

December 17, 2019

Dear Member of Congress:

On behalf of Common Cause's 1.2 million members and supporters, we call for the House of Representatives to impeach and the Senate to convict and remove from office Attorney General William P. Barr for obstruction of Congress, abuse of power and failing to faithfully execute his office.

The position of Attorney General of the United States was established by the [Judiciary Act of 1789](#), which provided that "there shall also be appointed a meet person, learned in the law, to act as attorney-general *for the United States*, who shall be sworn or affirmed to a faithful execution of his office . . ."¹ The Attorney General is and has always been the attorney for our nation—the United States—not the president's attorney. The Attorney General is the nation's top law enforcement officer, responsible for making real the promise of equal justice under law and ensuring that no one, including the president, is above the law.

During his first 10 months in office, Attorney General Barr has made clear that, first and foremost, he serves President Donald Trump's interests and not those of the United States. He blatantly misled Congress and the public regarding Special Counsel Mueller's investigation in order to serve the personal interests of President Trump. He is implicated in the whistleblower complaint regarding President Trump's *quid pro quo* demand that Ukraine investigate 2020 electoral opponent Joe Biden in exchange for U.S. military aid and a White House meeting. Barr refused to recuse himself, while his Office of Legal Counsel provided widely-criticized cover for the Trump administration to withhold the complaint from Congress. Most recently, he criticized the Department of Justice inspector general's conclusion that the FBI had a legitimate basis for launching an investigation into Russian interference in our 2016 election and possible Trump campaign involvement. The Central Intelligence Agency, the National Security Agency, the Federal Bureau of Investigation, the Office of the Director of National Intelligence, the Department of Homeland Security, the House Intelligence Committee, the Senate Intelligence Committee and the Department of Justice all agree that Russia interfered in our 2016 elections² and will continue to interfere in our elections if left unchecked.

Attorney General Barr's prioritization of President Trump's personal interests over our nation's interests not only whitewashes Russia's attack on our 2016 election, but also encourages attacks in 2020. Attorney General Barr is a threat to our national security. Consequently, Common Cause calls for Attorney General Barr's impeachment and removal from office.

Barr Undermined Inspector General Review of Russia Investigation for Trump's Benefit

On July 31, 2016, the Federal Bureau of Investigation (FBI) opened an investigation "into whether individuals associated with the Donald J. Trump for President Campaign were coordinating, wittingly or

unwittingly, with the Russian government's efforts to interfere in the 2016 U.S. presidential election."³ In May 2017, the DOJ transferred the investigation from the FBI to Special Counsel Mueller.

In 2019, following criticism by President Trump and Attorney General Barr of the Russian election interference investigation, the Department of Justice's Inspector General conducted a review of the early phases of this investigation into Russian interference in the 2016 election.

[This month, the Office of the Inspector General \(OIG\) published the results of its review.](#)⁴ After examining more than one million documents and interviewing more than 100 witnesses, the OIG concluded that the FBI had opened its Russia investigation "after its receipt of information from a Friendly Foreign Government (FFG) reporting that, in May 2016, during a meeting with the FFG, then Trump campaign foreign policy advisor George Papadopoulos 'suggested the Trump team had received some kind of suggestion from Russia that it could assist this process with the anonymous release of information during the campaign that would be damaging to Mrs. Clinton (and President Obama).'"⁵ The OIG "did not find information ... indicating that any information other than the FFG information was relied upon to predicate the opening of" the investigation. The OIG determined that the now-infamous Steele dossier "played no role" in the opening of the investigation. The OIG concluded that the "FFG information, provided by a government the United States Intelligence Community (USIC) deems trustworthy, and describing a first-hand account from an FFG employee of a conversation with Papadopoulos, was sufficient to predicate the investigation." The OIG further concluded that FBI had "sufficient" information "to open the individual investigations on Papadopoulos, Page, Flynn, and Manafort in August 2016."

Importantly, the OIG concluded that the "opening the investigation was in compliance with Department and FBI policies." The OIG "did not find documentary or testimonial evidence that political bias or improper motivation influenced" the decision to open the investigation.

