March 31, 2021

SENT VIA EMAIL
foia@americanoversight.org

Mr. Austin R. Evers
Executive Director
American Oversight

Subject: Freedom of Information/Privacy Act Request [20-OIG-302]

Dear Mr. Evers:

This is a third partial response to your July 24, 2020 Freedom of Information Act (FOIA) request to the Office of the Inspector General (OIG), seeking "[a]ll complaints submitted to the DOJ Office of the Inspector General (OIG) . . . containing allegations that concern the conduct of Attorney General William Barr." This partial response supplements responses made to you on January 22, 2021 and February 25, 2021.

The OIG has now completed processing of the original set of records identified through its initial FOIA search. However, during processing, OIG identified and collected additional records that are responsive to your request. The additional records total approximately 900 pages. The OIG has begun processing these records and will use its best efforts to complete its work over the next six months (i.e., by the end of September 2021).

For this third partial response, we have processed 172 pages of responsive records, eleven pages of which are the balance of the original set of records located. It has been determined that pursuant to FOIA, 5 U.S.C. § 552(b)(3), (b)(6) and (b)(7)(C), twenty pages are being released in part, as follows:

- 5 U.S.C. § 552(b)(3), the Inspector General Act of 1978, 5 U.S.C. App. 3 § 7(b) protects the identities of agency employees who submit complaints or information;
- 5 U.S.C. § 552(b)(6), protects personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and
- 5 U.S.C. § 552(b)(7)(C), protects records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information could reasonably be expected to constitute an unwarranted invasion of

personal privacy.

The remaining 152 pages are being sent for consultation with other federal agencies.

We are aware that this matter is in litigation and we will continue to process the requested records as expeditiously as possible and in compliance with all applicable court orders. Although your request is in litigation, we are required by law to provide you the following information:

If you are not satisfied with OIG's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: https://www.justice.gov/oip/submit-and-track-request-or-appeal. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may contact our FOIA Public Liaison, Deborah Waller at (202) 616-0646 for any further assistance of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at (202) 741-5770; toll free at 1-877-684-6448.

If you have any questions regarding this response, please contact the attorney representing the Government in this matter, Jonathan Kossak of the Department's Civil Division, Federal Programs Branch, at 202-305-0612.

Sincerely,

Jacqueline E. Lightle

Jacqueline E. Lightle
Government Information Specialist
Office of the General Counsel

Attachment

(b)(6); (b)(7)(C) [redacted]

February 15, 2019

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cc: Richard E. Zuckerman, Principal
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The Honorable Sheldon Whitehouse
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(b)(6); (b)(7)(C) [redacted]
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Federal Deposit Insurance Corp.
(b)(6); (b)(7)(C) [redacted]
FDIC-OIG
(b)(6); (b)(7)(C) [redacted]

(b)(6); (b)(7)(C) [redacted]

COMPLAINT

William Barr is legally required to recuse himself from the investigation of Caterpillar Inc.

Dear Sir/Madam:

I am filing this complaint with the Office of Professional Responsibility (OPR) and the Office of Inspector General (OIG) calling on your Offices to promptly conduct an investigation into whether Attorney General William Barr is in violation of Department of Justice (DOJ) rules and regulations for not recusing himself from the investigation of Caterpillar Inc. He was asked by the Senate in written questions to confirm his recusal, but he did not even though he noted there is likely to be conflicts regarding this matter, and that certain conflicts cannot be waived.[1] This is one of those conflicts. He was required to report the matter and all attendant facts and circumstances[2] to the OPR, but there is no indication he has done so. Instead, he has provided vague promises to recuse himself from former client matters for *a short period of time* and *follow all rules and regulations*, yet the rules and regulations require his recusal which he did not provide to the Senate. Caterpillar Inc. is his only former client matter[3] and at the center of the investigation, which is larger than any reported case of this kind.[4]

To put this in the broader context of Attorney General Barr's confirmation, there was much said about him recusing himself from the investigations of President Trump. Imagine if President Trump had nominated Rudy Giuliani for Attorney General. Would Giuliani have to recuse himself because he was defense counsel for the President in the investigation? Giuliani's relationship with President Trump as his lawyer is by definition, and by law, more partial than Jeff Sessions relationship with President Trump as a political advisor. In the Caterpillar Inc. case, having their defense lawyer appointed as Attorney General is tantamount to President Trump appointing Giuliani as Attorney General in his case. A lawyer's obligation to his client includes total partiality with ongoing obligations to the client even after the representation has ended.

