

June 23, 2020

**STATEMENT REGARDING ATTORNEY GENERAL WILLIAM H. BARR FROM
MEMBERS OF THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL FACULTY**

INTRODUCTION

As full-time faculty, deans, legal professionals, or emeriti at the George Washington University Law School, we write with a heavy heart to condemn a series of acts and omissions by William P. Barr, the Attorney General of the United States, which have undermined the rule of law, damaged public confidence that the law applies equally and fairly to all persons, and demonstrated contempt for basic constitutional rights. In short, Attorney General Barr has failed to fulfill his oath of office to “support and defend the Constitution of the United States.”

We feel a special obligation to speak out because of the long relationship Attorney General Barr has with our law school and our university. Our law school stands for the core values of the rule of law, the fair and equal application of the law to all persons, and the protection of constitutional rights. Our school granted Attorney General Barr his J.D. in 1977. He served on our school’s Board of Advisors, donated money to and raised money for us. We once took pride in Mr. Barr’s successful career, including his service three decades ago as Deputy Attorney General and Attorney General, and named our Dean’s Suite in his honor. Our university awarded him an honorary degree in 1992.

Sadly, in his current (second) term as Attorney General Mr. Barr has demonstrated repeated disregard of the principles for which our institution stands. Since 2019 Attorney General Barr has made the Department of Justice unrecognizable to those of us who prize its independence from politics and its commitment to the highest standards of the legal profession. We cannot remain silent in the wake of the damage he has done to the integrity of the Department, the rule of law, and the constitutional order. Our school’s relationship with Attorney General Barr places us in a unique position, and imposes a unique duty on us to candidly confront his abuse of the office of the Attorney General and his betrayal of professional norms and the Constitution.

William Barr’s actions as Attorney General since 2019 have undermined the rule of law, breached constitutional norms, and damaged the integrity and traditional independence of his office and of the Department of Justice. He obfuscated and misled the American public about the results of the Mueller investigation. He wrongfully interfered in the day-to-day activities of career prosecutors, and continues to do so, bending the criminal justice system to benefit the President’s friends and target those perceived to be his enemies. He participated in the forcible removal from public space of peaceful protesters, exercising their First Amendment rights to speech and assembly in order to protest racial injustice. His actions have posed, and continue to

create, a clear and present danger to the even-handed administration of justice, to civil liberties, and to the constitutional order.

THE MUELLER INVESTIGATION AND REPORT

On March 22, 2019, after finishing his investigation into Russian influence in the 2016 election and the relationship of Russia to the Trump campaign, Special Counsel Robert S. Mueller III delivered his Report to Attorney General Barr. Two days later, on March 24, 2019, Attorney General Barr issued a four-page “summary” of the Mueller Report in a public letter to the Senate Judiciary Committee. On March 27, 2019, Special Counsel Mueller stated in a letter to Attorney General Barr that the representations made in the March 24, 2019 letter “did not fully capture the context, nature, and substance of th[e] [Special Counsel’s] Office’s work and conclusions.” Special Counsel Mueller asserted that the Attorney General’s letter had confused the public and “threaten[ed] to undermine a central purpose for which the Department appointed [] Special Counsel [Mueller]: to assure full public confidence in the outcome of the investigations.” Attorney General Barr did nothing to address Special Counsel’s Mueller’s concerns. Instead, at a press conference on April 18, 2019, Attorney General Barr falsely claimed that Mueller had found that there was no “collusion” between Russian agents interfering in the 2016 election and the Trump campaign.

A comparison of the actual text of the Mueller Report with the Attorney General’s statements about the Report reveals that Attorney General Barr misstated what Special Counsel Mueller did in his investigation and what that investigation concluded. Attorney General Barr’s assertion that Mueller found no “collusion” is misleading because Mueller, who limited his investigation to possible crimes, never examined “collusion.” Although the Mueller Report stated that the investigation “did not establish” that the Trump campaign criminally conspired with the Russian government, it did find extensive links between Trump campaign officials and individuals with ties to the Russian government. But from the time Attorney General Barr first wrote his March 24th letter until the actual release of the redacted Mueller Report almost a month later, the public was prevented from knowing that the Mueller Report expressly found such links. Meanwhile, Attorney General Barr’s misrepresentations took root.

We regard Attorney General Barr’s purported summaries as misleading and deceptive, and we must ask ourselves why he issued them. The only answer that seems plausible is that Attorney General Barr intended the result that Special Counsel Mueller warned about: i.e., to create public confusion about critical aspects of the Mueller investigation and to undermine full public confidence in the outcome of the investigation. We are not alone in our conclusion. United States District Judge Reggie B. Walton wrote on March 5th of this year, in a case seeking disclosure of an unredacted copy of the Mueller report, that “review of the redacted version of the Mueller Report by the Court results in the Court’s concurrence with Special Counsel Mueller’s assessment that Attorney General Barr distorted the findings in the Mueller Report.”