However, while the FBI had sufficient grounds and no political bias in opening its investigation into Russian interference in the 2016 elections, the OIG identified "at least 17 significant errors or omissions" in the FBI's applications for wiretaps under the Foreign Intelligence Surveillance Act (FISA) targeting former Trump campaign advisor Carter Page. The OIG concluded that all of these misstatements and omissions "taken together resulted in FISA applications that made it appear that the information supporting probable cause was stronger than was actually the case." Consequently, the OIG made nine recommendations to the DOJ and FBI to address and remedy the issues identified in the OIG review.

Notwithstanding the OIG's determination of sufficient grounds for the FBI's Russian election interference investigation—and the OIG's explicit reject of President Trump's assertion that the investigation was motivated by political bias—Attorney General Barr intensified his attacks on the FBI after publication of the OIG review.

In an interview with [NBC News](#), Barr rejected the OIG's findings, stating that the FBI launched its investigation "on the thinnest of suspicions that, in my view, were insufficient to justify the steps taken."⁶ Barr further asserted that the FBI may have operated out of "bad faith," arguing that the investigation was "based on a completely bogus narrative."⁷ Barr also repeated an earlier assertion that the Trump campaign was "clearly spied upon" by the FBI.

At a recent [Wall Street Journal event](#), Barr again rejected the conclusions of the OIG report, referring to the FBI's investigation as a "travesty" and claiming that it is too soon to determine whether political bias motivated the investigation.⁸

Attorney General Barr's attacks on the OIG report "drew condemnations from some involved in the case, and those inside the Justice Department privately worried he might be undercutting faith in federal law enforcement to please the president."⁹ Even in the face of overwhelming evidence, compiled by an independent DOJ inspector general, that the FBI's investigation of Russia's interference in the 2016 election was justified and not motivated by political bias, Attorney General Barr continued to parrot the self-serving conspiracy theories President Trump.

Barr's DOJ Obstructed Ukraine Whistleblower Complaint

On September 13, 2019, Congressman Adam Schiff, chairman of the House Permanent Select Committee on Intelligence, issued a subpoena to the acting director of national intelligence (DNI) Joseph Maguire to compel the production of a whistleblower complaint that the Intelligence Community Inspector General had determined to be credible and a matter of "urgent concern."¹⁰ The acting DNI had been required by statute to submit the complaint to the congressional intelligence committees more than 10 days earlier but had refused to do so.¹¹

On September 17, Intelligence Community Inspector General Michael K. Atkinson sent a letter to Congressmen Schiff and Devin Nunes, chair and ranking member of the House Intelligence Committee, respectively, stating his disagreement with the Trump administration's decision to withhold the whistleblower complaint from the Intelligence Committee, which Atkinson deemed both credible and of "urgent concern."¹²

On September 20, the *Wall Street Journal* [reported](#) that "President Trump in a July [25] phone call repeatedly pressured the president of Ukraine to investigate Joe Biden's son... urging Volodymyr Zelensky about eight times to work with Rudy Giuliani on a probe that could hamper Mr. Trump's potential 2020 opponent."¹³ This news report was the first public revelation of the events at the heart of the whistleblower complaint and ongoing impeachment proceedings—President Trump's scheme to force Ukraine's government to investigate 2020 presidential election candidate Joe Biden and his son— withholding a nearly \$400 million military aid package as leverage.

On September 24, President Trump authorized the White House to release a [rough transcript](#) of the president's July 25 phone conversation with President Zelenskyy of Ukraine.¹⁴ At least five times during

the call President Trump indicated his desire to have President Zelenskyy speak with Attorney General Barr about an investigation into Biden.

