



DEPARTMENT OF JUSTICE | OFFICE OF THE INSPECTOR GENERAL

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July 16, 2021

**SENT VIA EMAIL**

[foia@americanoversight.org](mailto:foia@americanoversight.org)

Mr. Austin Evers, Executive Director  
American Oversight  
1030 15th Street NW, Suite B255  
Washington, DC 20005

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

Dear Mr. Evers:

This is a 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, February 25, 2021, and March 31, 2021.

As indicated in the March 31, 2021 response, OIG identified and collected additional records that are responsive to your request and had begun processing these records. On June 9, 2021, you narrowed your request to only those detailed complaints pertaining to pages 21–27 and page 41 of OIG’s January 22, 2021 production.

In reference to your narrowed request, in addition to materials that were already provided to you in prior productions, OIG has located eighty pages of responsive records, which are included herewith. Seventy-three of those pages are new. Seven pages are a portion of the 152 pages of records that OIG sent to other federal agencies for consultation, as discussed in our March 31, 2021 response. Today’s release also includes an additional twenty-one pages of the 152 pages of consultation records, discussed in our March 31, 2021 response. In total, today’s release is comprised of 101 pages of responsive material. Please note, for clarity we have included a non-record slip-sheet denoting the begin of record attachments.

It has been determined that certain portions of the records in today’s release should be withheld from disclosure pursuant to FOIA, 5 U.S.C. § 552(b)(3), (b)(6) and (b)(7)(C) 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 124 pages of records are still undergoing consultation. OIG will use its best efforts to work with those with whom it is consulting to finalize that process 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](mailto: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 Lightle*

Jacqueline Lightle  
Office of the General Counsel

Attachment

6/28/2020

Inspector General Horowitz,

Please investigate the role of AG Barr and DOJ employees played in the use of chemical agents and rubber bullets on 6/1/20 to disperse peaceful protesters in Lafayette Square. Your investigation is required by these troubling developments. Here's to justice for all Americans. Thank you,

(b)(6);  
(b)(7)(C)

(b)(6);  
(b)(7)(C)

(b)(6); (b)(7)(C)

Dem I.B. Horowitz,

I join over 1200 former federal prosecutors,  
judges and department officials asking you  
to investigate the use of violence against  
peaceful protesters in Lafayette Square  
and the role of AG Barr in instigating  
this illegal action. The military should not  
be used for political purposes in our democracy

(b)(6); (b)(7)(C)





7.28.20

Mr. Horowitz,

I just want to thank you for looking  
into the legality of incidents of use of  
force in Washington D.C. + Portland.

It is the right thing to do.  
INSPECTED 28

Thanks again

(b)(6);  
(b)(7)(C)

(b)(6); (b)(7)(C)

August 6, 2020

Michael E. Horowitz  
U.S. Department of Justice  
Office of the Inspector General  
950 Pennsylvania Avenue NW  
Washington, D.C. 20530-0001

Dear Inspector General Horowitz:

As an ordinary citizen, I am deeply worried about the leadership of the Department of Justice and the unwise decisions Attorney General Barr has made and is making. He has damaged the reputation of the Justice Department, but more importantly he is undermining democracy in the United States.

One does not need a law degree to know that Attorney General Barr should not have been leading troops into battle against lawful citizens protesting in Washington, D.C and endangering their lives (and those of journalists). He should not be defending General Flynn, who deliberately lied to Congress and the DOJ and colluded with the Russians. The Attorney General should not have supported Roger Stone, another lawfully convicted friend of the president's.

He should not have blatantly dismissed the findings of the Mueller Report nor ignored the president's efforts to extort favors from Ukraine.

He should be working diligently to stop the Russians, Chinese, and other hackers eager and able to destroy the 2020 U.S. election. He should not be supporting conspiracy theorists, but working to eliminate them. He should be working to make certain that all citizens, regardless of race or color, should be able to vote safely and securely, whether in person or by absentee ballot.

Sadly, the list keeps growing of Barr's blatant transgressions of the law.

Sadly, the current administration has destroyed trust in the office of inspector generals in a number of government agencies (State, Homeland Security, for example).

Democracy dies unless ordinary citizens speak up.

Sincerely,

(b)(6); (b)(7)(C)

July 23, 2020

Office of the Inspector General  
Mail Stop 0305  
Department of Homeland Security  
245 Murray Lane, SW  
Washington, D.C. 20528-0305

Re: Trump/Barr/Wolf's unconstitutional deployment of secret agents/militia

Inspector General Joseph Cuffari:

From what little I recently learned about you, you are a person of honor and integrity. You are, and have been, a public servant with deep regard for this country, as imperfect and flawed as its practice of principles in democracy are.

We are in the throes of a growing **Constitutional Crisis** that threatens the very existence of our country. The Dept. of Homeland Security, under the direction of Trump, Barr and Wolf, are engaged in violent, illegal and unconstitutional actions in Portland, OR, and soon-to-be other U.S. cities by the personal, secret agents/militia of Trump, Barr and Wolf. These storm troopers (I mean it) wear camouflaged uniforms (including their faces—not for covid-19 protection) that have no identifying insignia, no name tags; carry and use assault weapons; unleash gas and batons to beat and disable Americans; kidnap Americans; shoot rubber bullets that cause life-threatening injuries (and possibly death) to Americans.

I call upon you to sound the alarm and **immediately launch an aggressive investigation into the fascist creep of Trump and Barr's proclivity for dictatorship. Their illegal and unconstitutional actions must be stopped NOW!!**

It is easier for Trump and Barr to prevent and/or interfere with the November election if they already have secret "police"/agents in cities that have democratic mayors (who were democratically elected) whom Trump considers "hostile." Voter intimidation, voter suppression, closed polling stations, lack of transportation can be achieved in a timely fashion if these militias have had weeks/months to strong arm the American people. Trump and Barr are enamored of dictators, and would much rather control Americans without the inconvenience of the Constitution and the rule of law. **THEY MUST BE STOPPED AND PROSECUTED.**

In addition, Chad Wolf illegally became the acting Secretary of the DHS. Both he and McAleenan illegally operated in that position. He is violating the Constitution and the Federal Vacancies Reform Act. As such, any and all of Wolf's actions and policies, including the dispatch of secret militias to Portland and any other cities are illegal and invalid. He must be removed and prosecuted (along with Trump, Barr, militia members) for the violence done with his approval (explicit and implicit) including attempted murder, kidnapping, false arrest, false imprisonment,

violations of constitutional and civil rights, assault and battery, aggravated assault, assault with a deadly weapon, violations of federal, state, local criminal and civil laws, etc.

**I am counting on you. America is counting on you to stop Trump from taking over our country.**

Sincerely,

An American who believes in Justice, Equality and Compassion

 Cc: Michael Horowitz, Inspector General, Department of Justice



July 28, 2020

Michael E. Horowitz  
U.S. Department of Justice  
Office of the Inspector General  
950 Pennsylvania Avenue NW  
Washington, D.C. 20530-0001

Inspector General Horowitz,

I offer my support to you as Inspector General in investigating the Justice Department's response by federal agents to demonstrations in Portland, Washington, D.C., and other cities. To see Attorney General William Barr laughing at the House Judiciary Committee questioning of him at a hearing today exemplifies the Justice Department's disrespect for other branches of the government and the rights of lawfully dissenting citizens. Thus, I appreciate your role.

There is print and video evidence that the civil rights of citizens, including journalists, are being violated in the most shocking cases. So, the result shows that federal troops are provoking violence. Local people are coming out not only to support Black Lives Matter and the end to widespread racism among police departments but also to protest the actions of these unmarked federal troops. These agents go far beyond protecting buildings. Day after day they are arresting without probable cause the calm residents who show up in protest; they are tear-gassing crowds, and they are inciting violence in the streets. Local police can better handle their own splinter of law breakers who show up to destroy property. The invasive interference of agents deputized by the Federal Protection Service over objections of local elected leaders is unconstitutional.

I believe the Department of Justice is on a dangerous course to purposefully discredit and stop peaceful dissent by spreading false extremist stories about hordes of radical criminals threatening property. Hold Attorney General Barr and others in the Trump administration to the law. Thank you., sir.

(b)(6); (b)(7)(C)



June 2, 2020

U.S. Department of Justice  
Office of the Inspector General  
Investigations Division  
ATTN: OIG Hotline  
950 Pennsylvania Ave., NW  
Washington, DC 20530

To the Office of the Inspector General:

On Monday, June 1, 2020, the President of the United States, Donald John Trump, through the United States Attorney General, William Pelham Barr, unlawfully ordered the use of military force against peaceful protestors outside Lafayette Square here in Washington, DC. I emphasize again, the Attorney General of the US Department of Justice (DOJ) enabled and acting on behalf of the President of the United States to unconstitutionally order the use of violent lethal force against peaceful protestors.

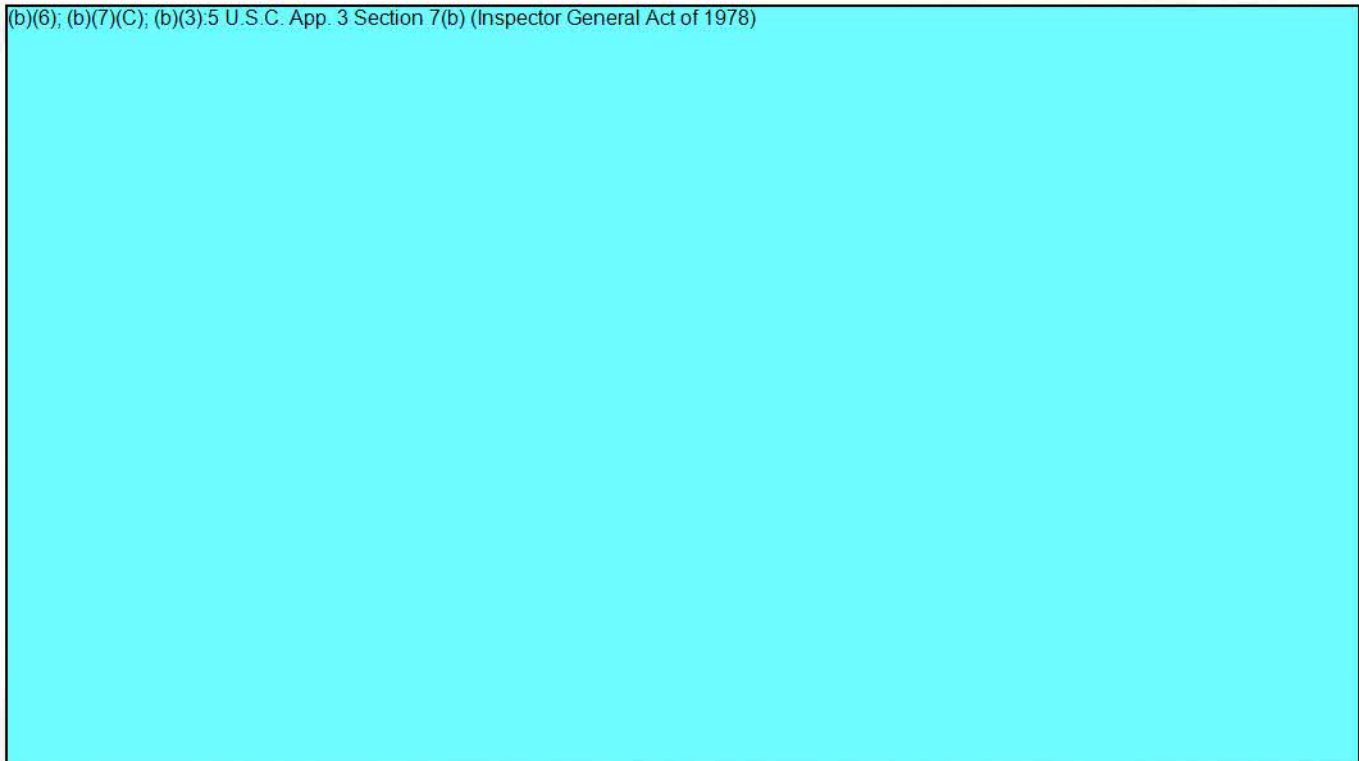
The First Amendment to the US Constitution is clear in this regard, the government may not prohibit the free exercise of an individual's right to free speech or **"the right of the people peaceably to assemble, and to petition the government for a redress of grievances"**. The Attorney General's order is a flagrant violation of these rights and clearly demonstrates his disregard to his duty by willfully ignoring the First law. Any forthcoming argument that it was necessary to clear the square is inaccurate and disingenuous. Barr ordered the military and police forces to attack protestors so that alongside the President he could stage a photoshoot holding a Bible outside St. John's Church. The pictures alone serves as evidence of Barr's presence, that there was no existing threat and that any risk were self-engineered and manufactured for an absolutely unnecessary instigating presence.

On May 15, 2020, William Barr himself issued a department wide memo regarding "Election Year Sensitivities". This memorandum was also emailed to every Department of Justice employee and contractor, including myself. The first sentence of that very memo was clear: "Department of Justice employees are entrusted with the authority to enforce the laws of the United States with the responsibility to do so in a neutral and impartial manner." Barr abdicated that responsibility yesterday, because of him the historical record will be that the Department of Justice ordered the use of force against peaceful protestors outside the White House for an unnecessary campaign photo. Not only was the decision reckless for what it was simply for, it was disgusting that the Attorney General stood outside a sheltered church which did not invite them to use their place of worship with the Bible as a prop only to risk endangering their parishioners to any consequence to follow. This is not a misunderstanding of the law, tradition or civil practice. William Barr does not care about flaunting the authority of this department and those of us who serve under him. Barr understands his actions, on May 30, 2020 during a DOJ press conference Barr himself noted, "[w]ith the rioting that is occurring in many of our cities around the country, the voices of peaceful and legitimate protests have been hijacked by violent radical elements. Groups of outside radicals and agitators are exploiting the situation to pursue their own separate, violent, and extremist agenda". William Barr may not have known it when he said it

but he was speaking about himself as the voices of peaceful and legitimate protests were hijacked by his own violent radical dispositions to exploit a campaign photo-op.