Special Counsel Mueller was duly appointed in accordance with Department of Justice regulations. He investigated on behalf of the American people, and he had every right to expect

that his work would be fairly presented to the American people. The American people had every right to expect the same. Attorney General Barr prevented this from happening. The Attorney General's statements were disingenuous, at best, and certainly deceitful. In distorting the Mueller Report to be consistent with the President's desired narrative, Barr elevated loyalty to the President above the needs of the body politic. The American people have the right to expect candor from their chief law enforcement officer, especially on grave matters of state.

THE SENTENCING OF ROGER STONE

Attorney General Barr disregarded principles of even-handed justice and the rule of law in connection with the sentencing of convicted felon Roger Stone. Career prosecutors in the Department of Justice who had successfully prosecuted Mr. Stone submitted a sentencing memorandum recommending a sentence consistent with the relevant federal sentencing guidelines. Shortly thereafter, and after the President publicly criticized the Department's recommendation, the Department withdrew that recommendation and substituted a recommendation for a lighter sentence. Career prosecutors withdrew from the case.

In response, roughly 2,000 veterans of the Department of Justice ("DOJ Alumni") joined in a Feb. 16, 2020 public letter criticizing the President and Attorney General Barr. We borrow from that public statement in describing the significance of the Stone case. The letter explains:

[i]t is unheard of for the Department's top leaders to overrule line prosecutors [who serve as civil servants without political appointments], who are following established policies, in order to give preferential treatment to a close associate of the President. That is what Attorney General Barr did in the Stone case. And, worse, he did so after the President publicly condemned the sentencing recommendation that line prosecutors had already filed in court.

We agree with the DOJ Alumni that the public could only conclude that the Attorney General believed that fulfilling the President's personal wishes was more important than ensuring even-handed justice for all federal criminal defendants.

Attorney General Barr's conduct poses a grave threat to the fair administration of justice and to the notion that we all stand equal before the law. No one should receive special treatment in a criminal prosecution because of a close personal or political relationship with the President. This is not fidelity to the rule of law and to even-handed justice. It is fidelity to the whims of the President, the stuff of autocracies, not a constitutional republic.

THE CASE OF MICHAEL FLYNN

The Attorney General's conduct in the case of former National Security Advisor Michael Flynn was also deeply problematic. As is well known, General Flynn was indicted for lying to the FBI when agents interviewed him about earlier false statements he had made to the incoming Vice President and White House Chief of Staff. In discussion with those two officials, Flynn had

falsely denied that he had discussed with the Russian Ambassador to the United States the sanctions the Obama administration had imposed on Russia for its interference in the 2016 election. In fact, Flynn had requested that Russia not retaliate for the sanctions. The FBI had proof that Flynn was lying because of material it uncovered during what the DOJ Inspector General found to be a properly predicated and legally-conducted intelligence operation. Because the Russians also knew and could likely prove that Flynn had lied, Flynn's lies posed a security threat of the highest order to the United States in the event the Russians used their knowledge to blackmail Flynn.

After information that Flynn had lied to the Vice President and the Chief of Staff became public, Flynn was out as National Security Advisor, whether because he resigned or because the President fired him. President Trump said he "had to fire General Flynn because he lied to the Vice President and the FBI." Flynn, fully advised by competent counsel, entered a guilty plea to the charges that he had lied to the FBI.

Thereafter, President Trump repeatedly and publicly complained that Flynn had been mistreated and subjected to a "witch hunt." After Flynn pleaded guilty before two federal judges, the Department moved to dismiss the charges against Flynn and to allow him to withdraw his guilty plea. This motion appeared in an extraordinary filing signed by a single political appointee after the career prosecutors on the case had refused to sign. The facts set forth above and in many public sources indicate that the Department's purported justification for making the motion cannot withstand scrutiny, given the ample evidence that the investigation was well-founded and the fact that Flynn admitted under oath and in open court that he told material lies to the FBI in violation of longstanding federal law.

In response to the Department's motion to dismiss the charges, Judge Emmett Sullivan appointed former United States District Judge John Gleeson as amicus to argue against the motion and to address whether perjury charges should be contemplated against Flynn. Judge Gleeson's deeply researched amicus brief filed on June 10, 2020 argues persuasively that "[t]he reasons offered by the Government are so irregular, and so obviously pretextual, that they are deficient"; "the facts surrounding the filing of the Government's motion constitute clear evidence of gross prosecutorial abuse"; and "[t]hey reveal an unconvincing effort to disguise as legitimate a decision to dismiss that is based solely on the fact that Flynn is a political ally of President Trump."