On September 24, House Speaker Pelosi announced that the House was opening a formal impeachment inquiry into President Trump.¹⁵ And on September 25, the whistleblower complaint was finally turned over to Congress¹⁶ and then made available to the public.¹⁷ The whistleblower complaint begins:

In the course of my official duties, I have received information from multiple U.S. Government officials that the President of the United States is using the power of his office to solicit interference from a foreign country in the 2020 U.S. election. This interference includes, among other things, pressuring a foreign country to investigate one of the President’s main domestic political rivals. The President’s personal lawyer, Mr. Rudolph Giuliani, is a central figure in this effort. Attorney General Barr appears to be involved as well.¹⁸

The whistleblower further alleged that “[i]n the days following the phone call, [the whistleblower] learned from multiple U.S. officials that senior White House officials had intervened to ‘lock down’ all records of the phone call, especially the official word-for-word transcript of the call[.]”¹⁹ White House officials reportedly told the whistleblower that they had been “directed” by White House lawyers to remove the electronic transcript from the computer system in which such transcripts are typically stored and to instead load the transcript into a separated electronic system that is “otherwise used to store and handle classified information of an especially sensitive nature.”²⁰ “One White House official described this act as an abuse of this electronic system because the call did not contain anything remotely sensitive from a national security perspective.”²¹

Despite the fact that Attorney General Barr was named in the whistleblower complaint—and despite the determination by the Inspector General of the Intelligence Community that the complaint was both credible and of “urgent concern”²²—the DOJ’s Office of Legal Counsel (OLC), under Attorney General Barr’s management, [advised](#) the acting Director of National Intelligence not to forward the whistleblower complaint to the House and Senate intelligence committees as required by statute.²³ The Justice Department’s own independent inspector general, joined by more than 50 other inspectors general from other federal agencies, [sharply criticized](#) the OLC opinion on the grounds that it was “wrong as a matter of law and policy” and would create a “chilling effect on effective oversight.”²⁴ The inspectors general urged that the OLC opinion be withdrawn or modified.

There is no evidence that Attorney General Barr recused himself from the Trump Administration’s handling of the whistleblower complaint as was necessary and proper, and the OLC opinion has not been withdrawn or modified.

Barr Is Defying Congressional Subpoenas Regarding Census Citizenship Question

In March 2018, Commerce Secretary Wilbur Ross announced that the 2020 Census would require everyone in America to answer a question on citizenship status.²⁵ Ross testified to Congress that he had added the citizenship question to the census “solely” in response to a request from the DOJ, claiming the DOJ had “initiated” the process in order to gather data necessary to enforce the Voting Rights Act. The Supreme Court concluded in June 2019 that Ross’ proffered justification was pretextual and contrived—that it was made up after the fact to conceal the actual basis for the decision—and that adding the citizenship question was the idea of Secretary Ross and other Trump Administration officials.

The House Committee on Oversight and Reform subpoenaed Attorney General Barr and others in its investigation of the census citizenship question matter, but Barr and others have defied these duly issued Congressional subpoenas—invalidly invoking Executive Privilege at the direction of President Trump. So on July 17, 2019, the [House voted](#) 230-198 to hold Attorney General Barr in criminal contempt of Congress.²⁶ And then on November 26, the House Oversight Committee [sued](#) Barr in federal court to force compliance with the subpoenas.²⁷ The litigation remains pending.

Barr Mischaracterized Mueller Report for Trump’s Personal Benefit

In June 2018, as a private citizen and former Attorney General to President George H.W. Bush, Barr sent a [19-page memo](#) to Deputy Attorney General Rod Rosenstein arguing that Mueller’s investigation into obstruction of justice by President Trump was “fatally misconceived,” asserting that “Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction.”²⁸ Six months later President Trump nominated Barr to the position of Attorney General and, notwithstanding the fact that he had published a memo opposing Mueller’s investigation, Barr refused to say during his confirmation hearing whether he would recuse himself from overseeing the investigation. The Senate confirmed Barr for the position in February of this year and Barr announced in March that he would not recuse himself from overseeing the Mueller investigation.²⁹

On March 22, 2019, Barr [notified](#) Congress that Special Counsel Mueller had concluded his investigation and that Barr might “be in a position to advise you of the Special Counsel’s principal conclusions as soon as this weekend.”³⁰ Two days later, Barr sent a [letter](#) to Congress containing his summary of the “principal conclusions” reached by Mueller—but did not share with Congress the Mueller report itself.