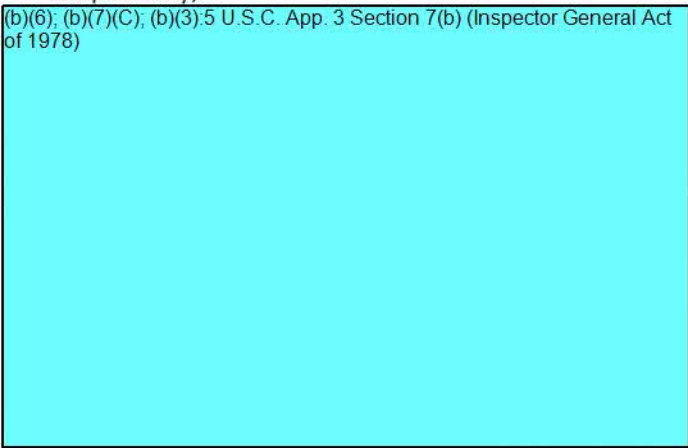
Under his leadership and failure to recuse himself when necessary, William Barr has unnecessarily weaponized the Department of Justice. Instead of acting as the top law enforcement officer in the country, Barr decided to simply act as the President's bag man and simultaneously set a tragic abhorrent example of law enforcement abuse...in a law enforcement abuse protest! Whether it was ignorance or arrogance, it does not matter. The Attorney General is supposed to uphold the rule of law and protect all Americans' constitutional rights even from a misinformed President. William Barr, in ordering the assault of unarmed American civilians has demonstrated that he is a threat not only to the credibility of this department but the American public's safety.

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



Respectfully,

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



To: U.S. Dept. of Justice  
Office of Inspector General  
Investigations Division

Attn: Civil Rights & Civil Liberties Division  
950 Pen. Ave. NW  
Washington, DC 20530

To: DOJ Inspector General  
Michael Horowitz

Dear Mr. Horowitz

I am just an ordinary citizen  
so I don't know if my request  
carries any weight. But I  
feel the need to ask you to  
launch an investigation into  
Attn. Gen. William Barr.  
Under his direction, on June 1<sup>st</sup>  
law enforcement cleared peaceful  
demonstrators from Lafayette  
Park in DC by violent means.  
People were beaten, tear  
gassed, shot w/ pepper balls,



rubber bullets & other projectiles.  
I know it happened because  
I saw it with my own eyes  
on television. I know you  
probably saw it to.

What happened was abusive  
& a violation of the civil  
rights of the protestors to  
peacefully assemble. It was  
also a threat to public  
safety. It was wrong. Every-  
thing about it was wrong.  
I am asking you to do  
what's right & not let this  
action by Attn. Gen. William Barr  
be ignored. On behalf of all  
our civil liberties, please  
initiate an investigation.  
Thank you for reading my letter.

Sincerely,

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)



(b)(6); (b)(7)(C)

June 7, 2020

COMPLAINT SUBMITTED TO INSPECTOR GENERAL OF JUSTICE DEPT  
COMPLAINT AGAINST ATTORNEY GENERAL WILLIAM BARR

Inspector General fax: (202) 616-9881

According to reports from CNN, ABC, CBS, NBC, MSNBC, The Wall Street Journal, and The Associated Press, William Barr as Attorney General ordered various military, police, Secret Service, Park Police and other unidentified military and civilian offices to launch an attack on peaceful First Amendment protesters in and near Lafayette Park in order to remove them from the area so that President Trump could stand in front of St. John's Church and hold up a bible.

As a result of Barr's orders the military, police, Secret Service and others launched an attack spraying tear gas and other chemical irritants, discharging explosives, shooting rubber bullets, shooting pepper and irritant bullets at the peaceful demonstrators with the intent to injure them and to cause them pain and discomfort. Barr's orders were successful as the peaceful citizens were hurt, injured and assaulted in such manner that they departed Lafayette Park to make way for President Trump to hold up his bible.

AG Barr undertook these actions knowing that his orders would cause damage, injury harm and suffering by the peaceful protesters who were exercising First Amendment rights, and he thereby violated their civil rights by causing them intentional injury as a result of their constitutional assertion of their rights.

An immediate investigation is required.

(b)(6); (b)(7)(C)



LIVE TV

# Barr attempts to distance himself from call to remove peaceful protesters in DC before Trump photo-op

By Megan Trimble, CNN

Updated 11:03 PM ET, Sat June 6, 2020

(CNN) — Attorney General William Barr on Friday tried to distance himself from law enforcement's violent confrontation and removal of peaceful protesters from Lafayette Square earlier this week, saying he did not give the final order to clear the demonstration even as the White House has placed the decision on Barr's shoulders amid ongoing fallout.

"They had the Park Police mounted unit ready, so it was just a matter of execution. So, I didn't just say to them, 'Go,'" Barr said in an interview with The Associated Press.

"I'm not involved in giving tactical commands like that," he told the AP. "I was frustrated and I was also worried that as the crowd grew, it was going to be harder and harder to do. So my attitude was get it done, but I didn't say, 'Go do it.'"

The attorney general told the AP that a Park Police tactical commander gave the order for law enforcement to move in, but that he never spoke to that commander.



**Related Article:** Barr embraced tough response to DC protests, once again proving his loyalty to Trump

CNN has reached out to the White House for comment.

The comments mark the attorney general's most clear attempt yet to pass responsibility for the widely condemned move by law enforcement agencies to clash with peaceful protesters, while still embracing the militarization in the nation's capital.

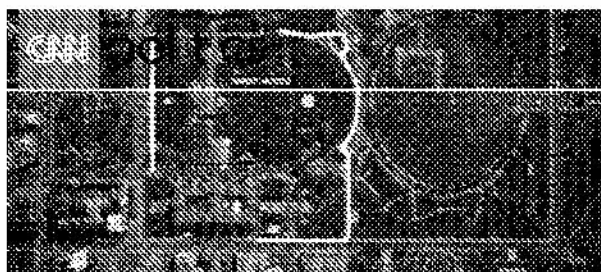
The White House has attempted to deflect repeated criticism of the Monday evening events, where peaceful protesters were dispersed with tear gas and rubber bullets about 30 minutes before a curfew was set to take effect, after which President Donald Trump participated in a photo opportunity with a Bible outside of the nearby St. John's Episcopal Church.

White House press secretary Kayleigh McEnany told reporters earlier in the week that Trump didn't know about the plan to empty the streets and that Barr had made the decision to extend the security perimeter.



"The Attorney General decided that morning to expand the perimeter and that was a decision





**Related Article:** Flash bangs and fury:  
Behind the fortress walls in a defining week  
for Trump and the country

restrained by a white officer's knee as Floyd called out for more than eight minutes to be allowed to breathe.

## Barr's order

CNN previously reported that Barr ordered authorities Monday evening to clear a crowd of protesters that had gathered near the White House, according to a Justice Department official, minutes ahead of Trump's televised address from the Rose Garden.

Barr and other top officials from agencies responsible for securing the White House had previously planned to secure a wider perimeter around Lafayette Square, a federally owned green space just north of the building, in response to fires and destruction caused by protesters on Sunday night. That plan, developed earlier Monday, would have cleared the area later used for the President's walk to the nearby church for a photo-op by 4 p.m. ET, the official said.

But when Barr arrived at Lafayette Square just after 6 p.m., in a scene that was captured on news cameras and elicited heckles from the large, peaceful crowd, the attorney general saw that the area had not been emptied, and told police to clear the area, the official said.

If federal law enforcement was met with resistance by the protesters, crowd control measures should be implemented, Barr had said, according to the official.

Barr had been told that police believed protesters were gathering rocks to throw at law enforcement, and while he was in the park, water bottles were thrown in his direction, the official said. CNN did not witness any water bottles being thrown at the attorney general. Camera footage shows him

standing and watching the crowd for several minutes, flanked by a security detail and two senior department officials.

**Related Article:** Analysis: With a shocking  
invocation of George Floyd, Trump shows  
his disconnect from nation's pain



Before 6:24 p.m., police broadcast their first warning for the crowd to distance. A CNN correspondent reporting from the rooftop of a nearby hotel heard three warnings broadcast over the next 10 minutes as authorities moved closer to the crowd.

At 6:35 p.m., authorities began charging the crowd in lockstep with their shields raised, some using their batons to strike the protesters as gas canisters were deployed.

Trump walked over to the church shortly after 7 p.m.

## Barr defended use of force

On Thursday, Barr defended the use of force to clear the protesters, maintaining in his first public remarks on the Lafayette Square episode that his decision to disperse protesters followed signs that the crowd was "becoming increasingly unruly." The removal, he said, had nothing to do with a photo-op staged by Trump minutes later.

**Related Article:** Park Police spokesperson said it was a mistake to deny tear gas was used to clear Lafayette Square. The acting chief then again denied using tear gas.

"There was no correlation between our tactical plan of moving the perimeter out by one block and the President's going over to the church," Barr said.

Barr said in his news conference that officials had decided on Monday morning that they would expand a protective barrier around the White House north by one block to create "more of a buffer," and at 2 p.m. that day, the attorney general said, he met with officials to set a tactical plan to move the perimeter.

"It was our hope to be able to do that relatively quickly before many demonstrators appeared that day. Unfortunately, because of the difficulty in getting appropriate forces -- units -- into place, by the time they were able to move a perimeter up to us there had been a large number of protesters had assembled," Barr said.

The law enforcement action, Trump's photo-op and the President's response to protests across the country have been widely condemned at home and abroad, including from prominent former military leaders who once served under Trump.

*CNN's David Shortell and Evan Perez contributed to this report.*

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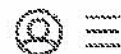


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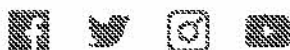
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LEGAL

## Barr says he didn't give tactical order to clear Lafayette Park protesters

Earlier in the week, White House spokeswoman Kayleigh McEnany said it was Barr who made the decision.



Attorney General William Barr. | Sarah Silbiger/Getty Images

By ASSOCIATED PRESS  
06/05/2020 08:58 PM EDT



Attorney General William Barr says law enforcement officers were already moving to push back protesters from a park in front of the White House when he arrived there Monday evening, and he says he did not give a command to disperse the crowd, though he supported the decision.



Barr's comments in an interview with The Associated Press on Friday were his most detailed explanation yet of what unfolded outside the White House earlier this week. They come after the White House and others said repeatedly that the attorney general ordered officers to clear the park. Shortly after officers aggressively pushed back demonstrators, President Donald Trump — accompanied by Barr, Pentagon leaders and other top advisers — walked through Lafayette Park to pose for a photo at a nearby church that had been damaged during the protests.

The episode played out on live television and prompted an outcry from some Republicans and former military leaders, including Gen. Jim Mattis, Trump's first defense secretary. Barr told the AP that much of the criticism was unwarranted and that Mattis' rebuke was “borne of ignorance of the facts.”

Still, administration officials have spent much of the week trying to explain how the situation escalated and why smoke bombs, pepper balls and police on horseback were needed to clear the largely peaceful crowd.

Earlier in the week, White House spokeswoman Kayleigh McEnany told reporters it was Barr who made the decision to push back the security perimeter outside the White House on Monday morning. McEnany said that when Barr arrived at Lafayette Park later that day to survey the security situation, he was surprised to see that action had not yet been taken.

“So he said that we needed to get going with moving that perimeter. He told the officers that out there,” McEnany said Wednesday. A person familiar with the matter also said earlier this week that Barr told law enforcement to take action to move the perimeter when he arrived in the park.

On Friday, Barr told the AP that both he and U.S. Park Police were in agreement on the need to push back the security perimeter. He said he attended a meeting around 2 p.m. Monday with several other law enforcement officials, including Metropolitan Police Chief Peter Newsham, where they looked at a map and decided on a dividing line. Under the plan, the protesters would be moved away from Lafayette Park and federal law enforcement



officials and members of the National Guard would maintain the perimeter line, Barr said.

Barr said the plan was supposed to be put into action soon after the meeting, but additional officers and National Guard troops had to be called in because of a high number of officers who had been injured throughout the weekend. It had not yet been implemented when he arrived at the park later in the evening and the crowd had grown much larger than it was in the afternoon, Barr said.

Still, he said he did not give the officers the orders to proceed — they were already in the process of doing so when he showed up.

"They told me they were about to make the announcement and I think they stretched the announcements over 20 minutes. During the time I was there, I would periodically hear announcements," Barr said. "They had the Park Police mounted unit ready, so it was just a matter of execution. So, I didn't just say to them, 'Go.'"

Barr said it was a Park Police tactical commander — an official he never spoke to — who gave the order for the law enforcement agencies to move in and clear the protesters.

"I'm not involved in giving tactical commands like that," he said. "I was frustrated and I was also worried that as the crowd grew, it was going to be harder and harder to do. So my attitude was get it done, but I didn't say, 'Go do it.'"

Barr insisted there was no connection between the heavy-handed crackdown on the protesters and Trump's walk soon after to St. John's Church. The attorney general said he had learned in the afternoon that Trump wanted to go outside, and said that when he went to the White House in the evening, he learned of the president's intended destination.

Several different groups, including the Secret Service and Park Police, were involved in the pushback on the protesters. Members of the National Guard

were present but didn't engage with the protesters, Barr said. On 20187146-000020

were present but didn't engage with the protesters, Barr said. Trump also threatened that night to deploy active-duty military forces to the states if local and state authorities could not adequately quell the demonstrations, which have occasionally turned violent.

Mattis, who left the administration in 2019, said Wednesday that Trump was setting up a "false conflict" between the military and civilian society, and took particular issue with the show of force outside the White House.

