary Committee on May 1 was, as Benjamin Wittes, a respected observer of the Justice Department [wrote](#), “a disinformation campaign being run by the senior leadership of the Justice Department” that is “utterly beneath the United States Department of Justice.”

In his testimony, Barr inaccurately portrayed the President as having “fully cooperated” with the Mueller investigation, when this is obviously not true.

President Trump refused to be interviewed by the Special Counsel and instead provided written responses to limited questions submitted by the Special Counsel under terms demanded by Trump that prohibited the Special Counsel from asking any questions about obstruction. This was anything but full cooperation.

Furthermore, the Mueller report lays out in detail the multiple acts of apparent obstruction of justice that Trump engaged in to frustrate or derail the investigation. Whether these acts meet the criminal standard for prosecutable obstruction of justice, and more than 600 former prosecutors [state](#) they do, the acts certainly constitute efforts to obstruct the investigation and again demonstrate that Trump's conduct was anything but full cooperation.

For Barr to portray Trump's conduct as full cooperation is not only incorrect but also goes beyond his role as the head of the Justice Department, and instead places Barr in the position of serving as Trump's defender.

Barr was not credible in his [description](#) of Trump's instruction to former White House Counsel Donald McGahn to take steps to have Special Counsel Mueller removed on grounds of conflict of interest. In Barr's view, this was not an instruction to "fire" Mueller because removal for reasons of conflict would "presumably" lead to appointment of another Special Counsel while "firing" Mueller would not.

To the contrary, McGahn certainly believed Trump was directing him to fire Mueller, because he was ready to resign rather than carry out an instruction that he feared would be a [second Saturday Night Massacre](#), which involved the firing of Watergate Special Prosecutor Archibald Cox.

Barr's parsing of Trump's directive to remove Mueller as not really an effort to fire Mueller is sophistry. Another Special Counsel could have been appointed whether Mueller was removed for cause or otherwise, so the distinction drawn by Barr makes no sense. It also misses the point, which is that Trump wanted Mueller removed, whether a different Special Counsel would have then replaced him. Trump's directive to remove Mueller was an effort to obstruct the investigation, even if Mueller was going to be replaced by another Special Counsel, and there is no reason to think he would have been.

Barr's attempt to rationalize and defend what otherwise seems to be a plain effort at obstruction of justice has yet again created the public appearance that his fealty to Trump comes at the expense of his obligation to the Justice Department's stated [mission](#) "to ensure fair and impartial administration of justice for all Americans."

Collectively, these actions and statements by Attorney General Barr demonstrate a repeated willingness to use his role as Attorney General to amplify and defend unjustifiable positions of President Trump at the expense of the Mueller report. This is an inappropriate role for the nation's chief law enforcement official and fails to comply with his obligation, or the Department's obligation, to administer "fair and impartial" justice.

As noted above, Attorney General Barr currently supervises the [14](#) pending criminal investigations stemming from the Mueller investigation that have been referred by the Special Counsel to other Justice Department offices, such as the U.S. Attorney for the Southern District of New York. (See Report of the Office of Special Counsel at App. D-Sec. B.) In that role, Barr acts as the final decision-maker on these matters.

In light of Attorney General Barr's actions and statements described above that collectively create the appearance by the Attorney General of bias and favoritism to President Trump, Attorney General Barr should be required to recuse himself from any continuing involvement in the 14 pending matters that stem from the Mueller investigation. The Attorney General also should be required to recuse himself from any other Department matters that arise from the Mueller investigation or the 2016 Trump presidential campaign.

The Attorney General's demonstrated baseless favoritism towards President Trump has irreparably undermined Barr's credibility and compromised public confidence in his ability to continue to supervise the 14 pending matters in a fair and impartial manner.

Democracy 21 strongly urges you to exercise your responsibility as the Director of the Office of Professional Responsibility to enforce the Department of Justice's high standards of professional responsibility by taking prompt action to ensure that Attorney General Barr is recused from the 14 pending investigations that stem from the Special Counsel investigation.

Sincerely,

A handwritten signature in black ink, appearing to read "Fred Wertheimer", with a long horizontal line extending to the right.

Fred Wertheimer  
President

CC: Michael Horowitz  
Inspector General  
U.S. Department of Justice  
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