With respect to Mueller’s investigation of Russian interference in the 2016 presidential election, Barr wrote that the “Special Counsel’s investigation did not find that the Trump campaign or anyone associated with it conspired or coordinated with Russia in its efforts to influence the 2016 U.S. presidential election.” And with respect to Mueller’s investigation into obstruction of justice by President Trump, Barr wrote that Special Counsel Mueller had “determined not to make a traditional prosecutorial judgment” and that the “Special Counsel therefore did not draw a conclusion—one way or the other—as to whether the examined conduct constituted obstruction.” Barr continued, the Special Counsel “leaves it to the Attorney General to determine whether the conduct described in the report constitutes a crime.” Barr concluded that “the evidence developed during the Special Counsel’s

investigation is not sufficient to establish that the President committed an obstruction-of-justice offense.”

The morning after Barr’s March 24 release of his summary letter, Special Counsel Mueller communicated concerns to Barr about his summary and then wrote a letter to Barr dated March 27 “objecting to his early description of the Russia investigation’s conclusions that appeared to clear President Trump on possible obstruction of justice[.]”³¹ In the [letter](#), Mueller complained that Barr’s summary letter “did not fully capture the context, nature, and substance of this Office’s work and conclusions” and that “[t]here 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.”³² Mueller urged Barr to immediately release the complete executive summaries for the two volumes of the report “to alleviate the misunderstandings that have arisen.”³³

On April 9 and 10, Barr testified before the House and Senate appropriations subcommittees and though the hearings were scheduled to be about the DOJ budget, Barr was asked many questions about the Mueller investigation and report. For example, Rep. Charlie Crist (D-FL) noted that reports had recently emerged that “members of the special counsel’s team are frustrated at some level with the limited information included in your March 24th letter, that it does not adequately or accurately necessarily portray the report’s findings.” Crist then asked Barr: “Do you know what they’re referencing with that?” Barr responded: “No, I don’t. I think—I think—I suspect that they probably wanted more put out[.]”³⁴ And Sen. Chris Van Hollen (D-MD) questioned Barr about his conclusion that President Trump did not obstruct justice and asked: “Did Bob Mueller support your conclusion?” Barr replied: “I don’t know whether Bob Mueller supported my conclusion.”³⁵

Barr’s claims—made to both the House and the Senate under oath—that he did not know what the Mueller team investigators were frustrated about, nor whether Mueller supported his conclusion that Trump did not obstruct justice, were clearly misleading statements, if not outright lies.

Barr also stated during the April 10 Senate hearing a belief that President Trump’s 2016 campaign was spied on by the FBI. Barr stated “I think spying did occur” and “I think spying on a political campaign is a big deal,”³⁶ without providing any evidence of this claim.³⁷ President Trump immediately began fundraising off of Barr’s unsupported claim, sending an email to supporters stating: “The multi-million dollar investigation is over and it’s time to look into the real problem: the belief that the Obama Administration ‘illegally spied’ on President Trump and the 2016 campaign,” and also misquoting Barr as saying “unlawful spying did occur.”³⁸

On April 15, a DOJ spokesperson announced that the redacted Mueller report would be released to Congress and the public on Thursday, April 18.³⁹ Then on the afternoon of Wednesday, April 17, President Trump broke the news during a talk radio interview that Barr would be holding a press conference about the Mueller report on the morning of April 18—before the report would be released to Congress and the

public.⁴⁰ The press understandably erupted with incredulity. *New York Times* White House correspondent Maggie Haberman [Tweeted](#): “Sorry but this is not a press conference—it’s an opportunity for Barr to put a spin on the ball or defend himself. No one can ask real questions here.” Not surprisingly, Barr’s press conference on the morning of April 18 was a total sham. Immediately after Barr’s show, Vox published a piece immediately titled “[The attorney general just pre-spun the Mueller report for Trump.](#)”⁴¹