"We know that we are better than the abuse of executive authority that we witnessed in Lafayette Square. We must reject and hold accountable those in office who would make a mockery of our Constitution," Mattis said.

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### Black Lives Matter sues Bill Barr for order that led to tear gas attack on peaceful protesters

The lawsuit faces an uphill battle in a judiciary controlled by Republicans.

By Ian Millhiser | Jun 6, 2020, 8:30am EDT



Attorney General Bill Barr (second from right) walks through Lafayette Park in Washington, DC, during a demonstration on June 1, 2020. Shortly after this picture was taken, Barr personally ordered law enforcement to clear the area of protesters. | Jonathan Raben/HQ/Getty Images

The District of Columbia chapter of the Black Lives Matter movement, along with four individual protesters, filed a federal lawsuit Thursday against President Donald Trump, Attorney General Bill Barr, and an array of police and federal officials who were allegedly involved in a **violent police attack on peaceful protesters** on June 1 in Washington, DC. The suit is *Black Lives Matter DC v. Trump*.

As president, Trump has immunity from lawsuits seeking money damages for his official actions. Yet Barr, who reportedly **gave the order to remove the demonstrators** from Lafayette Square, a public park adjacent to the White House, could **potentially be held personally liable** to both the Black Lives Matter chapter and the individual protesters. (On Friday, Barr claimed that he did not give the order, but his own Justice Department admitted that he gave the order earlier this week.)

Although lawsuits challenging police misconduct are common, it is exceedingly rare for a sitting US attorney general to assume direct command over law enforcement officers in the field. So this is an unusual case wherein a Cabinet official could be held liable for the actions of officers he personally oversaw.

The suit also names as defendants Secretary of Defense Mark Esper and Secret Service Director James Murray, in addition to 120 unidentified law enforcement officers. Its



plaintiffs seek both money damages and an injunction preventing federal law enforcement from continuing to use the tactics it deployed in Lafayette Square.

The suit raises strong allegations that officers acting under Barr's command violated the constitutional rights of protesters. But merely showing that the officers violated the Constitution will not be enough for the plaintiffs in *Black Lives Matter* to prevail, in large part because law enforcement enjoys broad — if not entirely insurmountable — immunity from civil suits. Indeed, the *Black Lives Matter* plaintiffs will need to overcome a dizzying array of legal obstacles that stand in the way of victims of police violence.

Moreover, those plaintiffs must litigate their case before an increasingly conservative judiciary that appears determined to erect more barriers in front of plaintiffs challenging abuse by federal law enforcement.

*Black Lives Matter* could end in defeat for the protesters, in other words, even if Barr and the officers violated the Constitution.

### **The plaintiffs have strong arguments that their constitutional rights were violated**

There are strong arguments that officers acting under Barr's command violated the First Amendment rights of protesters. Although the First Amendment offers broad protection to political demonstrators, the government may still impose reasonable "time, place and manner" restrictions on such demonstrators. The right to protest doesn't mean someone can break into Barr's home and yell at him while he eats dinner with his family.

But First Amendment rights are strongest in places where the public traditionally gathers openly and freely. As the *Black Lives Matter* complaint points out, "Lafayette Square is a traditional public forum where First Amendment rights are at their apex." That means that the government bears an unusually high burden if it wants to restrict free speech in this location.

Moreover, one of the gravest sins under the First Amendment is "viewpoint discrimination." That is, the government is almost never allowed to treat different speakers differently because it agrees with the message of one group and disagrees with the message of another one.

But President Trump has signaled he intends to do just that. The day before Barr allegedly ordered police to clear protesters out of Lafayette Square, Trump tweeted about



protesters demonstrating against police violence that "these people are **ANARCHISTS**. Call in our National Guard NOW."

And yet, one day earlier, Trump seemed to actively encourage his own supporters to rally near the same location where the Lafayette Square demonstration took place.



**Donald J. Trump**  
@realDonaldTrump

The professionally managed so-called "protesters" at the White House had little to do with the memory of George Floyd. They were just there to cause trouble. The @SecretService handled them easily. Tonight, I understand, is **MAGA NIGHT AT THE WHITE HOUSE???**

163K 9:34 AM - May 30, 2020

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The government may not actively encourage protests by people with a conservative viewpoint, while using violent tactics to discourage peaceful protesters with a different viewpoint.

Additionally, the Fourth Amendment protects "against unreasonable searches and seizures," and a violent attack by law enforcement officers typically amounts to a "seizure." The government, in other words, must show that it was reasonable to remove peaceful protesters using rather extreme law enforcement tactics. And it must do so in the face of credible allegations that the real reason the protesters were removed is so that Trump could have a photo op at a nearby church.

### **Existing law frequently protects law enforcement officers who commit illegal acts**

Even if Barr and the officers under his command did violate the constitutional rights of protesters, however, the *Black Lives Matter* plaintiffs must clear an array of legal hurdles in order to prevail.

For one thing, both Barr and most of the officers present in Lafayette Square are federal employees. The plaintiffs in *Black Lives Matter* seek money damages against these officers, in addition to an injunction "ordering Defendants to cease engaging in the unlawful acts" alleged in their lawsuit.

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Most of the claims in *Black Lives Matter* arise directly under the Constitution, and the Supreme Court's decision in *Bivens v. Six Unknown Named Agents* (1971) permits lawsuits seeking money damages from federal law enforcement officers who violate the Constitution.

But the Court's Republican majority is hostile to *Bivens*. Indeed, it recently signaled that it may overrule this decision. In its 5-4 decision in *Hernández v. Mesa* (2020), the majority warned that *Bivens* suits are "a 'disfavored' judicial activity," and the Court has even suggested that if *Bivens* were "decided today," it is "doubtful we would have reached the same result."

If the *Black Lives Matter* plaintiffs manage to clear this hurdle, they still must overcome a doctrine known as *qualified immunity*. As the Supreme Court held in *Harlow v. Fitzgerald* (1982), qualified immunity provides that "government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."

But some courts have defined the term "clearly established law" exceedingly narrowly. One recent federal appeals court decision, for example, held that police who ~~trashed a woman's home and saturated it with tear gas~~, after she gave them permission to enter in order to search for her ex-boyfriend, were entitled to qualified immunity.

The court's opinion suggests that, in order to overcome qualified immunity, the woman would have had to produce a binding precedent holding that when a homeowner gives police consent to enter their home, that consent does not include permission to smash windows or to fire chemical weapons into the house.

It's possible that courts hearing the *Black Lives Matter* case will impose a similarly high burden on the plaintiffs in that case.

The *Black Lives Matter* plaintiffs also face a heavy burden in their quest for an injunction. In *City of Los Angeles v. Lyons* (1983), the Supreme Court held that a victim of a police chokehold could not obtain an injunction preventing the Los Angeles Police Department from using similar chokeholds in the future unless he could show that "he was likely to suffer future injury from the use of the chokeholds by police officers." That is, he had to show that he was likely to be choked a second time by a Los Angeles cop.



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Similarly, the *Black Lives Matter* plaintiffs could have to show that they are likely to be gassed or hit with rubber bullets a second time by federal law enforcement officers.

Given that the protests remain ongoing, and that police violence appears to be widespread in response to these nationwide protests, *Black Lives Matter* may be the rare case where a plaintiff can show that they are likely to experience the same form of police violence twice. But *Lyons* remains a high bar for any plaintiff seeking to enjoin police misconduct.

The bottom line is that law enforcement frequently engages in violence and gets away with it, not because the violence is lawful, but because the Supreme Court gives extraordinary protection to rogue police.

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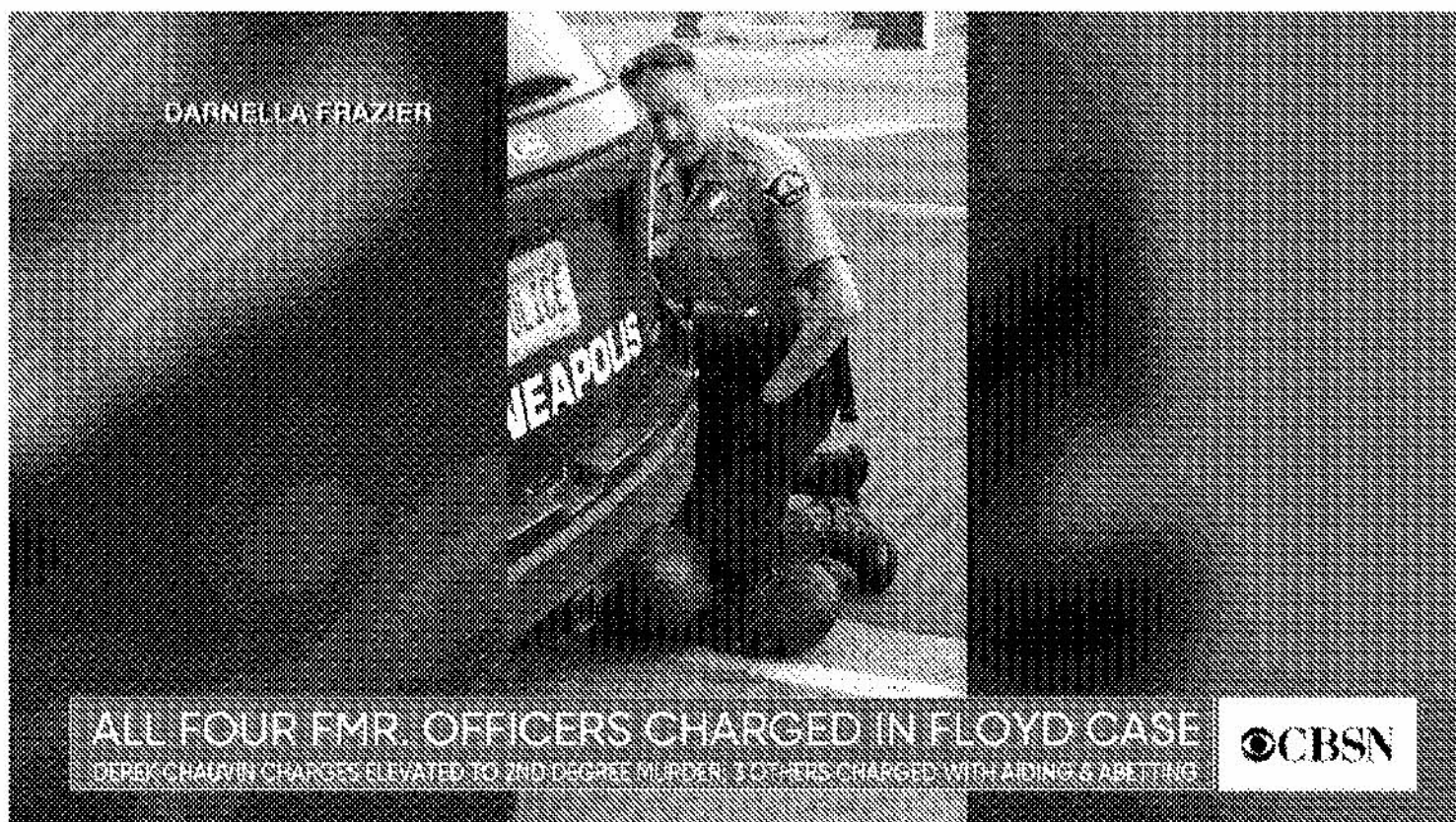
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## Barr defends decision to forcefully clear protesters near White House

BY STEFAN BECKET, CLARE HYNES  
JUNE 4, 2020 / 5:25 PM / CBS NEWS



**Washington** – Attorney General William Barr defended his decision to order the forceful removal of protesters from a park near the White House earlier this week, saying the move to expand the perimeter around the White House was planned well before President Trump decided to walk across the park and pose for photos in front of a historic church.

Speaking at a press conference alongside the heads of all five Justice Department law enforcement agencies on Thursday, Barr said the massive federal response to protests in the nation's capital was justified after days of violent confrontations



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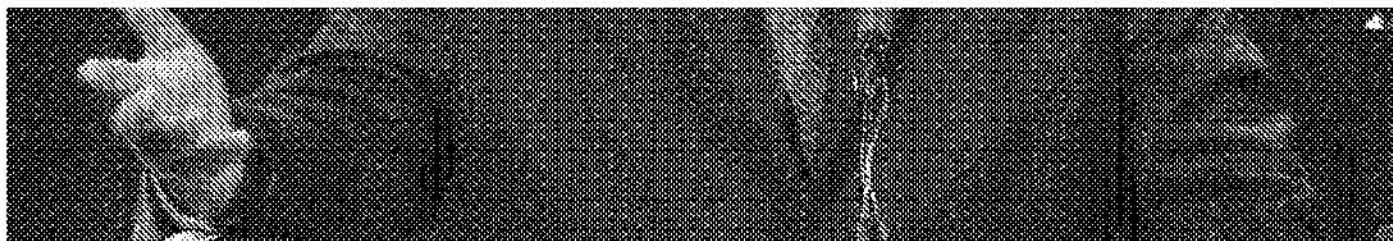
over the weekend. He said President Trump tasked him with coordinating efforts by thousands of law enforcement officers from various agencies and departments in the district.

"This is the federal city. It's the seat of the federal government," Barr said at the virtual press conference. "When you have a large-scale civil disturbance that is damaging federal property, threatening federal property, threatening federal law enforcement officers, threatening the officials in government and their officers and our great monuments, it is the responsibility of the federal government to render that protection, and we do so in close coordination with the Metropolitan Police Department."





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U.S. Attorney General William Barr speaks to reporters during a news conference at the Justice Department in Washington on June 4, 2020.

POOL / REUTERS

The protests in the District of Columbia and around the country were sparked by the death of George Floyd, a black man who died in Minneapolis on Memorial Day after a police officer pinned his knee to his neck for nearly nine minutes.

In Washington, demonstrations north of the White House escalated in intensity over three nights beginning on Friday, May 29, and peaked on Sunday when demonstrators set several fires, damaged buildings and launched projectiles, the attorney general said.