Whether or not the Department's motion is granted, the salient fact is that the motion was made at all. DOJ Alumni, including many who had protested the revised sentencing memorandum in the Stone case, also criticized the motion in the Flynn case. The Attorney General once again sought to do a favor for the President, despite Flynn's lies to his superiors and to the FBI, and Flynn's robust admission to criminal acts. As the DOJ Alumni put it in a public letter on May 11, 2020: "Governments that use the enormous power of law enforcement to punish their enemies and reward their allies are autocracies, not constitutional republics."

CLEARING LAFAYETTE SQUARE

Attorney General Barr's actions on the Mueller Report, and in the Stone and Flynn matters, harmed public confidence in the Department of Justice. This confidence was further undermined by his participation in the unconstitutional dispersal of people lawfully gathered in Lafayette Square on the evening of June 1, 2020, to protest the murder of George Floyd at the hands of a Minneapolis police officer. "Before the start of a city-imposed curfew," a June 10 letter from DOJ alumni stated, "federal law enforcement officers in riot gear reportedly fired rubber bullets, chemical gas, smoke canisters, and stun grenades at peaceful protesters, and otherwise used excessive force, physically injuring many people, including journalists and an Episcopal priest who had come to give food and water to the protestors." These measures put scores of innocent people at serious physical risk.

Although Attorney General Barr has denied issuing any orders to the law enforcement officers, spokespersons for the Department of Justice and the White House have said he was in charge and gave the orders. We need not attempt to resolve those discrepancies here. It is undeniable that the Attorney General, who was on the scene, made no effort to assure that the First Amendment rights of lawful protestors were protected. He made matters worse by participating with President Trump in a photo opportunity in front of St. John's Episcopal Church, whose leaders had neither been asked for nor granted permission for partisan exploitation of their house of worship. At a critical moment in American history, Attorney General Barr could have been a leader in protecting Americans' First Amendment right to express their outrage at our nation's long history of institutional racism, and police brutality against people of color. Instead, Attorney General Barr stands on the wrong side of history.

CONCLUSION

William Barr's actions as Attorney General since 2019 have undermined the rule of law, breached constitutional norms, and damaged the integrity and traditional independence of his office and of the Department of Justice. He obfuscated and misled the American public about the results of the Mueller investigation. He wrongfully interfered in the day-to-day activities of career prosecutors, injecting partisan politics into the criminal justice system by bending its administration to benefit the President's friends and target those perceived to be his enemies. He participated in the forcible removal from public space of peaceful protesters, exercising their First Amendment rights to speech and assembly in order to protest racial injustice, so that he and the President could have a photo opportunity in front of a church that did not request or consent to their presence. His actions have posed, and continue to create, a clear and present danger to civil liberties and the constitutional order.

The undersigned join other legal professionals who have expressed their alarm about the ways in which Attorney General Barr is undermining constitutional governance. By Protect Democracy's count, an estimated 2,500 attorneys – Republicans and Democrats -- who formerly worked at the Department as career or political appointees signed letters dated February 16, May 11, and June 10, 2020, in response respectively to the Stone sentencing memorandum, the Flynn motion, and the police assault on protesters in Lafayette Square. The May 11 letter

explained: “Our democracy depends on a Department of Justice that acts as an independent arbiter of equal justice, not as an arm of the President’s political apparatus.” The DOJ Alumni concluded that Attorney General Barr’s conduct had damaged the Department’s “integrity” and that he had “assaulted the rule of law.” We agree. Indeed, nearly all of the signatories below who are Department alumni also signed one or more of those letters.

The DOJ Alumni initially called upon Attorney General Barr to resign, though they conceded he was unlikely to do so. They requested that Congress exercise its oversight authority to review Barr’s official conduct and formally censure him. They further asked the Inspector General of the Department of Justice to initiate a formal inquiry into Barr’s conduct. We endorse all of those requests.

We express the most severe opprobrium for Barr’s actions as Attorney General. We are not motivated by political partisanship. We include members of both major political parties, and of none. We have different legal specialties and represent a broad spectrum of approaches to the law. Our diversity is a strength as we pull together to respond to a time of national crisis, exacerbated by an Attorney General who has fallen well below the minimal threshold his office requires.

As individuals, as attorneys, and as educators and scholars, we cherish shared values to which we have pledged our professional lives: respecting and promoting the rule of law, training and setting positive examples for future generations of attorneys, and working toward a more perfect union. By this letter, we seek to demonstrate to our current and former students, our colleagues in the legal profession and legal academia, and the general public that we are deeply disturbed by Barr’s actions as Attorney General since 2019 and their implications for our democracy. Attorney General Barr has besmirched the basic values of our law school and the legal profession.

Signed:

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Catherine J. Ross

Professor of Law & Fred C. Stevenson Research Professor

Ira C. Lupu

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