

Congress of the United States
Washington, DC 20515

January 31, 2023

Michael E. Horowitz
Department of Justice
Office of the Inspector General
950 Pennsylvania Ave, NW
Washington, DC 20530-0001

Dear Inspector General Horowitz:

As former prosecutors and Members of Congress, we are alarmed by a recent *New York Times* article¹ that revealed possible misconduct by Special Counsel John Durham and then-Attorney General Bill Barr in connection with Mr. Durham's fruitless four-year investigation. At former President Donald Trump's urging, Mr. Barr appointed Mr. Durham as a special counsel to investigate the origins of the Russia inquiry codenamed "Crossfire Hurricane." Rather than vindicate former President Trump, the Durham investigation instead resulted in two failed political prosecutions, two career prosecutors resigning in protest, an abuse of the grand jury process, an attempt to suppress a part of your lengthy and detailed report, and a misleading narrative presented to the American people that hid an allegation of a financial crime committed by the former President.

We are referring this case for your review to determine whether there was sufficient grounds to open the investigation in the first instance, and whether Mr. Barr and Mr. Durham violated any laws, DOJ rules or regulations, or canons of legal ethics.

Background

In 2019, Mr. Barr "weaponized" the Department of Justice to pursue the false conspiracy theory that the "deep state" or Hillary Clinton caused the FBI to open an inquiry into ties between Trump and Russia. Your office conducted an independent review of the Russia inquiry and concluded that the FBI's actions were not politically motivated, that the Steele dossier had nothing to do with the origination of the investigation, and that the FBI had a sufficient basis to open the Russia case.²

Specifically, your office's December 2019 report stated that "FBI officials involved in opening the investigation...were aware of information regarding Russia's efforts to interfere with the 2016 U.S. elections." You also testified before the Senate Judiciary Committee and confirmed

¹ Charlie Savage, Adam Goldman and Katie Benner, "How Barr's Quest to Find Laws in the Russia Inquiry Unraveled," *New York Times*, Jan. 26, 2023. <https://www.nytimes.com/2023/01/26/us/politics/durham-trump-russia-barr.html>

² U.S. Department of Justice Office of the Inspector General, *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation*, Dec. 2019.

that “we did not find any documentary or testimonial evidence that political bias or improper motivation influenced the FBI’s decision to conduct these operations.”³

Yet at the time he was confirmed — and before he had reviewed *any* evidence — Mr. Barr told aides that “he already suspected that intelligence abuses played a role in igniting the Russia investigation.”⁴ This was a conclusion in search of an investigation — a clear abuse of power.

In support of their cause, Mr. Durham also apparently tried to coerce you to modify your finding that the FBI had a sufficient basis to open a full investigation into Russian interference in the 2016 election.⁵ When you refused to alter your report, Mr. Barr and Mr. Durham went on the offensive to undermine your conclusion and preserve their preferred political narrative. Mr. Barr told Fox News that the investigation began “without any basis,”⁶ and Mr. Durham released an unusual statement about an ongoing investigation in which he disagreed with your conclusions.

The *Times* investigation reveals possible prosecutorial misconduct, abuse of power, ethical transgressions, and a potential cover up of an allegation of a financial crime committed by the former President. Moreover, the *Times* describes in great detail the extent to which Mr. Barr and Mr. Durham improperly discussed publicly ongoing investigations and misled the American public about what their evidence had uncovered.

We therefore request that you initiate an investigation into whether there was a sufficient basis to open Mr. Durham’s investigation, and whether Mr. Barr and Mr. Durham violated any laws, DOJ rules or practices, or canons of legal ethics.

Discussion

The *Times* investigation sets forth multiple troubling allegations of misconduct by Mr. Barr and Mr. Durham:

1. Mr. Barr and Mr. Durham “never disclosed that their inquiry expanded in the fall of 2019, based on a tip from Italian officials, to include a criminal investigation into suspicious financial dealings related to Mr. Trump.”⁷ Instead, the Department leaked that Mr. Durham had opened a criminal investigation without further explanation. In light of

³ “Statement of Michael E. Horowitz, Inspector General, U.S. Department of Justice before the U.S. Senate Committee on the Judiciary Concerning ‘Examining the Inspector General’s Report on Alleged Abuses of the Foreign Intelligence Surveillance Act.’” *Oig.justice.gov*, Dec. 11, 2019, <https://oig.justice.gov/node/1100>

⁴ Charlie Savage, Adam Goldman and Katie Benner, “How Barr’s Quest to Find Laws in the Russia Inquiry Unraveled,” *New York Times*, Jan. 26, 2023. <https://www.nytimes.com/2023/01/26/us/politics/durham-trump-russia-barr.html>

⁵ *Id.*

⁶ “Review of Four FISA Applications and Other Aspects of the FBI’s Crossfire Hurricane Investigation.” *U.S. Department of Justice Office of the Inspector General*. Dec. 2019. <https://www.justice.gov/storage/120919-examination.pdf>