"It was very serious rioting," Barr said. "The Treasury Department annex there was broken into. A historical building on Lafayette Park, which is federal

property, was burned down. There was a fire set at the historical St. John's Church, right there across from the White House."

The attorney general said there were "numerous head injuries" among officers protecting the White House, and 114 overall injuries to law enforcement since Saturday. He said 22 officers have been hospitalized, most with head injuries.

Barr said the president asked him to coordinate the response on Monday, and he determined that morning that "we needed more of a buffer" around the White House complex.

"I made the decision that we would try to move our perimeter northward by a

6/7/2020

block to provide this additional protection, and later at 2 o'clock on Monday, I met with all the various law enforcement agencies and we set our tactical plan, and that plan involved moving our perimeter a block north, to I Street," he continued.

Barr said he hoped to extend the perimeter "relatively quickly, before many demonstrators appeared that day," but delays in getting units in place pushed back the move.

"By the time they were able to move our perimeter up to I Street, there had been a number, a large number of protesters that had assembled on H Street," he said, adding that the group was becoming "increasingly unruly." He claimed the protesters were asked three times to move back a block, which has been disputed by demonstrators who were there.

"They refused. We proceeded to move our perimeter out to I Street," Barr continued.

Federal officers deployed chemical irritants to scatter dozens of protesters, a dramatic confrontation that played out on live television just minutes before Mr.

Trump was set to address the nation from the White House Rose Garden.



Police clear demonstrators from Lafayette Park as they protest the death of George Floyd on Monday, June 1, 2020, in Washington.

ALEX BRANDON / AP

Explosions could be heard in the background as Mr. Trump spoke and threatened to deploy active-duty military units to states that couldn't put a stop to looters.

Mr. Trump immediately left the White House on foot to walk to St. John's Church, accompanied by numerous Cabinet officials, Barr among them. He posed in front of the church while holding a Bible and urging his aides to join him, immediately raising the question of whether peaceful protesters were forcefully removed to clear the way for a presidential photo opportunity.

On Thursday, Barr denied that the decision to extend the perimeter was related to the president's decision to walk to the church.

"There was no correlation between our tactical plan of moving the perimeter out by one block and the president's going over to the church," he said.

The attorney general said the move to extend the perimeter has been effective in tamping down confrontations between officers and protesters.

"Fortunately, later that evening on Monday after we did establish a buffer zone, we were able to finish that day without further significant violence from the demonstrators, and then the following two days were peaceful," Barr said. "So

DOJ-20-1871-G-000034

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we're pleased with that."

*First published on June 4, 2020 / 5:25 PM*

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## McConnell blocks resolution condemning Trump's response to protests

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# The Washington Post

*Democracy Dies in Darkness*



## Barr seeks to dissociate himself from move on demonstrators outside Lafayette Square

By **Matt Zapotosky**

June 5, 2020 at 10:34 p.m. EDT

Attorney General William P. Barr sought to dissociate himself Friday from police's move earlier this week to push back a crowd of largely peaceful demonstrators using horses and gas, claiming that he did not give the "tactical" order for law enforcement on the scene to move in.

The Associated Press reported that Barr told the news organization that the move against the protesters — which has been widely condemned — was already in process when he was spotted at the scene near the White House early Monday evening conferring with law enforcement on the ground.

"I'm not involved in giving tactical commands like that," Barr told the Associated Press. "I was frustrated and I was also worried that as the crowd grew, it was going to be harder and harder to do. So my attitude was get it done, but I didn't say, 'Go do it.'"

AD



The Washington Post reported Tuesday that Barr personally ordered the crowd of protesters be pushed back as part of a plan hatched far earlier in the day. According to a Justice Department official, law enforcement authorities, including Barr, had decided to extend the security perimeter outside the White House after earlier demonstrations over the death of George Floyd at police hands in Minneapolis turned violent. When Barr came to the scene Monday afternoon, the official said, he was "surprised" to see that hadn't been done.

"He conferred with them to check on the status and basically said: 'This needs to be done. Get it done,' " the Justice Department official said. The official added that Barr "assumed that any resistance from the protesters of being moved would be met with typical crowd-control measures."

The following day, White House press secretary Kayleigh McEnany confirmed that account, noting that Barr "said that we needed to get going with moving that perimeter. He told the officers that out there." McEnany did not immediately respond to an email Friday night.

AD

At his own news conference Thursday, Barr said he had decided to extend the perimeter early Monday morning, and later, around 2 p.m., met with law enforcement agencies to lay out a plan for doing so. He said that officials could not get units in place soon enough to execute the plan before demonstrators arrived, but he did not address what happened in the minutes before police made their move.

A video of the incident shows Barr conferring with officials on the ground, and about 24 minutes later, police making an aggressive move on the crowd. The Associated Press reported that Barr "said it was a Park Police tactical commander — an official he never spoke to — who gave the order for the law enforcement agencies to move in and clear the protesters."

"They told me they were about to make the announcement and I think they stretched the announcements over 20 minutes. During the time I was there, I would periodically hear announcements," Barr told the Associated Press. "They had the Park Police mounted unit ready, so it was just a matter of execution. So, I didn't just say to them, 'Go.'"

AD

Kerri Kupec, a Justice Department spokeswoman, claimed there was “no contradiction” between Barr’s and other officials’ comments — though her statement did not address McEnany and the Justice Department official saying specifically that Barr had told those on scene to take action.

“Earlier in the day, the Attorney General had approved and adopted a plan to move the perimeter in response to the violence that had occurred over the weekend. Subsequently, he checked in with federal law enforcement officials on the ground in Lafayette Square to see how it was proceeding,” Kupec said.

A Park Police spokesman did not immediately return an email message seeking comment.

AD

At his Thursday news conference, Barr notably defended what happened soon after the demonstrators were cleared: President Trump walked across the now-empty area to St. John’s Episcopal Church, where he snapped a photo with Barr. Defense



Secretary Mark T. Esper and others.

“I think it was entirely appropriate for him to do,” Barr said.

The photo op, coupled with the move against protesters, has drawn intense criticism. Former defense secretary Jim Mattis, for example, wrote for the Atlantic: “When I joined the military, some 50 years ago, I swore an oath to support and defend the Constitution. Never did I dream that troops taking that same oath would be ordered under any circumstance to violate the Constitutional rights of their fellow citizens — much less to provide a bizarre photo op for the elected commander-in-chief, with military leadership standing alongside.”

AD

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# Barr: 'Everyone agreed use of regular troops is a last resort'

BY ZACK BUDRYK - 06/07/20 10:59 AM EDT

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Attorney General William Barr said Sunday on CBS's "Face the Nation" that "everyone" in the Trump administration agreed that active-duty military personnel should only be deployed in response to demonstrations over the death of George Floyd "as a last resort."

Barr called a CBS report that President Trump had demanded on Monday morning for 10,000 active-duty troops to be deployed to American cities "completely false."

"The decision was made to have at the ready or on hand in the vicinity in the vicinity some regular troops," he added, but "everyone agreed use of regular troops is a last resort."

"I think our position was common, which was that they should only be deployed as a last resort. And that we didn't think we would need them. I think everyone was on the same page," Barr said, referring to himself, Defense Secretary Mark Esper and Chairman of the Joint Chiefs of Staff Gen. Mark Milley

Host Margaret Brennan said following the segment that CBS stands by its reporting.

Barr also defended the forcible clearing of Lafayette Square Monday, denying that the crowd had been peaceful protesters and saying they had thrown "projectiles" at police, contradicting reporting from the scene of the protest, including that of The Hill.



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Barr: 'Everyone agreed use of regular troops is a last resort' | TheHill

The attorney general also denied tear gas or any other chemical irritant was used, saying "pepper spray is not a chemical irritant." Park Police issued a similar denial last week before later walking it back.



Face The Nation  
@FaceTheNation

AG Bill Barr says methods @usparkpolice used to move protesters were appropriate "when they met resistance" including tear gas used to clear crowds in front of St. John's Church and pepper balls Monday to "put a larger perimeter around" @WhitHouse.com.wu2X0DeCuk



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Asked if he would have done anything differently in hindsight, Barr responded: "I haven't studied the events retrospectively in detail, but I think in general, you had the qualified law enforcement officials with shields warning and moving a line slowly. They had mounted officers moving slowly, directing people to move. And most people complied."

After initial reporting that Barr had personally ordered the clearing of the park, the attorney general said Saturday that he "didn't just say to them, 'Go.'"

"I'm not involved in giving tactical commands like that," he added at the time.

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Black Lives Matter D.C. Sues Trump And Barr Over Tear Gas At Lafayette Square : NPR



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# Black Lives Matter D.C. Sues Trump And Barr Over Tear Gas At Lafayette Square

June 5, 2020

RACHEL KURZIUS

FROM **WAMU 88.5**  
NATIONAL PUBLIC RADIO



The scene by Lafayette Square on Monday evening.

Tyrona Turner/WAMU

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<https://www.npr.org/local/305/2020/06/05/870752740/black-lives-matter-d-c-sues-trump-and-barr-over-tear-gas-at-lafayette-square>



Protesters and civil liberties groups are suing President Donald Trump, Attorney General William Barr and heads of military forces and law enforcement for violating their constitutional rights by violently dispersing a peaceful protest at Lafayette Square on Monday evening, all so Trump could walk to a nearby church for a photo op.

Black Lives Matter D.C. and a number of local residents, including a nine-year-old, who were at Lafayette Square to protest the killing of George Floyd say they were given no warning before federal law enforcement used tear gas, pepper spray capsules, rubber bullets and flash bombs to clear the public space.

"It is precisely such domination – in the form of centuries of white supremacy and subjugation of Black lives – that was the core focus of the peaceful demonstration in Lafayette Square," the lawsuit says, connecting law enforcement actions that day to events like the Tulsa Race Massacre, Bloody Sunday, Ferguson and other "violence against Black people and their supporters committed by state actors. What differentiates the actions here from the others is that the President and Attorney General of the United States ordered the violence."

While Trump and the U.S. Park Police deny that authorities used tear gas against protesters, evidence shows otherwise. Journalists and demonstrators have maintained that they experienced the deployment of chemical irritants. On Thursday, WUSA journalist Nathan Baca tweeted images of canisters of tear gas reportedly collected Monday night in the square after the dispersal. That tweet is included as evidence in the lawsuit.

The Park Police also claims it issued three warnings and was dealing with "violent protestors on H Street NW [who] began throwing projectiles including bricks, frozen water bottles and caustic liquids." Eyewitness accounts from the scene dispute these claims, as do the lawsuit's plaintiffs.

The Washington Lawyers' Committee for Civil Rights & Urban Affairs, the American Civil Liberties Union of D.C. and Arnold & Porter. The ACLU of D.C. has also indicated it is investigating other police activity on June 1, including the kettling of demonstrators by D.C. police on Swann Street NW after the 7 p.m. curfew, and the



ACLU of Minnesota has filed a lawsuit on behalf of journalists injured by police violence in Minneapolis.

The lawsuit points out that Trump had used violent rhetoric towards the protesters in the days leading up to the incident, including tweeting that "when the looting starts, the shooting starts" and telling governors in a phone call earlier that day that "in Washington, we're going to do something people haven't seen before."

While D.C. was under a curfew beginning at 7 p.m. on Monday, federal law enforcement began clearing the square at approximately 6:30 p.m., shortly before Trump began a speech in the Rose Garden.

The president said in his remarks that he was deploying "thousands and thousands" of military personnel and law enforcement to the District: "We are putting everybody on warning on a 7:00 curfew that will be strictly enforced. Those who threaten innocent life and property will be arrested, detained, and prosecuted to the fullest extent of the law."

Mayor Muriel Bowser tweeted in response to the clearing of the park that "A full 25 minutes before the curfew & w/o provocation, federal police used munitions on peaceful protestors in front of the White House, an act that will make the job of @DCPoliceDept officers more difficult. Shameful!"

The lawsuit says the dispersal of the park amounts to violations of the First and Fourth Amendments. The event impacted Black Lives Matter D.C. "by chilling BLM members and supporters from exercising their rights to demonstrate and by creating fear when they do," per the suit, and individual protesters faced trauma, bruising, symptoms related to inhaling tear gas and other injuries.

The day after the clearing of Lafayette Square, Trump tweeted, "Washington, D.C., was the safest place on earth last night!"

Blm v. Trump Complaint by Rachel Kurzius on Scribd

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

BLACK LIVES MATTER D.C.  
c/o Washington Lawyers' Committee for Civil  
Rights & Urban Affairs  
700 14th Street, NW, Suite 400  
Washington, D.C. 20005,

Case No.

