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TASK FORCE ON THE RULE OF LAW

Sent via Facsimile & Regular Mail

January 8, 2020

Hon. Nancy Pelosi
Speaker
U.S. House of Representatives
H-232, The Capitol
Washington, DC 20515

Hon. Kevin McCarthy
Minority Leader
U.S. House of Representatives
H-204, The Capitol
Washington, DC 20515

Hon. Mitch McConnell
Majority Leader
U.S. Senate
S-230, The Capitol
Washington, DC 20515

Hon. Charles Schumer
Minority Leader
U.S. Senate
S-221, The Capitol
Washington, DC 20515

Dear Speaker Pelosi, Minority Leader McCarthy, Majority Leader McConnell, and Minority Leader Schumer:

We write on behalf of the New York City Bar Association (the “City Bar”) to urge Congress to commence formal inquiries into a pattern of conduct by Attorney General William P. Barr that threatens public confidence in the fair and impartial administration of justice. We make this request based upon our belief, as similarly recognized by Mr. Barr during his Senate confirmation hearings, that the Attorney General occupies a unique position with special obligations as the nation’s top law enforcement officer. We also make this request in keeping with the City Bar’s mission to embrace advancement of the rule of law and the fair administration of justice, especially by those who are entrusted with important public responsibilities.¹

¹ In October 2019, the City Bar called on Mr. Barr to recuse himself from all Department of Justice matters relating to allegations that President Donald J. Trump abused the power of his office to solicit political interference on his behalf by the government of Ukraine. Mr. Barr was personally named in the whistleblower complaint first raising those allegations and is reported to have been involved personally in some of the matters subject to review. To date, Mr. Barr has failed to recuse himself. See New York City Bar Association, *Attorney General Barr Should Recuse Himself from Department of Justice Review of Ukraine Matter*, Oct. 23, 2019, <https://www.nycbar.org/media-listing/media/detail/attorney-general-barr-should-recuse-himself-from-department-of-justice-review-of-ukraine->

As further described below, Mr. Barr’s recent actions and statements position the Attorney General and, by extension, the United States Department of Justice (DOJ) as political partisans willing to use the levers of government to empower certain groups over others. These statements are the latest examples of a broader pattern of conduct that is inconsistent with the role of the Attorney General in our legal and constitutional system and with the norms and standards that govern the fair administration of justice. We urge Congress to exercise its constitutional authority to investigate this troubling pattern of conduct, in order to assess Mr. Barr’s actions as Attorney General and to consider any legislative and oversight responses and remedies that may be necessary.

The duties to act impartially, to avoid even the appearance of partiality and impropriety, and to avoid manifesting bias, prejudice, or partisanship in the exercise of official responsibilities are bedrock obligations for government lawyers. In the context of pending investigations, government lawyers also are obliged to be circumspect in their public statements and to avoid prejudging the outcomes of those investigations.

Mr. Barr has disregarded these fundamental obligations in several extended public statements during the past few months:

- On October 11, 2019, in an invitation-only speech at the University of Notre Dame, Mr. Barr launched a partisan attack against “so called ‘progressives’” for supposedly waging a “campaign to destroy the traditional moral order.” He charged that “secularists” and “their allies among progressives” were “marshal[ing] all the force of mass communication, popular culture, the entertainment industry, and academia in an unremitting assault on religion and traditional values,” with the ultimate goal of achieving the “organized destruction” of religion. In his speech, which is now published on the DOJ website, Mr. Barr stated that “the Founding generation . . . believed that the Judeo-Christian moral system corresponds to the true nature of man” and that “Judeo-Christian moral standards are the ultimate utilitarian rules for human conduct.” According to the Attorney General, “they are like God’s instruction manual for the best running of man and society.” Expressing his view that “Judeo-Christian values . . . have made this country great”—while simultaneously rejecting the moral basis of secularism and, by implication, other religions (and atheism) as “an inversion of Christian morality,” Mr. Barr vowed to place the Department of Justice “at the forefront” of efforts to resist “forces of secularization.”²

[matter](#) (hereinafter New York City Bar Association, *Barr Should Recuse Himself*, Oct. 23, 2019). (All links cited in this letter were last checked on January 7, 2020).

² William P. Barr, Attorney General of the United States, *Remarks to de Nicola Center for Ethics and Culture, University of Notre Dame School of Law*, Oct. 11, 2019, <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-remarks-law-school-and-de-nicola-center-ethics> (as prepared for delivery); see Michael Sean Winters, *Notre Dame Had a Right to Host Barr—But His Talk Was Ridiculously Stupid*, NAT’L CATHOLIC REPORTER, Oct. 18, 2019, <https://www.ncronline.org/news/opinion/distinctly-catholic/notre-dame-had-right-host-barr-his-talk-was-ridiculously-stupid>.