When the defense attorney in a criminal case becomes top prosecutor overseeing the case, there is a conflict.

On January 8, 2015, the U.S. Attorney's Office for the Central District of Illinois issued Grand Jury Subpoenas to Caterpillar Inc. commencing a criminal investigation.[5] This investigation led to the production of evidence, expert opinions,[6] and circumstances that supported the issuance of search warrants for a highly publicized multi-agency raid by over 100 Special Agents. On March 2, 2017, the FDIC, IRS, & Department of Commerce raided Caterpillar

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[1] https://www.judiciary.senate.gov/imo/media/doc/Barr%20Responses%20to%20Whitehouse%20QFRs.pdf (see Questions #55)

[2] 28 CFR § 45.2(a)&(b)

[3] Barr stated in his Senate testimony that he only had one client. Caterpillar Inc. is the only source of legal fees shown on his financial disclosure. Ethics Agreement letter to the U.S. Office of Government Ethics, dated January 11, 2019, with financial disclosure.
https://extapps2.oge.gov/201/Presiden.nsf/D4CD873798AD3D1F85258381002E4CEE/$FILE/Barr,%20William%20P.%20%20finalEA%20.pdf .

[4] Caterpillar has disclosed in its Form 10-K for several years that the IRS has assessed $2 billion of additional tax only for the years 2007-2012, and that it continues to report its federal tax using scheme at the heart of the investigation. For all years involved the tax amount exceeds $5 billion through 2017, and exceeds $10 billion if you include penalties and interest.

[5] See page 22 of Caterpillar Annual Report for year ended December 31, 2014.
https://www.sec.gov/Archives/edgar/data/18230/000001823015000061/cat_10-kx12312014.htm . See also, http://www.cfo.com/tax/2015/02/caterpillar-discloses-grand-jury-probe/ .

[6] https://www.nytimes.com/2017/03/07/business/caterpillar-tax-fraud.html . Expert witness report states, "Caterpillar did not comply with either U.S. tax law or U.S. financial reporting rules…I believe the company's noncompliance with these rules was deliberate and primarily with the intention of maintaining a higher share price. These actions were fraudulent rather than negligent."

Inc.'s global headquarters and data centers.[7] Immediately following the raid, Caterpillar Inc.'s CEO personally asked Mr. Barr to provide legal representation regarding the matter.[8] Mr. Barr then associated himself with the law firm Kirkland & Ellis. Mr. Barr has personally been paid significant sums for this representation which exceed $1.2 million for 2018 alone.

Your investigation should take into account the conflict of interest created by Mr. Barr's employment by Kirkland & Ellis[9] which routinely represents PriceWaterhouseCoopers (PwC).[10] PwC is Caterpillar's public auditor and the primary architect, implementer and overseer of the tax scheme that is the subject of the investigation.[11] Kirkland & Ellis entered its appearance[12] as the attorney for PwC in a Sarbanes-Oxley lawsuit against Caterpillar Inc. pertaining to this particular tax matter.[13] The interests of PwC and Caterpillar Inc. are directly adverse to one another in this matter. This conflict of interest was and is public knowledge.[14]

If warranted by the results of OPR's and OIG's investigations, the OPR and OIG should issue public findings that Attorney General Barr is violating DOJ regulations and that he is required by DOJ regulations to recuse himself "*permanently*" from all matters regarding Caterpillar Inc., and from any consideration and decisions dealing with these matters.