TONI SANDERS  
c/o Washington Lawyers' Committee for Civil  
Rights & Urban Affairs  
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Washington, D.C. 20005,

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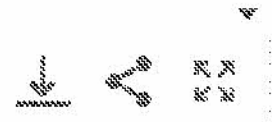
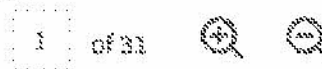
J.N.C., through his mother Demetria Bright,  
c/o Washington Lawyers' Committee for Civil  
Rights & Urban Affairs  
700 14th Street, NW, Suite 400  
Washington, D.C. 20005,

KISHON MCDONALD  
c/o Washington Lawyers' Committee for Civil  
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700 14th Street, NW, Suite 400  
Washington, D.C. 20005,

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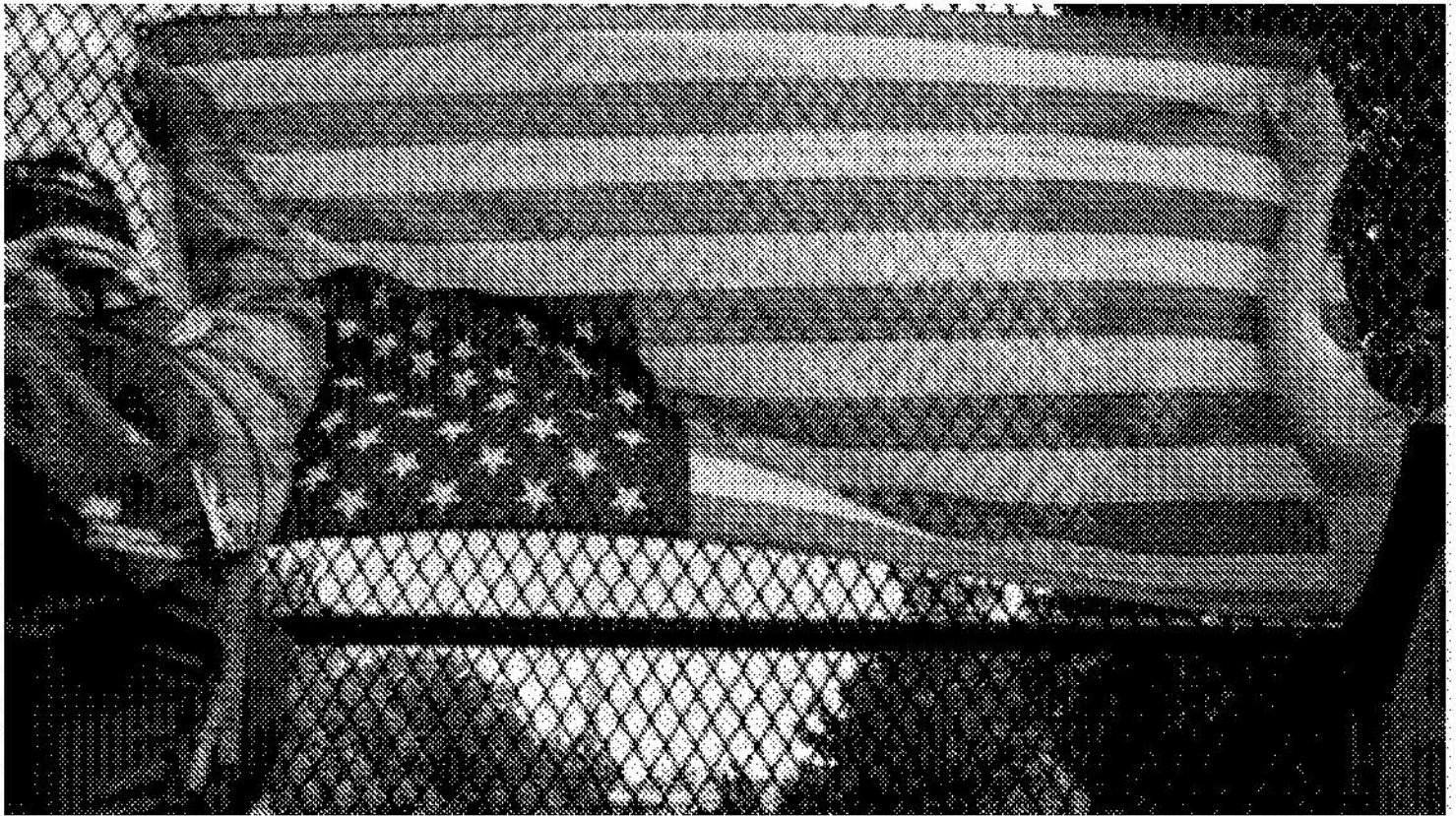
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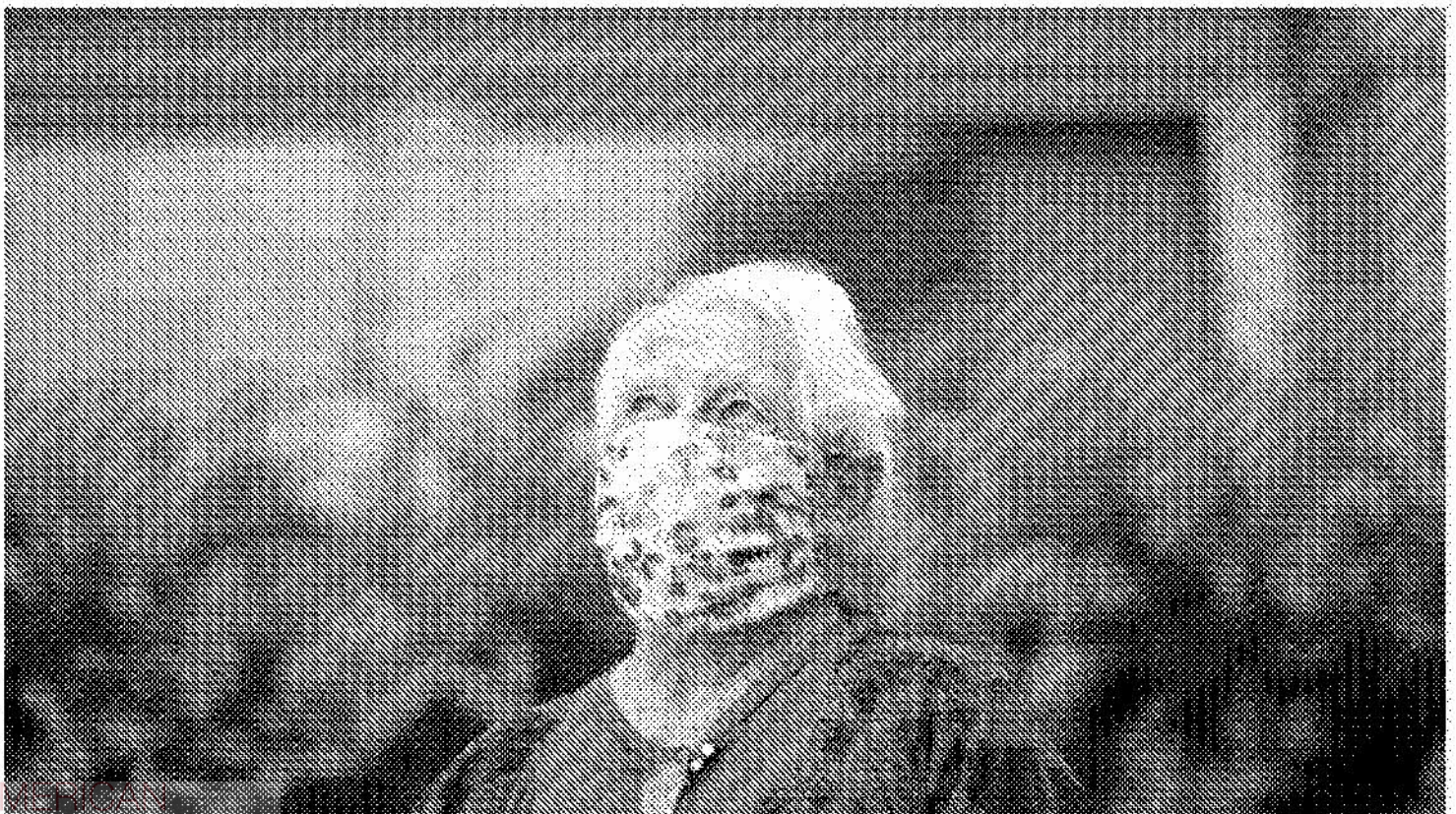
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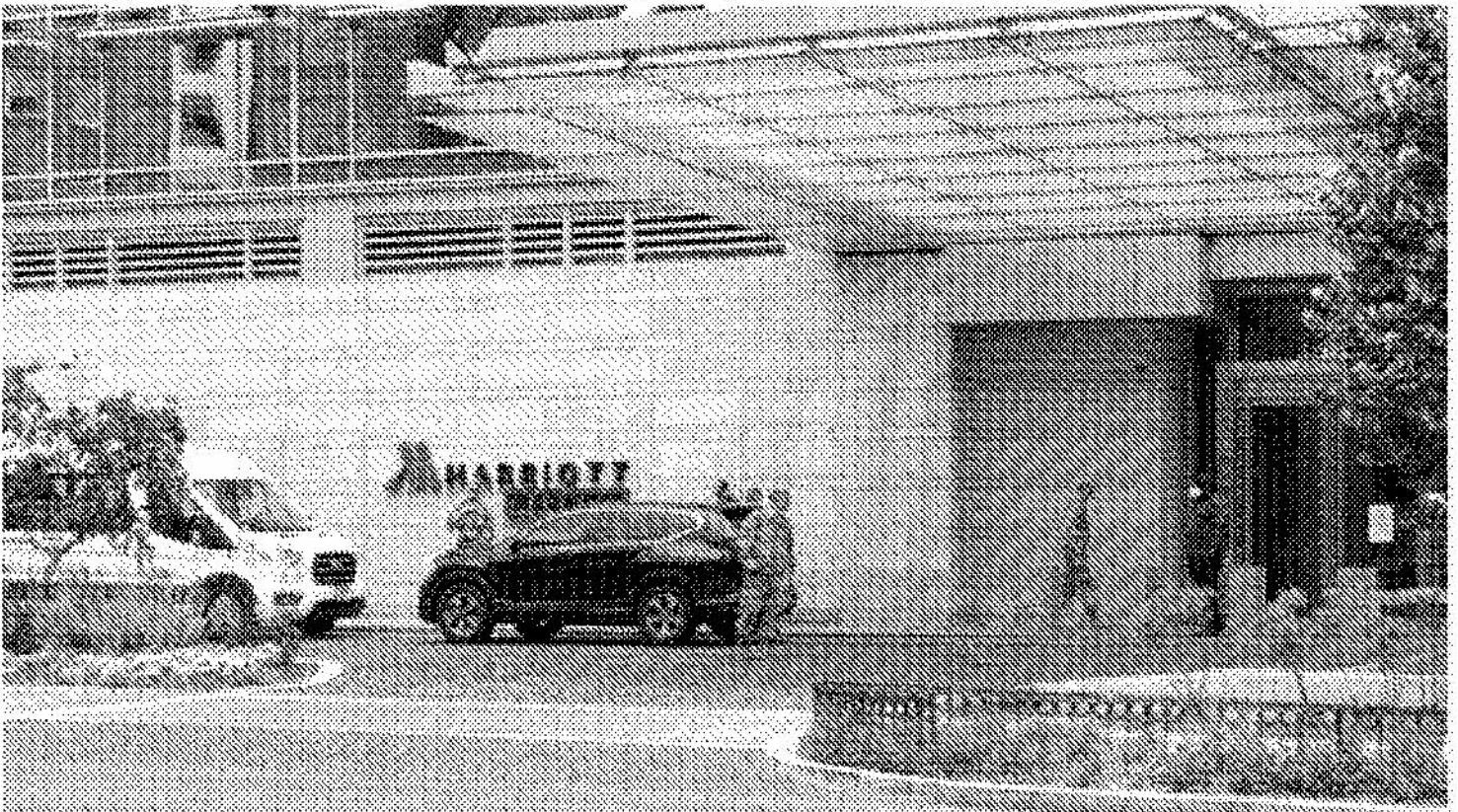


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WASHINGTON POST VIDEO ON EVENTS AT LAFAYETTE SQUARE  
ON JUNE 1, 2020 BETWEEN 5:00 PM AND ABOUT 7:15 PM

<https://www.washingtonpost.com/investigations/2020/06/08/timeline-inamp-church-photo-op/?arc404=true>

TO ACCOMPANY COMPLAINT BY  
BARR, ATTORNEY GENERAL

(b)(6); (b)(7)(C)

AGAINST WILLIAM

TO: INSPECTOR GENERAL OF DOJ

AND

CIVIL RIGHTS DIVISION OF DOJ

# FAX

**FROM**

(b)(6); (b)(7)(C)

**PHONE**

(b)(6); (b)(7)(C)

**NO. PAGES**

16

**DATE**

JUNE 10, 2020 AT 3:20 AM

**SUBJECT**

ADDITION TO MY COMPLAINT AGAINST WILLIAM BARR

SENT WITH **FAX PRO FOR IPHONE**

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# The Washington Post

*Democracy Dies in Darkness*



## William Barr and his henchmen must be held accountable

By Jennifer Rubin

May 8, 2020 at 7:45 a.m. EDT

### CORRECTION

An earlier version of this article misstated the party affiliation of Rep. Adam B. Schiff of California. He is a Democrat.

We take a moment in the midst of a pandemic, which, because of the negligence of this administration has killed more than 75,000 Americans and sent the United States into a record-setting recession, to note another assault on the rule of law by the most corrupt president and attorney general in history.

### The Post reports:

The Justice Department moved Thursday to drop charges against President Trump's former national security adviser Michael T. Flynn, who pleaded guilty to lying to the FBI about his Russian contacts during the presidential transition.

The unraveling of Flynn's guilty plea marked a stunning reversal by the Justice Department in its case against the retired three-star Army general, who was

convicted in the course of special counsel Robert S. Mueller III's investigation of Russian interference in the 2016 election.

The stated reason is false and irrelevant. The Justice Department claims that the investigation into the now-former national security adviser was about to be dropped until the FBI interviewed Flynn, after discussing the possibility he might lie. There is nothing untoward about this. It in no way should vitiate Flynn's guilty plea. Former House impeachment counsel Norman Eisen tells me, "Barr's latest perversion of [the] DOJ is shocking. Flynn has repeatedly admitted his guilt in U.S. District Court." Eisen adds, "The four pages of FBI emails and notes revealed last week changed nothing. They did not affect his culpability or undermine [the] DOJ's and the FBI's work, as I explained at the time."

AD

Rep. Adam B. Schiff (D-Calif.), who served as the lead impeachment manager, tweeted his reaction:



**Adam Schiff**  
@RepAdamSchiff



Rep. Jerrold Nadler (D-N.Y.), the chairman of the House Judiciary Committee, who also served as an impeachment manager, excoriated Barr in a written statement: “The decision to drop the charges against General Flynn is outrageous. The evidence against General Flynn is overwhelming,” Nadler stated. “He pleaded guilty to lying to investigators. And now a politicized and thoroughly corrupt Department of Justice is going to let the President’s crony simply walk away. Americans are right to be furious and worried about the continued erosion of our rule of law.” Nadler called for a new inspector general’s investigation.