Barr stated five times during the press conference that Mueller found no evidence of collusion and admitted that days earlier he had given President Trump’s personal lawyers “the opportunity to read a final version of the redacted report before it was publicly released.”⁴² And when asked to explain Mueller’s “reason for not reaching a decision on obstruction of justice and if it had anything to do with the department’s longstanding guidance on not indicting a sitting president,” Barr claimed Mueller “was not saying that but for the OLC opinion he would have found a crime.” When another reporter asked: “Did the Special Counsel indicate that he wanted you to make the decision or that it should be left for Congress?” Barr replied: “Special Counsel Mueller did not indicate that his purpose was to leave the decision to Congress.”

Through a published “summary” of the Mueller report, testimony before Congress, and a sham press conference—all before Congress, the press, or the public were allowed to read the Mueller report—Barr had given President Trump an incredible gift: positive spin on a report that would have devastated any prior president.

Finally, after Barr’s sham press conference on the morning of April 18, the DOJ published a redacted version of the Mueller report. Barr’s misrepresentation of the contents of the Mueller report—both in his March 24 letter and in his April 18 press conference—is apparent from the introduction of Volume I of the report onward.

For example, Mueller explained in his report that because “collusion” is not a term of art in the criminal code, he instead analyzed criminal liability for “conspiracy” as defined in federal law. Mueller determined there was insufficient evidence to bring criminal conspiracy charges against President Trump. Mueller made no conclusions regarding collusion between the Trump campaign and Russia.

In fact, according to the *New York Times*, President Trump and “18 of his associates had at least 140 contacts with Russian nationals and WikiLeaks, or their intermediaries, during the 2016 campaign and presidential transition” and the Mueller report “revealed at least 30 more contacts beyond those previously known”⁴³—contacts that the average person could most certainly consider collusion.

Mueller assembled a mountain of evidence that Russia intervened in our 2016 elections and that the Trump campaign welcomed this intervention, with extensive direct contact and explicit encouragement. As *Time* explained, Mueller and his team had “indicted, convicted or gotten guilty pleas

from 34 people and three companies, including top advisers to President Trump, Russian spies and hackers with ties to the Kremlin.⁴⁴

Barr likewise misrepresented Mueller's investigation into obstruction of justice by President Trump. Whereas Barr claimed Mueller had simply declined to make a prosecutorial judgment on obstruction of justice, and that the OLC memo barring indictment of a sitting president was not the reason for Mueller's decision, Mueller's explanation of this matter in his report makes clear his understanding that he had no choice—he followed DOJ policy that he could not indict the president. Mueller explained that he “accepted OLC's legal conclusion” that “the indictment or criminal prosecution of a sitting President would impermissibly undermine the capacity of the executive branch to perform its constitutionally assigned functions in violation of the constitutional separation of powers.” Mueller explained further:

[I]f we had confidence after a thorough investigation of the facts that the President clearly did not commit obstruction of justice, we would so state. Based on the facts and the applicable legal standards, however, we are unable to reach that judgment. The evidence we obtained about the President's actions and intent presents difficult issues that prevent us from conclusively determining that no criminal conduct occurred. Accordingly, while this report does not conclude that the President committed a crime, it also does not exonerate him.

In other words, Mueller concluded that DOJ policy prevented him from indicting President Trump, while evidence prevented him from saying President Trump did not obstruct justice. Given that the DOJ was unable, in Mueller's view, to indict the president, Mueller seemingly invited Congress to consider President Trump's obstruction of justice as an impeachable offense. Mueller wrote that “Congress has Article I authority to define generally applicable criminal law and apply it to all persons including the President. Congress clearly has authority to protect its own legislative functions against corrupt efforts designed to impede legitimate fact-gathering and lawmaking efforts.” Mueller ended his obstruction analysis stating: “And the protection of the criminal justice system from corrupt acts by any person—including the President—accords with the fundamental principle of our government that “[n]o [person] in this country is so high that he is above the law.”