- On November 15, 2019, in a speech at the Federalist Society’s National Lawyers Convention, Mr. Barr again vilified “progressives” and “the Left” (characterizing as “the other side” those who “oppose this President”) in highly partisan terms. Attacking “so-called progressives” for supposedly “treating politics as their religion,” and for allegedly attempting, by “any means necessary,” to “use the coercive power of the State to remake man and society in their image,” Mr. Barr charged that opponents of the Trump presidency’s policies have been “engaged in the systematic shredding of norms and the undermining of the rule of law.” By contrast, Mr. Barr proclaimed, conservatives “tend to have more scruple over their political tactics” and are more genuinely committed to the rule of law.³ The Attorney General referred to something he called a “progressive holy war,” characterized, he says, by the use of “any means necessary to gain momentary advantage.”
- On December 3, 2019 — drawing from earlier remarks at a Fraternal Order of Police gathering in New Orleans in which he lambasted District Attorneys from “large cities” who “style themselves as ‘social justice’ reformers, who spend their time undercutting the police, letting criminals off the hook, and refusing to enforce the law,” and “an increasingly vocal minority” that “regularly attacks the police and advances a narrative that it is the police that are the bad guys” and “automatically start[s] screaming for the officers’ scalps, regardless of the facts” following “a confrontation involving the use of force by police”⁴ — Mr. Barr warned at a DOJ awards ceremony that “the American people have to . . . start showing, more than they do, the respect and support that law enforcement deserves,” and “if communities don’t give that support and respect, they might find themselves without the police protection they need.”⁵ Although Mr. Barr did not specify which District Attorneys he had in mind, he did say that “[t]hese anti-law enforcement DAs have tended to emerge in jurisdictions where the election is largely determined by the primary” and cited to “large cities” as the culprit jurisdictions which, in his view, were headed towards “[m]ore crime; more victims” as a result.⁶ In similar fashion, Mr. Barr did not specify which “communities” were at risk of seeing

³ William P. Barr, Attorney General of the United States, *19th Annual Barbara K. Olson Memorial Lecture, National Lawyers Convention, Federalist Society*, Nov. 15, 2019, <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-19th-annual-barbara-k-olson-memorial-lecture> (as prepared for delivery); see Ruth Marcus, *The Most Alarming Part of Barr’s Speech Was Its Angrily Partisan Tone*, WASH. POST, Nov. 18, 2019, https://www.washingtonpost.com/opinions/william-barrs-language-is-that-of-an-ideological-warrior-not-an-attorney-general/2019/11/18/27f26c64-0a42-11ea-bd9d-c628fd48b3a0_story.html.

⁴ William P. Barr, Attorney General of the United States, *Attorney General William P. Barr Delivers Remarks at the Grand Lodge Fraternal Order of Police’s 64th National Biennial Conference*, August 12, 2019, <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-remarks-grand-lodge-fraternal-order-polices-64th> (as prepared for delivery) (hereinafter “FOP Speech”).

⁵ William P. Barr, Attorney General of the United States, *Third Annual Attorney General’s Award for Distinguished Service in Policing*, Dec. 3, 2019, <https://www.justice.gov/opa/video/third-annual-attorney-general-s-award-distinguished-service-policing>.

⁶ In response to the FOP Speech, 67 prosecutors issued a statement calling Barr’s speech “deeply concerning” and cautioning “It is not the time for a return to fear-driven narratives that find no foundation in fact.” *Statement in Response to Attorney General Barr’s Remarks to The Fraternal Order of Police*, August 16, 2019, <https://fairandjustprosecution.org/wp-content/uploads/2019/08/Barr-Remarks-Sign-On-Statement.pdf>.

decreased police protection because they lack respect for law enforcement, but his comment was understood by some observers, not unreasonably, as being directed toward members of communities of color protesting excessive use of force by police.⁷

- On December 10, 2019, in a television interview soon after DOJ's Inspector General released a report finding no improper political motivation in the FBI's commencement of a counterintelligence investigation into alleged ties between the Trump-Pence campaign and Russian officials in 2016, Mr. Barr publicly rejected the Inspector General's findings, asserting instead that a separate ongoing investigation into the FBI's actions that he personally had directed would likely reach a different conclusion. Although that second investigation (which is being supervised by a different DOJ official) is not yet complete, Mr. Barr nevertheless openly discussed his opinions about the likely outcome of that investigation. In a separate statement the previous day, Mr. Barr asserted that the FBI's factual predicate was "insufficient to justify" its investigation and that the FBI may have acted in "bad faith" in commencing that investigation.⁸