OPR has jurisdiction to investigate allegations of professional misconduct against attorneys of the Department of Justice that relate to the exercise of their authority to investigate, litigate or provide legal advice.[15] The OIG's mission also includes the detection and deterrence of misconduct by DOJ personnel. It is clear, as well, that this jurisdiction and responsibility includes investigating Attorney General Barr and any apparent violation of DOJ regulations by him. In 2017, in response to a complaint filed by Democracy 21, then Attorney General Jeff Sessions recused himself on the advice of the OPR.[16] In 1988, OPR, in response to a complaint filed by Common Cause, exercised its jurisdiction to investigate Edwin Meese to determine if

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[7] See https://www.forbes.com/sites/antoinegara/2017/03/02/caterpillars-headquarters-raided-by-federal-authorities-including-doj-and-irs/#33a4e3976f3a and https://www.nytimes.com/2017/03/02/business/caterpillar-raid-tax-practices.html and https://www.chicagotribune.com/business/ct-law-enforcement-search-caterpillar-0303-biz-20170302-story.html .

[8] See https://www.caterpillar.com/en/news/corporate-press-releases/h/new-caterpillar-ceo-asks-former-us-attorney-general-to-assess-and-help-address-ongoing-government-investigation.html

[9] While Mr. Barr describes his relationship with Kirkland & Ellis, he is paid a salary by this firm. See page 4 of Nominee Report, Public Financial Disclosure of Mr. Barr signed December 24, 2018.

[10] See https://www.kirkland.com/lawyers/b/becker-whitney-l and https://www.law.com/therecorder/almID/1202758297218/Kirkland-amp-Ellis-to-Defend-PricewaterhouseCoopers-in-Discrimination-Suit/?slreturn=20190109163554 and https://www.leagle.com/decision/infdco20170505a48 .

[11] See https://www.pjstar.com/news/20170320/firm-retained-by-caterpillar-after-raids-has-links-to-tax-strategy

[12] Schlicksup vs. Caterpillar, Inc., PACER case No. 09-cv-1208. U.S. District Court, C.D. Illinois, Peoria Division, document #92, appearance of counsel filed Monday, 16 May, 2011. Mark Nomellini of Kirkland & Ellis appearing on behalf of PricewaterhouseCoopers LLP.

[13] Schlicksup vs. Caterpillar, Inc., PACER case No. 09-cv-1208. U.S. District Court, C.D. Illinois, Peoria Division.

[14] See https://www.pjstar.com/news/20170320/firm-retained-by-caterpillar-after-raids-has-links-to-tax-strategy

[15] 28 C.F.R. 45.12

[16] See https://www.washingtonpost.com/powerpost/top-gop-lawmaker-calls-on-sessions-to-recuse-himself-from-russia-investigation/2017/03/02/148c07ac-ff46-11e6-8ebe-6e0dbe4f2bca_story.html?noredirect=on&utm_term=.41563410ef71 .

he had violated administrative rules and provisions of the Code of Ethics for Government Service that barred executive branch officials from using their public positions for private gain.[17] OPR found that Meese as Attorney General had violated these rules as they applied to Justice Department officials.[18]

Mr. Barr has stated the following with regard to the current matter. And although he has committed to some limited recusal for a short period of time which is subject to waiver, he would not commit to Senate questions asking specifically for his recusal in this specific matter as required by the DOJ regulations and explained below.

> On January 11, 2019, Mr. Barr submitted his Ethics Agreement in a letter to the U.S. Office of Government Ethics.[19] He committed that upon confirmation he "will resign from his position with the law firm Kirkland & Ellis LLP."[20] He also committed that:
>
> 1. "For a period of *one year* after his resignation, he will not participate personally and substantially in any particular matter involving specific parties in which he knows the firm is a party or represents a party, unless he is first authorized to participate, pursuant to 5 C.F.R. Sec. 2635.502(d);[21] (emphasis added)
> 2. "He will not participate personally and substantially in any particular matter involving specific parties in which he knows that a former client is a party or represents a party, for a period of *one year* after he last provided service to that client, unless he is first authorized to participate, pursuant to 5 C.F.R. Sec. 2635.502(d);[22] (emphasis added) and
> 3. "I (Mr. Barr) agree to *comply with the conflict of interest statutes and regulations*, ..."[23] (emphasis added)
>
> On January 15 & 16, 2019, Mr. Barr testified before the Senate Judiciary Committee. Mr. Barr was sent written questions by members of the Senate following his testimony.[24]
>
> (Q) "Will you commit to recusing yourself from any matters relating to Caterpillar?"
>
> > (A) "It is likely that my representation of Caterpillar will present conflicts, and it is my understanding that certain types of conflicts cannot be waived. If

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[17] "Meese's Department Probes Him," *New York Times News Service* (July 20, 1988).