This is one more instance — along with the misleading presentation of the Mueller report, reversing prosecutors’ sentencing recommendations for Trump confidant Roger Stone and refusing to investigate Trump’s extortion of Ukraine for political gain — in which Barr has acted contrary to his oath of office and to his professional obligations as a lawyer. He continues to serve President Trump’s interests (and, by extension, those of Russian President Vladimir Putin, with whom Trump bizarrely discussed the Russia investigation in a phone call last year) and not the fair administration of justice.

AD

“What Barr has done on Trump’s behalf with respect to Flynn, who entered a fully justified guilty plea that the district court duly approved, is blatantly and purely partisan,” constitutional scholar Laurence Tribe tells me. “I know of no similarly corrupt action in the Justice Department’s entire history. This latest outrage, which closes the circle that began with Trump’s attempt to get [then-FBI Director] James Comey to go easy on Flynn and with Trump’s firing of Comey for his failure to do so, just goes to show that a president with a sufficiently unprincipled and compliant Attorney General needn’t even bother to abuse his pardon power to bail out his loyal henchmen.” Tribe further observes, “By sparing Trump the need to invoke his pardon power and at least having to be held politically accountable, Barr gave the president cover. Hopefully the voters will see through the ruse come November.”

I recommended long ago that Barr be impeached for his unprecedented assaults on the rule of law. The latest stunt confirms my fear that, left to his own devices, Barr would continue to undermine the impartial administration of justice and the integrity of the Justice Department. “Close observers already knew that Barr was willing to sell out justice from his excusing Trump’s obstruction after it was revealed by the Mueller report — but this is even more brazen,” Eisen says.



Despite the pandemic, the House Judiciary Committee should revisit impeachment. In any event, as I also raised **during the Stone fiasco**, it is beyond time that state bar authorities investigate the attorney general and his enablers at the Justice Department. The next administration will need conduct a thorough investigation into Barr's conduct, fire anyone who aided and abetted Barr, set up new guidelines to prevent the politicization of justice and report the whole lot of them to the state bar associations. The damage to the rule of law is incalculable.

AD

Joyce White Vance, a former federal prosecutor, sums it up: "This is a bad day for the rule of law. There are two kinds of justice in America now: the kind that is available for the president's friends and the kind that's available to the rest of us."

**Read more:**

**Alexandra Petri: Justice Department announces its first-ever Purge for all white-collar crimes**

Greg Sargent: As Trump presides over an epic disaster, Senate Republicans see little to criticize

Eugene Robinson: Democrats always appeal to the mind. Now they must go for the gut.

George T. Conway III: Trump went ballistic at me on Twitter. Here's why he reacts with such rage.









# The Washington Post

*Democracy Dies in Darkness*



## William Barr's backpedaling tour continues

By James Downie

June 7, 2020 at 5:38 p.m. EDT

Attorney General William P. Barr began his backpedaling public relations tour Friday, when he told the Associated Press that — despite The Post's reporting — he had not personally ordered Monday's Lafayette Square advance on protesters with tear gas and horses. It was a surprising claim, given that White House press secretary Kayleigh McEnany had confirmed Barr's role on Wednesday. But the attorney general opted to shelter in a meaningless distinction: that “my attitude was get it done, but I didn't say, ‘Go do it.’”

It was not a profile in personal responsibility. But that was just the start of the weaseling; Barr's Sunday interview with CBS's “Face the Nation” was more like a tour de force in bobbing and weaving.

The interview kicked off with host Margaret Brennan asking Barr whether the president had indeed demanded 10,000 active duty troops be deployed against protesters. “No, that's completely false,” Barr replied. But that number had been reported by my Post colleague David Ignatius on Friday and confirmed by the AP, CBS and CNN since.

AD

Barr continued to dodge as the conversation shifted to systemic racism in law enforcement. “I think there’s racism in the United States still, but I don’t think that the law enforcement system is systemically racist,” said Barr, echoing the views expressed the previous Sunday by national security adviser Robert C. O’Brien. As I laid out last week, Barr and O’Brien’s views contradict the overwhelming evidence. And like O’Brien, the attorney general undercut his own argument. “The military used to be an explicitly racist institution,” he offered, “And now I think it’s in the vanguard of bringing the races together and providing equal opportunity. I think law enforcement has been going through the same process.” Barr couldn’t bring himself to say law enforcement *used* to be racist; but he did admit it’s something police departments struggle with.

Barr's credibility dimmed again when he disputed the very nature of pepper spray. "Pepper spray is not a chemical irritant," Barr insisted. "It's not chemical." That will no doubt come as news to manufacturers such as PepperBall, which advertises its products to law enforcement as "the most effective chemical irritant available." The active ingredient in pepper balls, pepper spray and the like? Capsaicin, with the chemical formula  $C_{18}H_{27}NO_3$ . Barr might as well have argued water isn't a compound.

Misrepresentation has long been standard operating procedure for America's top law enforcement officer. This is the same attorney general who claimed that dismissing charges against former national security adviser Michael Flynn "upheld the rule of law" — even as key former FBI and Justice Department officials disputed the facts in the DOJ's motion. And it's the same AG who twisted the findings of special counsel Robert S. Mueller III's report before its publication, to the point that a Republican-appointed judge demanded access to the full report because Barr's distortions damaged the Justice Department's credibility.

AD



In another administration, such behavior would be grounds for resignation. In the Trump White House, it's par for the course.

### **Read more:**

[The Post's View: By deploying police without badges, Barr threatens force without accountability](#)

[David Ignatius: How Trump came to the brink of deploying active-duty troops in Washington](#)

[James Miller: Secretary Esper, you violated your oath in aiding Trump's photo op. That's why I'm resigning.](#)

[Robert Kagan: The Battle of Lafayette Square and the undermining of American democracy](#)

[Alexandra Petri: Sorry I can't comment on the president's actions, I just remembered I'm turning into a bird](#)

## **George Floyd's death: What you need to know**

Protests have spread across the nation

Updated June 9, 2020

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**Understanding racism and inequality in America**







April 12, 2019

Michael E. Horowitz, Inspector General  
U.S. Department of Justice  
Office of the Inspector General  
950 Pennsylvania Ave., NW  
Suite 4706  
Washington, D. C. 20530-0001

Jonathan M. Malis, General Counsel  
U.S. Department of Justice  
Office of the Inspector General  
Office of the General Counsel  
950 Pennsylvania Ave., NW, Room 4726  
Washington, D.C. 20530

cc: Federal Deposit Insurance Corp.  
Special Agent, (b)(6); (b)(7)(C)  
FDIC-OIG  
300 S. Riverside Plaza – Suite 1700  
Chicago, IL 60606  
(b)(6); (b)(7)(C)

### COMPLAINT

Dear Sir or Madam:

*With all due respect.* There is a serious matter here that needs to be addressed. As a former government lawyer, I understand issues can go undetected by well intentioned, dedicated government employees. This matter reflects upon the Justice Department as a whole, so I believe it must addressed.

How did Department of Justice (DOJ) programs, policies, and procedures allow the Attorney General to engage in activity contrary to the law? I cannot imagine that an attorney representing a criminal defendant can *switch-sides* and join the DOJ in a position having influence over his former client's case without having to disclose this matter, permanently recuse himself, and effective screening measures put in place. This should happen with every rank and file DOJ attorney, and far more so for the AG. The Justice Department is putting itself and its investigation at great risk for ridicule, questions of taint, prosecutorial challenges, etc. *Is the DOJ unwittingly creating a defense for the defendant in this case that the AG taints the government's case?* The mere possibility of this cannot be permitted.

I believe this matter to be of significant importance given it involves the Attorney General and the largest tax evasion investigation in the history of the United States, in which the government has the defendants own deposition testimony and admissions in court filings to prove its case.

Please read on.

Federal courts have repeatedly ruled “*side-switching*” is forbidden and lawyers who engage in it must be disqualified. The D.C. Bar Association even amended the ABA Model Rules to codify the case law and state unequivocally that this conduct is prohibited and cannot be waived by anyone.<sup>1</sup> This complaint is not about the ethical conduct of the AG,<sup>2</sup> but rather how DOJ programs, policies and procedures produced a result so contrary to the law and legal norms. Thus, this issue falls under the jurisdiction of the Office of Inspector General, not the Office of Professional Responsibility.

Just four months ago AG Barr was defending Caterpillar Inc. in an ongoing DOJ criminal investigation. He now is sworn to investigate and prosecute Caterpillar Inc. in the *exact* same matter. His duty as the AG is directly adverse to his former representation of Caterpillar Inc. This is commonly known as *side-switching*. It is *absolutely prohibited* and *even with the informed consent of all involved clients*.<sup>3</sup> This conflict CANNOT be waived. Common sense should dictate that when the defense lawyer is allowed to switch sides and participate or be involved in the investigation and prosecution of his former client, something is amiss. This is alarming in any event, and more so when the lawyer is the highest law enforcement officer in the nation. Shouldn't DOJ programs, policies and procedures have prevented this? Or, even address it after the fact?

AG Barr has stated in both oral and written testimony he would comply with the Rules of Professional Conduct, and federal case law, statutes and regulations. However, I found that basic rules that should already have been complied with were not even a part of his Ethics Agreement submitted to the Office of Government Ethics. Nor were these issues and rules addressed in his oral and written testimony, even though the potential problem was noted. And based on a response I received from the Office of Professional Responsibility (OPR) discussed below, he has not complied with DOJ specific regulations directly addressing this situation.

I raised this issue to the OPR including support for my complaint in the DOJ regulations<sup>4</sup> confident that the OPR would investigate the matter as the conflict is apparent.<sup>5</sup> I indicated that AG Barr must permanently recuse himself from participating in the DOJ investigation of Caterpillar Inc. I received a response in which the OPR summarily dismissed this issue as not warranting an investigation.<sup>6</sup> The response indicates there has been no recusal,<sup>7</sup> nor will there be,

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<sup>1</sup> The D.C. Bar made specific changes to the ABA Model Rule 1.7 for the principal purpose of stating more clearly and unequivocally that there are circumstances in which representation is absolutely forbidden. This is a codification of the absolute prohibition that existed in case law. The D.C. Rule 1.7(a) mandates an absolute prohibition of multiple representation when the lawyer represents clients with *adverse positions* in the *same matter*. Client consent *cannot* cure such a conflict. Griya v. Davison, 637 A.2d 830, 843 (D.C. 1994).

<sup>2</sup> A complaint has been filed with the OPR regarding the employees conduct.

<sup>3</sup> See the letter dated April 9, 2019 (copy attached), for a detailed discussion and relevant authority supporting these statements and related issues.

<sup>4</sup> 28 C.F.R. § 45.2.

<sup>5</sup> See letter dated February 15, 2019 (copy attached).

<sup>6</sup> Email dated March 8, 2019 (copy attached).

<sup>7</sup> No permanent recusal pursuant to 28 C.F.R. § 45.2. While AG Barr's Ethics Agreement provides for a general one-year recusal, this is not relevant as the Rules of Professional Conduct, case law, statutes and regulations require **complete disqualification or permanent recusal**. See the letter dated April 9, 2019 (copy attached), for a detailed



nor were the DOJ regulations followed, and nor will this matter be addressed. I believe that response to be insincere.

The response states there was no basis for my assertions because I did not provide evidence that AG Barr had a “familial” or “friendship” relationship with Caterpillar Inc. The response dismissed the fact that AG Barr had a former attorney-client relationship with Caterpillar Inc., as apparently not relevant to the issue of conflicts-of-interest. This was surprising because one of the most common concerns regarding conflicts attorneys likely have upon entering the DOJ are the attorney-client relationships they had in private practice. A reasonable interpretation of this response is that DOJ programs, policies and procedures permit *side-switching* by the highest law enforcement officer in the nation. Surely this cannot be the intended outcome.

Upon more research, I found overwhelming support in the Rules of Professional Conduct and the federal case law that *side-switching*, even on matters of far less importance than here, is an *incurable conflict of interest that cannot be waived*.<sup>8</sup> Permanent recusal with effective screening measures are required. This is why Bar Association ethics attorneys with whom I have discussed side-switching matters have indicated, “That is a conflict-of-interest.” So, I submitted another complaint to the OPR including my additional research.<sup>9</sup> While I am hopeful that the OPR will require and ensure compliance with all relevant laws through a permanent recusal and screening measures, I have deep concerns given the manner of the response I received and its substance.

Given what has transpired I am calling on the Office of Inspector General (OIG) to investigate how and why DOJ programs, policies and procedures allowed the current situation to come about and, based on the response I received, why this situation is being perpetuated when presented with a reasonable inquiry regarding its propriety.

I believe there to be serious questions about the DOJ programs, policies and procedures that the OIG should investigate. I propose you consider the following in your investigation.

- Aren’t former client matters with the DOJ the most apparent and potentially damaging conflicts-of-interest?
- Are there programs, policies and procedures for disclosing former clients whom an incoming attorney represented in ongoing DOJ matters to identify conflicts?
  - Were these programs, policies and procedures followed?
  - For example, AG Barr was apparently aware of un-waivable conflicts-of-interest regarding Caterpillar Inc.<sup>10</sup>
  - 28 C.F.R. § 45.2(b) requires recusal and reporting.
- Should there have been follow-up on AG Barr’s written comments to the Senate stating it’s likely his representation of Caterpillar Inc. will present conflicts-of-interest and he knows certain conflicts cannot be waived?<sup>11</sup> Why didn’t the notation of “un-waivable conflict-of-interest”

---

discussion and relevant authority supporting these statements and related issues.