Whereas Mueller refused to exonerate President Trump on obstruction of justice and seemingly invited Congress to hold Trump accountable through impeachment, Barr wrongly claimed that Mueller had left the prosecutorial decision to him. Then Barr took matters into his own hands and exonerated Trump. And in reaching his decision not to prosecute President Trump for obstruction of justice, Barr turned the law on its head. Barr rationalized his decision not to prosecute Trump based on Mueller's determination there was insufficient evidence to “establish that the President was involved in an underlying crime related to Russian election interference.” But the reason obstruction of justice is illegal is precisely because it thwarts investigations and prevents the successful prosecution of underlying crimes.

Under Barr’s theory of obstruction, the more effective the obstruction the less likely to be prosecuted—because the obstruction would have prevented prosecutions for underlying crimes. The absurdity of Barr’s position cannot be overstated.

Finally, on July 24, Special Counsel Mueller testified before the House Judiciary and Intelligence Committees summarizing the conclusions of his report, emphasizing that President Trump had not been cleared of obstructing justice nor completely exonerated, as Barr implied and President Trump explicitly claimed in months since Mueller completed his report.⁴⁵

Conclusion

We do not raise these matters lightly. In less than one year in office, Attorney General Barr has ignored the evidence and conclusions of his own Department of Justice in the case of the Office of Inspector General’s report finding the FBI properly launched an investigation of Russian interference in the 2016 election. He mischaracterized and undermined the work and conclusions of Special Counsel Robert Muller into Russian election interference and obstruction of justice. He facilitated the Trump Administration’s unlawful withholding of the Ukraine whistleblower complaint from Congress on the basis of his Office of Legal Counsel’s severely flawed reasoning—reasoning sharply criticized by the DOJ’s own Inspector General and dozens of other federal agency inspectors general. And he continues to defy lawfully-issued Congressional subpoenas.

Through all of these actions, Attorney General Barr has politicized the Department of Justice and undermined trust in the law by prioritizing and acting in the interests of a president who has committed impeachable offenses, rather than upholding the law and the Constitution. Attorney General Barr has repeatedly violated his oath to the people he swore to protect.

To this end, Common Cause, on behalf of our 1.2 million members and supporters, calls for the House of Representatives to impeach Attorney General William P. Barr and for the Senate to remove him from office by convicting him.

Please let me know if you have any questions or would like to discuss how we arrived at this conclusion.

Sincerely,



Karen Hobert Flynn
President
Common Cause

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- ² Karen Yourish and Troy Griggs, “8 U.S. Intelligence Groups Blame Russia for Meddling, but Trump Keeps Clouding the Picture,” NEW YORK TIMES, Aug. 8, 2018, <https://www.nytimes.com/interactive/2018/07/16/us/elections/russian-interference-statements-comments.html>.
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- ⁴ *Id.*
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- ¹¹ *Id.*
- ¹² Michael K. Atkinson, Inspector General of the Intelligence Community, *Letter to the Honorable Adam Schiff and the Honorable Devin Nunes*, Sept. 17, 2019, https://intelligence.house.gov/uploadedfiles/20190917_-_ic_ig_second_letter_to_hpsci_on_whistleblower.pdf; see also Michael K. Atkinson, Inspector General of the Intelligence Community, *Letter to the Honorable Joseph Maguire, Director of National Intelligence (Acting)*, Aug. 26, 2019, https://intelligence.house.gov/uploadedfiles/20190826_-_icig_letter_to_acting_dni_unclass.pdf.
- ¹³ Alan Cullison, Rebecca Ballhaus and Dustin Volz, “Trump repeatedly pressed Ukraine president to investigate Biden’s son,” WALL STREET JOURNAL, updated Sept. 21, 2019 (emphasis added), <https://www.wsj.com/articles/trump-defends-conversation-with-ukraine-leader-11568993176?shareToken=stde3f8759f32e415285ffed603e98f9b1>.
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- ²⁰ *Id.* at 4.
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