[18] "Justice Department Rips Meese," *New York Times*, (January 18, 1989).

[19] Ethics Agreement letter to the U.S. Office of Government Ethics, dated January 11, 2019. https://extapps2.oge.gov/201/Presiden.nsf/D4CD873798AD3D1F85258381002E4CEE/$FILE/Barr,%20William%20P.%20%20finalEA%20.pdf .

[20] Ethics Agreement letter to the U.S. Office of Government Ethics, dated January 11, 2019, page 1.

[21] Ethics Agreement letter to the U.S. Office of Government Ethics, dated January 11, 2019, page 2.

[22] Ethics Agreement letter to the U.S. Office of Government Ethics, dated January 11, 2019, page 2.

[23] Ethics Agreement letter to the U.S. Office of Government Ethics, dated January 11, 2019, Nominee Statement attached to the letter.

[24] https://www.judiciary.senate.gov/imo/media/doc/Barr%20Responses%20to%20Whitehouse%20QFRs.pdf (see Questions #55)

confirmed, I commit to *__following all applicable laws, regulations, and rules__* with respect to my prior representation of Caterpillar and, if necessary, recusing from any matters relating to the company." (emphasis added)

(Q) "While representing Caterpillar, did you take any formal or informal actions to challenge the basis for the search warrants executed by the government or to challenge the documents collected during the search?"

(A) "Other than information that is publicly available, I am unable to provide further details regarding the nature and specifics of my work for Caterpillar due to the applicable privileges and confidentiality obligations."

We believe that the failure of Attorney General Barr to recuse himself from the matters set forth above is a violation of DOJ regulations, and that with a Grand Jury investigation already underway and the execution of search warrants in a multi-agency raid by over 100 Special Agents, his recusal has to take place immediately. Therefore, we are calling on you to exercise your responsibility and promptly make clear that Barr must comply with DOJ regulations and "*permanently*" recuse himself from these matters. The grounds for why DOJ regulations require Attorney General Barr to recuse himself in these matters are set forth below.

<u>DOJ Regulations Require Reporting & Recusal</u>
<u>Waiver NOT Possible</u>

The applicable DOJ recusal regulation, 28 CFR § 45.2, applies to all employees of the Department of Justice and provides:

45.2(a) Unless authorized under paragraph (b) of this section, no employee *__shall__* participate in a criminal investigation or prosecution if he has a personal or political relationship with:

(1) Any person or organization substantially involved in the conduct that is the subject of the investigation or prosecution; or

(2) Any person or organization which he knows has a specific and substantial interest that would be directly affected by the outcome of the investigation or prosecution.

45.2(b) An employee assigned to or otherwise participating in a criminal investigation or prosecution who believes that his participation may be prohibited by paragraph (a) of this section *__shall__* report the matter and all attendant facts and circumstances to his supervisor at the level of section chief or the equivalent or higher. If the supervisor determines that a personal or political relationship exists between the employee and a person or organization described in paragraph (a) of this section, he *__shall__* relieve the employee from participation unless he determines further, *__in writing__*, after full consideration of all the facts and circumstances, that: (emphasis added)

(1) The relationship will not have the effect of rendering the employee's service less than full impartial and professional; and

(2) The employee's participation would not create an appearance of a conflict of interest likely to affect the public perception of the integrity of the investigation or prosecution.

45.2(c).... For the purposes of this section:

(2) Personal relationship means a close and substantial connection of the type normally viewed as likely to induce partiality....

Mr. Barr was hired as the attorney for Caterpillar Inc. at the personal request of its Chief Executive Officer.[25] Mr. Barr was paid more than $1.2 million by Kirkland & Ellis for representing Caterpillar in 2018 alone.[26] By definition, an attorney is partial to his client as the attorney is required by the Rules of Professional Conduct to zealously represent his client to the exclusion of the interests of all other parties. An attorney cannot be impartial with regard to client matters. He is ethically bound to be partial in favor of his client.