<sup>8</sup> See the letter dated April 9, 2019 (copy attached), for a detailed discussion and relevant authority supporting these statements and related issues.

<sup>9</sup> See the letter dated April 9, 2019 (copy attached).

<sup>10</sup> <https://www.judiciary.senate.gov/imo/media/doc/Barr%20Responses%20to%20Whitehouse%20QFRs.pdf> (see Questions #55)

<sup>11</sup> <https://www.judiciary.senate.gov/imo/media/doc/Barr%20Responses%20to%20Whitehouse%20QFRs.pdf> (see



initiate inquiry?

- Why is there no mention of “un-waivable conflicts-of-interest” regarding Caterpillar Inc. in the Ethics Agreement submitted to Office of Government Ethics by the Justice Management Division?
- Why does the Ethics Agreement focus on every possible financial interest, but makes no mention of the one noted “un-waivable conflict-of-interest”?
- How and why did DOJ programs, policies and procedures allow for an absolute, incurable conflict-of-interest to go undetected?
- Shouldn’t DOJ programs, policies and procedures protect incoming attorneys like AG Barr and former clients from this very situation?
- Should AG Barr resign his position as Attorney General of the United States?
- Should AG Barr permanently recuse himself from participation in the Caterpillar investigation and the Deputy AG appoint a Special Counsel?<sup>12</sup>
- Should AG Barr permanently recuse himself from participation in the Caterpillar investigation and the DOJ immediately implements effective screening measures for the AG and any other appropriate personnel?
- Is the Justice Department sanctioning an apparent conflict-of-interest and creating at the very least an appearance of impropriety?

How does this situation promote overall DOJ Policy? It seems the DOJ has everything to lose, and nothing to gain, from this situation. What value or benefit does the DOJ gain from AG Barr’s involvement? Quite honestly, it is simply unfair for the DOJ programs, policies and procedures to put AG Barr or any attorney, and former clients, in this position. **His actual or even perceived possible participation or involvement contradicts DOJ norms and puts the government’s investigation at risk of Caterpillar claiming it is “tainted”.** This situation contradicts federal case law, statutes, and regulations. It contradicts the Rules of Professional Conduct. It contradicts Justice Department norms. It condones and permits a *non-waivable conflict-of-interest*; and creates the *appearance of either unfairness or favoritism toward Caterpillar Inc.*

How can DOJ programs, policies and procedures not lead to what should be a routine recusal and implementation of effective screening procedures when doing so creates no harm to anyone, and a positive outcome for everyone, including AG Barr and Caterpillar Inc.

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#### Questions #55)

<sup>12</sup> See 28 CFR §600.1. A Special Counsel is appropriate because: there is already a criminal investigation underway; the AG has a conflict-of-interest; and it is always in the public interest (and legally required) for the Justice Department to avoid *even the appearance of impropriety* to maintain the public trust. Since effective screening measures are required here for an effective recusal of the AG and such measures were not deployed promptly, the disqualification could be imputed beyond the AG to other high-level DOJ officials. (“The screen must be erected promptly. See *Analytica, Inc. v. NPD Research Inc.*, 708 F.2d 1263, 1267-68 (7th Cir. 1983) (“[I]t was not enough that the lawyer ‘did not disclose to any person associated with the firm any information . . . on any matter relevant to this litigation,’ for ‘no specific institutional mechanisms were in place to insure that information was not shared, even if inadvertently,’ until the disqualification motion was filed—months after the lawyer had joined the firm.”); see also *United States v. Goot*, 894 F.2d 231, 235 (7th Cir. 1990) (“The predominant theme running through this court’s prior decisions is that disqualification is required when screening devices were not employed or were not timely employed.”) (emphasis added); *Atasi Corp. v. Seagate Tech.*, 847 F.2d 826, 831 (Fed. Cir. 1988) (presumption of shared confidences was not clearly overcome because oral screening measures were not timely employed or adequately communicated); *Cobb Publ’g, Inc. v. Hearst Corp.*, 907 F. Supp. 1038 (E.D. Mich. 1995) (delay of 11 or 18 days in setting up ethical wall is too long).”)

- Recusal with effective screening procedures
  - o Safeguards AG Barr's former client, thereby protecting him.
  - o Eliminates the appearance of a conflict-of-interest, bias, unfairness, etc.
  - o Complies with the Rules of Professional Conduct, and federal law & regulation.
  - o Eliminates a patent conflict-of-interest.
  - o Is consistent with AG Barr's written comments to the Senate.
- Non-recusal
  - o Puts everyone involved at-risk.
  - o Could taint a 4-year multi-agency investigation.
  - o Condone a patent conflict-of-interest, setting a terrible precedent.
  - o Creates the appearance of a conflict-of-interest, which is prohibited by all relevant authority.

There are many good people involved here. Why have the DOJ programs, policies and procedures not prevented this situation nor addressed it in hind-sight? If you have any question please contact me.

Sincerely,

(b)(6); (b)(7)(C)





## **ATTACHMENTS**

**[Non-record; Inserted by OIG for clarity]**

(b)(6); (b)(7)(C)

April 10, 2019

To:

Robin C. Ashton, Counsel  
U.S. Department of Justice  
Office of Professional Responsibility  
950 Pennsylvania Ave., NW  
Suite 3529  
Washington, DC 20530  
Email: [robin.c.ashton@usdoj.gov](mailto:robin.c.ashton@usdoj.gov)

Corey R. Amundson, Director & Chief Counsel  
U.S. Department of Justice  
Office of Professional Responsibility  
950 Pennsylvania Ave., NW  
Suite 3529  
Washington, DC 20530  
Email: [corey.r.amundson@usdoj.gov](mailto:corey.r.amundson@usdoj.gov)

cc:

Richard E. Zuckerman, Principal  
Deputy Assistant Attorney General  
U.S. Department of Justice  
Tax Division  
950 Pennsylvania Ave.,  
NW Washington, D.C. 20530-0001  
Email: [richard.e.zuckerman@usdoj.gov](mailto:richard.e.zuckerman@usdoj.gov)

The Honorable Sheldon Whitehouse  
U.S. Senator for Rhode Island  
Hart Senate Office Bldg., Rm 530  
Washington, D.C. 20510

(b)(6); (b)(7)(C)

Assistant United States Attorney  
201 S. Vine Street  
Suite 226  
Urbana, IL 61802

Federal Deposit Insurance Corp.  
Special Agent, (b)(6); (b)(7)(C)  
FDIC-OIG  
300 S. Riverside Plaza – Suite 1700  
Chicago, IL 60606

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

William J. Birney  
Deputy Director  
Office of Professional Responsibility  
U.S. Department of Justice  
Email: [william.j.birney@usdoj.gov](mailto:william.j.birney@usdoj.gov)

Jacqueline T. Robertson  
Program Analyst  
Office of Professional Responsibility  
U.S. Department of Justice  
Email: [jacqueline.t.robertson@opr.usdoj.gov](mailto:jacqueline.t.robertson@opr.usdoj.gov)

## COMPLAINT

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

The Rules of Professional Conduct, case law, statutes & regulations prohibit his involvement.

Side-switching is a patent conflict-of-interest that is NOT waivable.

Screening measures are required for an effective recusal.

Dear Sir or Madam:

*With all due respect*; when the defense attorney becomes the top law enforcement officer overseeing the investigation of that very same case; there is a conflict-of-interest. No situation is more so. This is commonly referred to in federal case law as "side-switching". Disqualification is

required when lawyers change sides.<sup>1</sup> The Rules of Professional Conduct consider this to be a patent conflict-of-interest that *cannot* be waived. This is why Bar Association ethics attorneys with whom I have discussed side-switching matters have indicated, “That is a conflict-of-interest.”

*Side-switching* violates the core of the attorney-client relationship: the duties of confidentiality and loyalty, to avoid conflicts-of-interest. The courts do not require that it be proved the lawyer actually acquired confidential information in the former representation,<sup>2</sup> or that he actually disclosed confidential information in the subsequent representation.<sup>3</sup> The mere possibility these duties may be breached is prohibited.<sup>4</sup> Where there is a substantial relationship between the subject matter of the former representation and that of a subsequent representation, the latter representation will be prohibited.<sup>5</sup> In this case it is the *exact same matter*. For a lawyer to represent one client today, and the client's adversary tomorrow in the same matter, creates an unsavory appearance of conflict of interest that is difficult to dispel in the eyes of the public — or for that matter the bench and bar.<sup>6</sup>

In response to my letter to you dated February 15, 2019,<sup>7</sup> I received an email dated March 8, 2019.<sup>8</sup> The email indicates there has been no recusal, nor will there be, and nor will this matter be addressed. I was surprised the Office of Professional Responsibility (OPR) summarily dismissed this issue as not warranting an investigation. This response is tantamount to a statement by the Department of Justice (DOJ) that *side-switching* by the highest law enforcement officer in the nation is OK. Surely this cannot be what you intend.

AG Barr states in his written comments to the Senate that it's likely his representation of Caterpillar Inc. will present conflicts-of-interest and he knows certain conflicts cannot be waived.<sup>9</sup>

<sup>1</sup> Trone v. Smith, 621 F.2d 994, 1001 (9<sup>th</sup> Cir. 1980).

<sup>2</sup> The former client need show no more than that the matters embraced within the pending suit wherein his former attorney appears on behalf of his adversary are substantially related to the matters or cause of action wherein the attorney previously represented him, the former client. The Court will assume that during the course of the former representation confidences were disclosed to the attorney bearing on the subject matter of the representation. TC Theatre Corp. v. Warner Bros. Pictures, 113 F. Supp. 265, 268 (S.D.N.Y. 1953). A complainant need only show access confidential information and the inference that the lawyer received these confidences will follow. Brown v. District of Columbia Board of Zoning Adjustment, 486 A.2d 37, 43-44 (D.C. 1984). It matters not whether confidences were in fact imparted to the lawyer by the client. Trone v. Smith, 621 F.2d 994, 1000 (9<sup>th</sup> Cir. 1980).

<sup>3</sup> It is not appropriate for the court to inquire into whether actual confidences were disclosed. Analytica, Inc. v. NPD Research, Inc., 708 F.2d 1263, 1267 (7<sup>th</sup> Cir. 1983). The test does not require the former client to show that actual confidences were disclosed. Disqualification does not depend upon proof of the abuse of confidential information. Trone v. Smith, 621 F.2d 994, 999-1001 (9<sup>th</sup> Cir. 1980). We agree that when an attorney engages in a conflict of interest on the same matter, he or she is in a position to act on the confidential information learned from the relationship with the first client, whether or not that information is actually disclosed or acted upon in advising the new client. Damron v. Herzog, 67 F.3d 211, 339 (9<sup>th</sup> Cir. 1995).

<sup>4</sup> Trone v. Smith, 621 F.2d 994, 999 (9<sup>th</sup> Cir. 1980). It is the possibility of the breach of confidence, not the fact of the breach, that triggers disqualification.

<sup>5</sup> Brown v. District of Columbia Board of Zoning Adjustment, 486 A.2d 37, 42 (D.C. 1984).

<sup>6</sup> Analytica, Inc. v. NPD Research, Inc., 708 F.2d 1263, 1269 (7<sup>th</sup> Cir. 1983).

<sup>7</sup> Copy attached.

<sup>8</sup> Copy attached.

<sup>9</sup> <https://www.judiciary.senate.gov/imo/media/doc/Barr%20Responses%20to%20Whitehouse%20QFRs.pdf> (see Questions #55)



It would appear he was referring to his *side-switching* as few conflicts cannot be waived, and *side-switching* is one of them. Shouldn't this issue have been in AG Barr's Ethics Agreement? Wouldn't it be natural for the OPR to follow-up on his written comments to the Senate that are inconsistent with his Ethics Agreement; and the JMD's opinion given, on that agreement?

The reasoning stated in the email response<sup>10</sup> I received is that a DOJ employee can only have a conflict-of-interest in the context of a personal relationship that constitutes a "friendship" or "familial relationship". Therefore, without evidence of a friendship or familial relationship my allegations are without foundation and do not warrant further inquiry. This reasoning would mean that no other types of relationships can create a conflict-of-interest. This reasoning is contrary to the Rules of Professional Conduct; federal case law, statutes and regulations; and the DOJ's internal information published as guidance for its attorneys regarding conflicts.

I hereby submit this *new* complaint calling on the OPR to promptly conduct an investigation into whether AG Barr is in violation of the Rules of Professional Conduct, and federal case law, statutes and regulations for not "*permanently*" recusing himself from the investigation of Caterpillar Inc. and putting screening measures in place.

I *respectfully* submit the following reasons why this matter should be investigated, and urgently. I shall start with the Rules of Professional Conduct because these rules state clearly that all ethics rules, case law, statutes and regulations apply to government attorneys.<sup>11</sup> This includes AG Barr.

### Rules of Professional Conduct

The District of Columbia (D.C.) Rules of Professional Conduct related to Successive Government and Private Employment details specific ethical prohibitions applicable to lawyers who leave public service and enter private practice. There is not a specific rule regarding lawyers entering government service.<sup>12</sup> However, although there is no parallel D.C. rule addressing lawyer movement from private practice to government employment, the D.C. Rules of Professional Conduct address this subject more generally and provide guidance on the ethical constraints that apply when a lawyer leaves private practice to enter public service.<sup>13</sup> In other words, the ethical obligations and constraints that apply to a lawyer moving from government service to private practice, also apply to a lawyer moving from private practice to government service. For example, a lawyer who is investigating a case is prohibited from leaving the government to then defend that same case. And likewise, a lawyer who is defending a case is prohibited from then entering the

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<sup>10</sup> The email discussed the issue of financial conflict-of-interest. I have not raised that issue so it is not relevant to this discussion. The email also raised the issue of AG Barr's Ethics Agreement which outlines his compliance with general executive branch ethics rules including a one-year recusal. However, this ignores the permanent recusal required by the Rules of Professional Conduct, case law, and 28 CFR § 45.2, which were not addressed at all in the Ethics Agreement. A one-year recusal does NOT compliant with all the relevant rules.