These comments follow and are reminiscent of Mr. Barr's earlier mischaracterizations of the Mueller Report, prior to his release of a redacted version of it, in which Mr. Barr claimed the special counsel had found insufficient evidence of any obstruction of justice by President Trump—

⁷ In a television interview with Pete Williams of NBC News on December 10, 2019, Mr. Barr denied that he had suggested that people should not criticize police officers and said he was referring to the high rates of job vacancies in police agencies throughout the country. See *Full Interview: Barr Criticizes Inspector General Report on the Russia Investigation*, NBC NEWS, Dec. 10, 2019, <https://www.nbcnews.com/video/full-interview-barr-criticizes-inspector-general-report-on-the-russia-investigation-74851909911>. There has been extensive reporting over many years on police shortages and the innovative recruitment efforts being made by police departments, but the causes of the hiring challenges are myriad and complex. According to experts in the field, contributing factors include relatively low starting pay; a changing workforce with expectations and objectives that differ from past generations; a weakening pipeline from family members and the military; continuing challenges associated with recruitment of non-traditional candidates, including women and people of color; disqualifying past behaviors by applicants; the stress of increasingly being called upon to deal with the social ills of homelessness, substance abuse and mental illness; news stories highlighting the challenges of serving as a police officer; and misaligned job expectations. See, e.g., Laurie Mack, *Shortage Of Officers Fuels Police Recruiting Crisis*, Dec. NPR NEWS, Dec. 11, 2018, <https://www.npr.org/2018/12/11/675505052/shortage-of-officers-fuels-police-recruiting-crisis>; Timothy Roufa, *Why Police Departments Are Facing Recruitment Problems*, THE BALANCE CAREERS/CRIMINOLOGY CAREERS, Nov. 5, 2018, <https://www.thebalancecareers.com/why-police-departments-are-facing-recruitment-problems-974771>; Sid Smith, MPA, Chief of Police (former), *A Crisis Facing Law Enforcement: Recruiting in the 21st Century*, POLICE CHIEF MAGAZINE, June 2016, <https://www.policechiefmagazine.org/a-crisis-facing-law-enforcement-recruiting-in-the-21st-century/>; Ben Langham, Lieutenant, Kenai, Alaska, Police Department, *Millennials and Improving Recruitment in Law Enforcement*, POLICE CHIEF MAGAZINE, May 24, 2017, <https://www.policechiefmagazine.org/millennials-and-improving-recruitment/>; Lt. Ryan Harmon, *A New Approach In Recruiting & Retaining Qualified Officers At The Bella Vista [Arkansas] Police Department*, March 2011, <https://www.cji.edu/wp-content/uploads/2019/04/new-approach-in-recruiting-retaining-qualified-officers.pdf>; POLICE EXECUTIVE RESEARCH FORUM, *The Workforce Crisis, And What Police Agencies Are Doing About It*, September 2019, <https://www.policeforum.org/assets/WorkforceCrisis.pdf>.

⁸ *Full Interview: Barr Criticizes Inspector General Report*, supra note 7; Mikhaila Fogel, *Notable Statements on Inspector General's Report*, LAWFARE, Dec. 9, 2019, <https://www.lawfareblog.com/notable-statements-inspector-generals-report>; William Webster, *The Rule of Law Still Matters*, NY Times, Dec. 17, 2019, at A27, <https://www.nytimes.com/2019/12/16/opinion/FBI-Trump-russia-investigation.html>.

a material mischaracterization of the Mueller Report and a proposition rejected by more than 1,000 former federal prosecutors based on the facts set forth in the Mueller Report.⁹