⁷ Charlie Savage, Adam Goldman and Katie Benner, “How Barr’s Quest to Find Laws in the Russia Inquiry Unraveled,” *New York Times*, Jan. 26, 2023. <https://www.nytimes.com/2023/01/26/us/politics/durham-trump-russia-barr.html>

the subject matter of Mr. Durham’s assignment, the news reports naturally “were all framed around the erroneous assumption that the criminal investigation must mean Mr. Durham had found evidence of potential crimes by officials involved in the Russia inquiry.”⁸ But Mr. Durham and Mr. Barr allowed this false and misleading narrative to dictate the perception by the American public, similar to Mr. Barr’s “misleading” summary of the report by Special Counsel Robert Mueller.⁹ Mr. Barr, “who weighed in publicly about the Durham inquiry at regular intervals in ways that advanced a pro-Trump narrative, chose in this instance not to clarify what was really happening.”¹⁰

2. Mr. Durham “used Russian intelligence memos—suspected by other U.S. officials of containing misinformation—to gain access to emails of an aide to George Soros.”¹¹ Even after a district judge *twice* rejected Mr. Durham’s application for an order to retrieve information about those emails in pursuit of an anti-Semitic conspiracy theory related to Mr. Soros,¹² Mr. Durham nonetheless used grand jury powers to get the emails — a shocking response to a judge’s finding of insufficient credible evidence to obtain the materials. Not surprisingly, the emails “yielded no evidence that Mr. Durham has cited in any case he presented.”¹³

Mr. Barr appeared to violate Department of Justice policy by discussing the Durham probe publicly, making statements in opposition to your own findings, including that “the evidence shows that we are not dealing with just mistakes or sloppiness. There is something far more troubling here.”¹⁴ In fact, the evidence revealed to date has not demonstrated any misconduct by the FBI related to the origination of the Crossfire Hurricane investigation, confirming your previous findings. Yet in advance of the 2020 election, and at the urging of Republican presidential candidate Trump, Mr. Barr and Mr. Durham manipulated the public to believe that such evidence existed.

3. Prodded by Mr. Barr, Mr. Durham’s improper politicization of the investigation and questionable charging decisions resulted in the extremely unusual decision by two career prosecutors to resign in protest of unethical and unsupported actions. One of those prosecutors, Nora Dannehy, was Mr. Durham’s longtime deputy who, according to the

⁸ *Id.*

⁹ See *Electronic Privacy Information Center v. U.S. Department of Justice*, Civil Action No. 19-810 (D.D.C. 2020) (“In the Court’s view, Attorney General Barr’s representation that the Mueller Report would be ‘subject only to those redactions required by law or by compelling law enforcement, national security, or personal privacy interests’ cannot be credited without the Court’s independent verification in light of Attorney General Barr’s conduct and misleading public statements about the findings in the Mueller Report... and it would be disingenuous for the Court to conclude that the redactions of the Mueller Report pursuant to the FOIA are not tainted by Attorney General Barr’s actions and representations.”)

¹⁰ Charlie Savage, Adam Goldman and Katie Benner, “How Barr’s Quest to Find Laws in the Russia Inquiry Unraveled,” *New York Times*, Jan. 26, 2023. <https://www.nytimes.com/2023/01/26/us/politics/durham-trump-russia-barr.html>

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

Times, resigned after she learned that Mr. Durham had secretly directed other staff members to draft an interim report to be released shortly before the election.¹⁵

Mr. Durham also charged Michael Sussmann for allegedly lying to the FBI, despite scant evidence. Two prosecutors on his team, Anthony Scarpelli and Neeraj Patel, objected. “Mr. Scarpelli and Mr. Patel argued to Mr. Durham that the evidence was too thin to charge Mr. Sussmann and that such a case would not normally be prosecuted”¹⁶ Mr. Durham did not change course and “Mr. Scarpelli quit in protest” and “Mr. Patel left soon after to take a different job.”¹⁷ Mr. Sussmann was quickly acquitted after trial.

4. Mr. Durham also charged Igor Danschenko with making materially false statements regarding two sources in connection with the Steele dossier. Mr. Danschenko was also acquitted, but that apparently did not matter to Mr. Barr, who, according to the *Times* had an ulterior motive for those prosecutions. After the acquittal of Mr. Sussman, Mr. Barr “suggested that using the courts to advance a politically charged narrative was a goal in itself. Mr. Durham ‘accomplished something far more important’ than a conviction, Mr. Barr told Fox News, asserting that the case had ‘crystallized the central role played by the Hillary campaign in launching as a dirty trick the whole Russiagate collusion narrative and fanning the flames of it.’”¹⁸ With regard to prosecuting Mr. Danschenko, Mr. Barr said the prosecution would “get the story out” and “further amplify these themes and the role the F.B.I. leadership played in this”¹⁹ Charging individuals with crimes in order to pursue separate political narratives undermines our rule of law and represents a gross abuse of power.

The above allegations are alarming and, if true, show Mr. Barr and Mr. Durham misled the American people, abused their prosecutorial powers, and corrupted the Department of Justice to pursue a false political narrative. They may also have violated the law, Department of Justice regulations, and legal ethics in doing so. We request that you investigate this serious matter in an expeditious manner.

Sincerely,



Ted W. Lieu
Member, House Committee on the Judiciary



Daniel S. Goldman
Member, House Committee on Oversight
and Accountability

cc:

Attorney General Merrick Garland
FBI Director Christopher Wray

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*