Mr. Barr has a personal relationship with Caterpillar Inc. and individuals within the organization that are substantially involved in the conduct that is the subject of the current criminal investigation being conducted by multiple federal agencies. Mr. Barr knows Caterpillar Inc. and individuals within the organization have a specific and substantial interest that will be directly affected by the outcome of the investigation or prosecution. Mr. Barr is ethically bound to be partial in the favor of his clients and has ongoing obligations to them under the Rules of Professional Conduct even after withdrawing his representation. Mr. Barr is now the chief law enforcement officer in the United States sworn to uphold the rule of law, and to investigate and prosecute those who violate the law. Mr. Barr's obligations as Attorney General of the United States are in direct conflict with his past and ongoing obligations to Caterpillar Inc. This direct conflict and adverse interests preclude any possibility of Attorney General Barr avoiding a conflict of interest or the appearance of a conflict.

The DOJ regulation states that Mr. Barr ***shall*** report this matter and all attendant facts and circumstances to the OPR. The DOJ regulation states that Mr. Barr ***shall*** be relieved from participation in the investigation of Caterpillar Inc. unless the OPR determines, ***in writing***, that Mr. Barr can be impartial and that Mr. Barr's participation will not create ***even the appearance*** of a conflict of interest that is ***even likely*** to affect the public perception of the integrity of the investigation or prosecution. This is not possible! This complaint is evidence that any participation by Mr. Barr in the investigation of Caterpillar Inc. is already considered to be a conflict of interest, not merely likely to create an appearance of a conflict.

While Attorney General Barr has previously stated he will comply with DOJ regulations, to date there is no public indication that he has taken any steps to report this matter or recuse himself from the ongoing investigation by the DOJ and three other government agencies. His failure to do so is

25 https://www.caterpillar.com/en/news/corporate-press-releases/h/new-caterpillar-ceo-asks-former-us-attorney-general-to-assess-and-help-address-ongoing-government-investigation.html .

26 Executive Branch Personnel Public Financial Disclosure Report (OGE Form 278e), page 4-5. https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/FE446AE51F24A2D68525838l002E483C/$FILE/Barr,%20William%20P.%20%20final278%20.pdf . Mr. Barr indicated in his oral testimony before the Senate that he only had one client. Caterpillar Inc. is the only client listed as a source of income from providing legal service; see page 7.

in violation of the applicable Departmental regulation at 28 C.F.R. § 45.2(a). Attorney General Barr told the Senate, "It is likely that my representation of Caterpillar will present conflicts, and it is my understanding that certain types of conflicts cannot be waived." [27] He knows there is a conflict and he knows it cannot be waived.

We call on OPR and OIG to undertake an investigation into the Attorney General's failure to comply with Departmental regulations that require his recusal from the Department's and other agencies, investigation of Caterpillar Inc. If the results of the investigation show, as we believe, that Attorney General Barr has failed to recuse himself from this matter as required by DOJ regulations, OPR and OIG should make public findings to that effect, impose appropriate sanctions on Attorney General Barr and take whatever additional steps are required to ensure that all DOJ attorneys, including the Attorney General, comply with Justice Department rules.

This is a matter of urgent public importance that is vital to ensure ongoing public confidence in the impartiality and fairness of the Justice Department. This is an important matter for the DOJ by all of its published measurements. There are few greater public policies then the enforcement of our tax laws. Without revenue to run the government, there can be no government and no democracy. The precedential impact of this matter is far reaching and dramatic with a material impact upon tax revenues.

Sincerely,

(b)(6); (b)(7)(C)
[redacted]

[27] https://www.judiciary.senate.gov/imo/media/doc/Barr%20Responses%20to%20Whitehouse%20QFRs.pdf (see Questions #55)

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Office of the Inspector General
U.S. Department of Justice
Washington, DC 20530

August 7, 2020

Re: *Whistleblower Disclosure of Improper Political Interference Halting Criminal Investigations and Prosecutions by the U.S. Department of Justice Civil Rights Division*

To Whom It May Concern:

Introduction

We represent an individual, who wishes to remain anonymous, who possesses original information of improper political interference by Attorney General William Barr, former Attorney General Jeff Sessions, and other political appointees. The interference prevented criminal prosecutors within the Department of Justice (DOJ) Civil Rights Division (CRD) from investigating and prosecuting multiple cases of police brutality where deaths resulted – cases of national significance.