These public statements by Mr. Barr also contravene the norms applicable to his office and warrant further investigation by Congress as part of an inquiry into Mr. Barr's conduct as Attorney General more generally. They may even implicate ethical considerations, insofar as prosecutors must generally avoid public comments on ongoing investigations and must not manifest any bias or prejudice based on race, religion, sexual orientation or partisan political considerations in exercising their prosecutorial discretion.¹⁰ Although we do not in this letter take any position on whether or not Mr. Barr has violated any Rules of Professional Conduct, at least one leading legal ethics authority has suggested that government lawyers have special obligations to be factually accurate in their public statements, and should be bound by the Rules of Professional Conduct, even if they do not represent clients in the traditional sense.¹¹ Indeed, Mr. Barr's conduct appears to run afoul of the "very special obligations" that he himself professed to recognize during his 1991 and 2019 Senate confirmation hearings.¹² During the 1991 hearing, Mr. Barr recognized that the Attorney General "holds in trust the fair and impartial administration of justice" and bears responsibility "to enforce the law evenhandedly and with integrity." He also noted that the Attorney General "must ensure that the administration of justice . . . is above and away from politics," and that "[n]othing could be more destructive of our system of government, of the rule of law, or the Department of Justice as an institution, than any toleration of political interference with the enforcement of the law." In 2019, Mr. Barr further explained that the Department of Justice must be a "place[] in the government where the rule of law—not politics—holds sway, and where they [the American people] will be treated fairly based solely on the facts and an evenhanded application of the law."¹³

Mr. Barr's recent actions and statements are in sharp and diametric contrast to the principles he cited in his confirmation hearings. In addition, they reinforce a broader pattern of conduct during his tenure in which he has created, at a minimum, an appearance of partiality in

⁹ *Statement by Former Federal Prosecutors*, May 6, 2019, <https://medium.com/@dojalumni/statement-by-former-federal-prosecutors-8ab7691c2aa1>. Mr. Mueller expressed a similar point of view in a letter to the Attorney General, in which he stated that "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." *Letter from Special Counsel Robert S. Muller, III to The Honorable William P. Barr*, March 27, 2019, <https://int.nyt.com/data/documenthelper/796-mueller-letter-to-barr/02499959cbfa313c36d4/optimized/full.pdf>.

¹⁰ CRIMINAL JUSTICE STANDARDS FOR THE PROSECUTION FUNCTION §§ 3-1.3, 3-1.4, 3-1.6 & 3-1.10 (Am. Bar Ass'n, 4th ed. 2017), https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition.

¹¹ See Ellen Yaroshefsky, Regulation of Lawyers in Government Beyond the Client Representation Role, 33 NOTRE DAME J.L. ETHICS & PUB. POL'Y 151 (2019), <https://am.aals.org/wp-content/uploads/sites/4/2018/12/AM19SYaroshefskyRegulationofLawyers.pdf>.

¹² New York City Bar Association, *Barr Should Recuse Himself*, Oct. 23, 2019, *supra* note 1; see also *infra* note 13.

¹³ Confirmation Hearing of William P. Barr, 15. Hrg. 102-505, Pt. 2 (Nov. 12 & 13, 1991), at 16, <http://civilrightsdocs.info/pdf/ag-vacancy/1991-AG-Nomination-Hearing-Transcript.pdf>. Written Testimony of William P. Barr, Hearing on the Nomination of the Hon. William Pelham Barr to Be Attorney General of the United States, Committee on the Judiciary, U.S. Senate, Jan. 15, 2019, at 1, <https://www.judiciary.senate.gov/download/barr-testimony>.

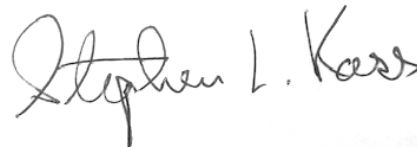
how he understands and carries out his role as Attorney General. In a troubling number of instances, Mr. Barr has spoken and acted in a manner communicating an impression that he views himself as serving as the Attorney General not for the entire nation, but more narrowly for certain segments of society—whether defined in terms of religion, ideology (his own “side,” to borrow the language of Mr. Barr’s Federalist Society speech) or party affiliation.

For the reasons stated above, we have significant concerns about the propriety of Mr. Barr’s recent actions and statements. We urge Congress to exercise its constitutional obligations by expeditiously commencing formal inquiries into Mr. Barr’s conduct.

Respectfully,



Roger Juan Maldonado
President
New York City Bar Association



Stephen L. Kass
Chair, Task Force on the Rule of Law
New York City Bar Association

cc: Hon. William P. Barr
Attorney General of the United States
U.S. Department of Justice
(*Sent via Express and Regular Mail*)

Hon. Jerrold Nadler
Chair, Committee on the Judiciary
U.S. House of Representatives

Hon. Doug Collins
Ranking Member, Committee on the Judiciary
U.S. House of Representatives

Hon. Lindsey Graham
Chair, Committee on the Judiciary
U.S. Senate

Hon. Dianne Feinstein
Ranking Member, Committee on the Judiciary
U.S. Senate