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.”

• 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

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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—

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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 1991, 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 even-handed application of the law.”13

Mr. Barr’s recent actions and statements are in sharp and diamic 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


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