One notable case involves the CRD criminal investigation into the death of Tamir Rice, a 12-year-old boy shot and killed by a Cleveland police officer in November 2014 while playing in a city park. CRD commenced its investigation of the incident for civil rights violations (b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector General Act of 1978) [redacted]

(b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector General Act of 1978) [redacted]

(b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector General Act of 1978) [redacted]

(b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector General Act of 1978) [redacted] And with the running of applicable statutes of limitations, federal prosecution is realistically no longer a viable option. The public has never been told this. We believe the Rice family has never been told that the investigation was ended nearly a year ago.

The primary explanation provided by those involved in the decision making was that the investigation would not proceed because of political concerns by the Attorney General. This kind of interference is highly unusual. It was contrary to longstanding CRD practice of making investigatory and prosecutorial decisions based on a neutral assessment of the evidence, free from political interference. It also placed the public at risk, as the officers involved in the shooting were not fully investigated.

The Rice case is not the only instance of direct Attorney General interference in high profile federal criminal investigations of police misconduct. In July 2019, Attorney General Barr ordered civil rights prosecutors to not pursue charges against the New York City police officer who caused Eric Garner's death by placing him in a chokehold. Before he died, Mr. Garner repeated the words "I can't breathe" 11 times while lying face down on the sidewalk. Both Attorney General Sessions and Attorney General Barr linked – improperly and explicitly – a charging decision in the Garner case to a decision of whether to permit a grand jury to investigate the Rice case.

Additionally, shortly after the Attorney General ordered the Garner case be dropped, (b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector General Act of 1978) [redacted] (b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector [redacted] That direction was contrary to CRD's longstanding practice of enforcing the nation's civil rights' statutes without regard to whether the victim was killed or almost killed.

Our client believes there are other investigations or prosecutions that were either declined or prevented from being initiated out of concerns that doing so would be contrary to the political wishes of or be politically damaging to President Trump and/or the Attorney General.

Death of Tamir Rice

In the early afternoon of November 22, 2014, Tamir Rice was sitting on a park bench outside of the community center in Cleveland. He had spent the morning playing in the park with other kids in his neighborhood, including his older sister. At 3:30pm, Cleveland Police Officer Timothy Loehmann and his partner drove in their patrol vehicle up a street that dead-ended at the park, approximately 200 feet from where Tamir was sitting alone on a park bench. As shown in a video of the scene taken by a park security camera, Tamir appeared to be playing on his cell phone.[1] Tamir was not posing a threat to anyone.

However, another person at the park, an older man, had earlier called 911 to report that a child was playing with a gun outside of the community center, by the swing set.[2] Officer Loehmann and his partner were responding to that call. They pulled up to the park without their emergency lights on. According to the video, Tamir appeared to not notice their arrival; he did not look up to see the patrol car.

Without warning or provocation, the officers drove over the curb and onto the grass towards Tamir. Tamir then stood up and slowly walked around the park bench. He did not run away, he did not have any weapon in his hands, he did not make any sudden movements, and he did nothing to suggest he was a threat to the two police officers. The patrol vehicle slid to a stop where Tamir was standing. But before it stopped rolling, Officer Loehmann, who was in the passenger seat, opened his door and, within two seconds, shot Tamir twice in the torso. Tamir fell to the ground. He died within seconds. Officers later found a cell phone and toy gun near his body.

Officer Loehmann gave multiple inconsistent statements after the shooting. In one, he claimed that he saw Tamir stick an "object" into his waistband as he stood up from the

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[1] Video of the shooting is available at YouTube, *Video Shows the Tamir Rice Shooting Aftermath* (Jan. 5, 2020), available at https://www.youtube.com/watch?time_continue=4&v=vNZMuSwzTeA&feature =emb_logo.

[2] The man had told 911 that he believed the gun was fake. However, it appears from an audio recording that the officers were told only that the child was playing with a gun. See Washington Post, *Audio from the Tamir Rice Shooting* (Nov. 26, 2014), available at https://www.washingtonpost.com/video/national/ audio-from-the-tamir-rice-shooting/2014/11/26/8389ceda-75bb-11e4-8893-97bf0c02cc5f_video.html.

park bench, and that he had "yelled continuously 'show me your hands'" as they approached Tamir in the patrol car.[3] By contrast, the video shows the patrol vehicle's windows were rolled up as the officers drove towards Tamir.

Officer Loehmann further claimed, that:

- After opening the vehicle's passenger door, he saw Tamir reach down into his waistband;
- Loehmann continued to yell, "show me your hands;"
- He did not initially fire his weapon after he saw Tamir reach into his waistband;
- He again yelled "show me your hands;"
- He then "tried to get to the back of the car" because this was an "active shooter situation;"
- He then observed Tamir "pulling the gun out of the waistband;"
- He and his partner again yelled "show me your hands; and that
- Only then he fired his weapon, killing Tamir.

The video of the incident contradicts these statements. It shows that Officer Loehmann fired his weapon within under *two seconds* of exiting the rolling patrol vehicle.

Initial Civil Rights Division Investigation

(b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector General Act of 1978)

[3] Officer Loehmann provided a written statement one year after the shooting, on November 30, 2015. It is available at http://i2.cdn.turner.com/cnn/2015/images/12/01/officer.loehmann.statement.pdf.

(b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector General Act of 1978)

[redacted]

About Federal Civil Rights Grand Jury Investigations

The initiation of a federal grand jury is a preliminary and necessary step towards indicting federal cases, particularly cases involving alleged violations of the federal civil rights statutes. The standard for opening a grand jury investigation is low – less than probable cause to believe a crime was committed – to allow time and resources to be devoted to the gathering of evidence needed to meet federal charging standards. Only after prosecutors are satisfied that they have collected the necessary evidence and testimony do they determine whether to present an indictment to the grand jury.

CRD criminal prosecutors are required to document their recommendation to initiate a grand jury investigation in a formal memorandum. The memo summarizes the available evidence and the reasons for taking the case to this next level. The memorandum is then reviewed and approved by two levels of CRD supervisors -- all career employees. In the typical criminal CRD investigation, the Deputy Attorney General for Civil Rights (DAAG), at a higher level, then authorizes the use of the grand jury.

Process Followed in the Tamir Rice Case

(b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector General Act of 1978)

[redacted]

(b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector General Act of 1978)

[redacted]

The Rice case was not handled in the customary way. (b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector General Act of 1978) [redacted]

(b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector General Act of 1978)

[redacted]

(b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector General Act of 1978) [redacted]

Attorney General Barr Takes No Action

Attorney General Barr assumed office in February 2019. (b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector General Act of 1978) [redacted] (b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector General Act of 1978) [redacted] (b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector General Act of 1978) [redacted] We believe Attorney General Barr had the same political concerns as his predecessor with regards to prosecuting the officers involved in these killings.

(b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector General Act of 1978) [redacted]

(b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector General Act of 1978) [redacted]

Attorney General Barr Declines Prosecution in Eric Garner Case, Drops Tamir Rice Investigation

On July 16, 2019, Attorney General Barr ordered the declination of prosecution in the Eric Garner case over the objections of CRD career prosecutors.[4] DOJ announced that the Attorney General "made the decision himself." (b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector General Act of 1978) [redacted] (b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector General Act of 1978) [redacted]

The Tamir Rice Case Has Never Been Formally Closed, the Rice Family Has Been Never Told

(b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector General Act of 1978) [redacted]

We believe the Tamir Rice case remains open on DOJ's books (b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector General Act of 1978) [redacted] (b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector General Act of 1978) [redacted] (b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector General Act of 1978) [redacted] The Department has yet to announce any decision. We also believe the Rice family has not been informed that the investigation was ordered closed in August 2019 – unlike the Garner family who were at least informed of the declination prior to the public announcement. We believe the Attorney General and other senior appointees are running out the clock on some of the obstruction charges (due to expire in December 2020), allowing the Department to claim that pursuing the remaining charges would be made more difficult given the running of the statute of limitations on the other charges in December 2019.

[4] See, e.g., N.Y. Times, *Eric Garner's Death Will Not Lead to Federal Charges for N.Y.P.D. Officer* (July 16, 2019), available at https://www.nytimes.com/2019/07/16/nyregion/eric-garner-case-death-daniel-pantaleo.html.

Applicable Justice Department Criteria Have Been Disregarded

The Justice Manual, which guides federal prosecutors in the carrying out of their duties, sets out the grounds for commencing or declining prosecution:

> The attorney for the government should commence or recommend federal prosecution if he/she believes that the person's conduct constitutes a federal offense, and that the admissible evidence will probably be sufficient to obtain and sustain a conviction, unless (1) the prosecution would serve no substantial federal interest; (2) the person is subject to effective prosecution in another jurisdiction; or (3) there exists an adequate non-criminal alternative to prosecution.
>
> Comment. … *in a civil rights case* … it might be clear that the evidence of guilt—viewed objectively by an unbiased factfinder—would be sufficient to obtain and sustain a conviction, yet the prosecutor might reasonably doubt, based on the circumstances, that the jury would convict. In such a case*, despite his/her negative assessment of the likelihood of a guilty verdict* (based on factors extraneous to an objective view of the law and the facts), the prosecutor may properly conclude that it is necessary and appropriate *to commence or recommend prosecution and allow the criminal process to operate* in accordance with the principles set forth here.[5]

In a section of the Justice Manual pertaining to the enforcement of civil rights criminal statutes, it is made clear that:

> In choosing to pursue a prosecution under this statute, the primary responsibility of Government attorneys shall be to seek justice. A government attorney shall file only those charges which he or she reasonably believes can be substantiated at trial through admissible evidence. *Charging and declination decisions should be made based upon the facts and totality of the circumstances in each individual case*.[6]

We believe these principles were not followed in the Tamir Rice investigation.

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[5] *See* JM 9-27.220 - Grounds for Commencing or Declining Prosecution (emphasis added).

[6] *See* JM 8-3.300 - Neutral and Objective Criteria for Guiding Prosecutorial Discretion (emphasis added).

(b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector General Act of 1978) [redacted]

(b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector General Act of 1978) [redacted] We believe the delay is due to political interference by the Attorney General as well as by his subordinate political appointees, including the Assistant Attorney General for Civil Rights (AAG) Eric Dreiband.

(b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector General Act of 1978) [redacted]

Additional Improper Political Interference

The Rice case was not the only one where the Attorney General and Trump Administration officials intervened in civil rights prosecutions, especially as it related to the investigation and prosecution of incidents involving excessive use of force by police.

(b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector General Act of 1978) [redacted]

In August 2019, Attorney General Barr spoke to the Grand Lodge Fraternal Order of Police in which he excoriated efforts by local prosecutors to reform their office's approach to criminal justice and criticized those who sought to hold law enforcement abuses accountable, stating:

> Whenever there is a confrontation involving the use of force by police, they [(the "increasingly vocal minority")] automatically start screaming for the officers' scalps, regardless of the facts.[7]

[7] Remarks available at https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-remarks-grand-lodge-fraternal-order-polices-64th.

(b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector General Act of 1978) [redacted]

(b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector General Act of 1978) [redacted]

(b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector General Act of 1978) [redacted] This departed from CRD's longstanding practice of investigating and prosecuting cases of police abuses that caused lesser injuries. (b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector General Act of 1978) [redacted]

(b)(6); (b)(7)(C); (b)(3):5 U.S.C. App. 3 Section 7(b) (Inspector General Act of 1978) [redacted]

We believe this is a departure from longstanding CRD practice designed to insulate prosecutorial decisions from politics. The foregoing is also contrary to CRD's decades-long practice of seeking to enforce the nation's civil rights laws impartially and justly. Prior to now, the decision to commence CRD investigations of civil rights violations by law enforcement officers did not depend on severe injuries or death. We do not believe this prosecution guideline is connected to resource limitations.

* * *

Please contact me if you have any questions.

Thank you.

Very truly yours,

/s/

(b)(6) [redacted]

Government Accountability Project

(b)(6) [redacted]