<sup>11</sup> District of Columbia Rules of Professional Conduct: Rule 1.11—Successive Government and Private Employment, Comment [2].

<sup>12</sup> There is a specific rule for this matter in ABA Model Rules of Professional Conduct; Rule 1.11(d).

<sup>13</sup> District of Columbia Ethics Opinion 308 – Ethical Constraints on Lawyers Who Leave Private Employment for Government Service. Additional regulations include the DOJ specific regulation 28 CFR § 45.2.



government to investigate that same case. Both examples involve the same lawyer, arguing both sides, of the same exact matter, for opposing clients.

A lawyer representing a government agency, whether employed or specially retained by the government, is subject to the Rules of Professional Conduct, including the prohibition against representing adverse interests stated in Rule 1.7 and the protections afforded former clients in Rule 1.9. In addition, such a lawyer is subject to Rule 1.11 and to statutes and government regulations concerning conflicts-of-interest.<sup>14</sup> Thus, AG Barr must comply with Rule 1.7, Rule 1.9, and Rule 1.11. These rules provide guidance on the ethical constraints that apply when a lawyer *leaves private practice to enter public service*. These rules disqualify AG Barr from participating in any matter related to the investigation of Caterpillar Inc. He must permanently recuse himself. The DOJ must implement screening procedures to ensure such recusal is in-fact effective.

Rule 1.7: This rule states that, “A lawyer shall not advance two or more adverse positions in the same matter.”<sup>15</sup> This rule sets out the limited circumstances in which representation of conflicting interests is “absolutely prohibited”, and “even with the informed consent of all involved clients”.<sup>16</sup> The institutional interests in preserving confidence in the adversary process and in the administration of justice preclude permitting a lawyer to represent adverse positions in the same matter.<sup>17</sup> The same lawyer should not espouse adverse positions in the same matter during the course of any type of representation.<sup>18</sup> This is an *absolute conflict-of-interest* that *cannot be waived* by anyone.<sup>19</sup>

AG Barr formerly defended Caterpillar Inc. in an ongoing DOJ investigation. Subsequently, he now is sworn to investigate Caterpillar Inc. in the *exact* same matter. This is *side-switching*. Any participation or involvement by AG Barr in the Caterpillar investigation is the advancement of an adverse position in the same matter. AG Barr’s participation or involvement in the Caterpillar investigation is prohibited. He must permanently recuse himself. The DOJ must implement screening procedures to ensure such recusal is in-fact effective.

Before discussing Rule 1.9 and Rule 1.11 it is important to re-emphasize that *side-switching* is an absolute conflict-of-interest that CANNOT be waived, even with the consent of all parties involved. So, although Rule 1.9 and Rule 1.11 provide for the waiver of certain conflicts by obtaining client consent, such waiver applies to less direct, less egregious conflicts. It is axiomatic that a reasonable person would never consent to their lawyer *switching-sides* to represent the other party against them in the same matter, particularly a DOJ investigation. To even allow

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<sup>14</sup> District of Colombia Rules of Professional Conduct: Rule 1.11—Successive Government and Private Employment, Comment [2]. See also, ABA Model Rules of Professional Conduct; Rule 1.11(d).

<sup>15</sup> District of Colombia Rules of Professional Conduct: Rule 1.7(a)—Conflict of Interest: General.

<sup>16</sup> District of Colombia Rules of Professional Conduct: Rule 1.7—Conflict of Interest: General, Comment [1]. Rule 1.7(b) references less egregious situations which may be waived.

<sup>17</sup> District of Colombia Rules of Professional Conduct: Rule 1.7—Conflict of Interest: General, Comment [2].

<sup>18</sup> District of Colombia Rules of Professional Conduct: Rule 1.7—Conflict of Interest: General, Comment [3].

<sup>19</sup> The D.C. Bar made specific changes to the ABA Model Rule 1.7 for the principal purpose of stating more clearly and unequivocally that there are circumstances in which representation is absolutely forbidden. This is a codification of the absolute prohibition that existed in case law. The D.C. Rule 1.7(a) mandates an absolute prohibition of multiple representation when the lawyer represents clients with *adverse positions* in the *same matter*. Client consent *cannot* cure such a conflict. Griva v. Davison, 637 A.2d 830, 843 (D.C. 1994).



clients to do so, no matter how unthinkable, would destroy the legal adversary system. So, although waiver by consent may be allowed in Rule 1.9 and Rule 1.11 for lesser conflicts, it is forbidden in a *side-switching* case such as this pursuant to Rule 1.7(a).

**Rule 1.9:** This rule states that “A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client unless the former client gives informed consent.” However, when a lawyer has been directly involved in a specific matter, subsequent representation of other clients with materially adverse interests is clearly prohibited.<sup>20</sup> The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a *changing-of-sides* in the matter in question.<sup>21</sup> “Where any substantial relationship can be shown between the subject matter of a former representation and that of a subsequent adverse representation, the latter representation will be prohibited.”<sup>22</sup> Courts considering *side-switching* from a former client to a subsequent client have consistently followed this formula,<sup>23</sup> and prohibited the subsequent representation. There is no waiver in this situation.<sup>24</sup>

This is a prophylactic rule to prevent even the *potential* that a former client’s confidences and secrets *may* be used against him.<sup>25</sup> The rule is important for the maintenance of the public confidence in the integrity of the bar.<sup>26</sup> Former client conflicts most often arise where the conflicted attorney is litigating against his former client which is invariably adverse.<sup>27</sup> The same is true for investigations against former clients. AG Barr formerly defended Caterpillar Inc. in an ongoing investigation. Subsequently, he now is sworn to investigate Caterpillar Inc. in the *exact* same matter. AG Barr’s subsequent representation is prohibited. He must permanently recuse himself.<sup>28</sup> The DOJ must implement screening procedures to ensure such recusal is in-fact effective.

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<sup>20</sup> District of Columbia Rules of Professional Conduct: Rule 1.9—Conflict of Interest: Former Client, Comment [2]. District of Columbia Ethics Opinion 308 – Ethical Constraints on Lawyers Who Leave Private Employment for Government Service.

<sup>21</sup> District of Columbia Rules of Professional Conduct: Rule 1.9—Conflict of Interest: Former Client, Comment [2]; District of Columbia Ethics Opinion 308—Ethical Constraints on Lawyers Who Leave Private Employment for Government Service, citing *Brown v. District of Columbia Board of Zoning Adjustment*, 486 A.2d 37, 42 (D.C. 1984).

<sup>22</sup> See *Brown v. District of Columbia Board of Zoning Adjustment*, 486 A.2d 37, 42 (D.C. 1984).

<sup>23</sup> See *Brown v. District of Columbia Board of Zoning Adjustment*, 486 A.2d 37, 43 (D.C. 1984), and its progeny.

<sup>24</sup> District of Columbia Rules of Professional Conduct: Rule 1.9—Conflict of Interest: Former Client. District of Columbia Ethics Opinion 308 – Ethical Constraints on Lawyers Who Leave Private Employment for Government Service; requires if a matter is the same as work done for the former client, a lawyer may not proceed without written consent from both the current and the former client. Even so, the courts have not permitted such a direct conflict. Rule 1.7 is an absolute prohibition on conflicting representation in the same matter, even with the consent of both the current and former client.

<sup>25</sup> See discussion above on pages 1 and 2.

<sup>26</sup> United States Attorney’s Bulletin, September 2009, p.9.

<sup>27</sup> United States Attorney’s Bulletin, September 2009, p.9.

<sup>28</sup> Although Rule 1.9 mentions the possibility of client consent, the Comment to Rule 1.9 makes clear that subsequent adverse representation is prohibited where there is a “substantial relationship” between the subject matter of the former and subsequent adverse relationship. In this case there is a “direct relationship” as the subject matter of the former and subsequent representations is exactly the same. This Comment is consistent with Rule 1.7 which divides conflicts into “direct” conflicts which CANNOT be waived, and lesser indirect



**Rule 1.11:** The DOJ has referred to this rule as the *side-switching* rule.<sup>29</sup> This rule states that “A lawyer shall not accept other employment in connection with a matter which is the same as, or substantially related to, a matter in which the lawyer participated personally and substantially as a public officer or employee.”<sup>30</sup> Or in this case, while in private practice.<sup>31</sup> This rule flatly forbids a lawyer to accept other employment (much less direct adverse representation) in a matter in which the lawyer participated personally and substantially.<sup>32</sup> There is no provision for waiver of the lawyer’s disqualification.<sup>33</sup> The Rule 1.11 absolute disqualification of a lawyer from matters in which the lawyer participated personally and substantially carries forward a policy of avoiding both *actual impropriety* and the *appearance of impropriety* that is expressed in the federal conflict-of-interest statutes and in the Code of Professional Responsibility.<sup>34</sup> Screening procedures are required.<sup>35</sup>

This rule does not state that the subsequent employment must even be adverse. It does not.<sup>36</sup> This rule is written broadly to disqualify an attorney from participating in the subsequent matter even when that matter is not adverse to their former client.<sup>37</sup> All aspects of this rule are interpreted broadly by the courts.<sup>38</sup> *Side-switching* is simply forbidden. *Side-switching* is inherently adverse, and particularly when it occurs in the *same matter*. There is an inherent, self-evident conflict-of-interest.

AG Barr participated personally and substantially as the attorney for Caterpillar Inc. in the matter of the ongoing investigation.<sup>39</sup> He formerly defended Caterpillar Inc. in the ongoing

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conflicts which can be waived. See, District of Columbia Rules of Professional Conduct: Rule 1.7—Conflict of Interest: General, Comment [1].

<sup>29</sup> United States Attorney’s Bulletin, September 2009, p.4.

<sup>30</sup> District of Columbia Rules of Professional Conduct: Rule 1.11(a)—Successive Government and Private Employment.

<sup>31</sup> See, District of Columbia Ethics Opinion 308 – Ethical Constraints on Lawyers Who Leave Private Employment for Government Service: Although there is no parallel rule addressing lawyer movement from private practice to government employment, the D.C. Rules of Professional Conduct address this subject more generally and provide guidance on the ethical constraints that apply when a lawyer *leaves private practice to enter public service*.

<sup>32</sup> District of Columbia Rules of Professional Conduct: Rule 1.11(a)—Successive Government and Private Employment, Comment [3].

<sup>33</sup> District of Columbia Rules of Professional Conduct: Rule 1.11(a)—Successive Government and Private Employment, Comment [3].

<sup>34</sup> District of Columbia Rules of Professional Conduct: Rule 1.11(a)—Successive Government and Private Employment, Comment [5].

<sup>35</sup> District of Columbia Rules of Professional Conduct: Rule 1.11(a)—Successive Government and Private Employment, Comment [5].

<sup>36</sup> United States Attorney’s Bulletin, September 2009, p.4.

<sup>37</sup> United States Attorney’s Bulletin, September 2009, p.5.

<sup>38</sup> United States Attorney’s Bulletin, September 2009, see generally the discussion on p.4,5 & 6 where the key terms in this rule are interpreted in a very broad manner.

<sup>39</sup> In 2018 alone, AG Barr was paid more than \$1.2 million by Kirkland & Ellis for legal service to Caterpillar Inc. He stated in his oral testimony that he only had one client and no other clients are listed as sources of income on his financial disclosure. Executive Branch Personnel Public Financial Disclosure Report (OGE Form 278e), page 4-5 & 7. <https://extapps2.oge.gov/201/Presiden.ns/PAS+Index/FE446AE51F24A2D685258381002F483C/SFILE/Bart,%20William%20P.%20%20final278%20.pdf>. AG 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



investigation. Subsequently, he now is sworn to investigate Caterpillar Inc. in the *exact* same matter. Courts have found that an attorney is involved in a matter even where he is only supervising other lawyers who are in charge of an investigation and only attends high-level meetings about the case.<sup>40</sup> AG Barr cannot have any supervisory authority over the investigation of Caterpillar Inc. His subsequent participation or involvement in any capacity<sup>41</sup> is prohibited. He must permanently recuse himself. The DOJ must implement screening procedures to ensure such recusal is in-fact effective.

### DOJ Specific Regulation

"A lawyer representing a government agency, whether employed or specially retained by the government, is subject to...statutes and government regulations concerning conflict-of-interest."<sup>42</sup> Thus, AG Barr is subject to 28 C.F.R. § 45.2.

28 C.F.R. § 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

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legal service; see page 7.

<sup>40</sup> United States Attorney's Bulletin, September 2009, p.6. "Although the term "substantially" might suggest that an attorney's participation in a prior matter must be extensive to justify disqualification, the case law demonstrates otherwise. The "substantial" participation requirement means participation in the substance of the prior matter and does not require some particular quantum of effort expended. The rule requires some involvement but does not require that the attorney was directly responsible for the prior matter in question. See, e.g., *United States v. Smith*, 995 F.2d 662, 675-76 (7th Cir. 1993) (court found that an AUSA's involvement was "personal" and "substantial" under Illinois Rule of Professional Conduct 1.11(a) (similar to the Model Rule 1.11) when he supervised another AUSA in charge of investigating a related case, attended high-level meetings about the case, and signed an immunity agreement for one of the government's witnesses); *Sec. Investor Prot. Corp. v. Vigman*, 587 F. Supp. 1358, 1367 (C.D. Cal. 1984) (district court found that, when the SEC Regional Administrator signed a complaint and a trial brief, he assumed the "personal and substantial responsibility of ensuring that there existed good grounds to support the SEC's case"). The same is true with regard to the subsequent representation.

<sup>41</sup> *TC Theatre Corp. v. Warner Bros. Pictures*, 113 F. Supp. 265, 271 (S.D.N.Y. 1953). When the lawyer's subsequent representation deals with matters as to which his former client reposed confidence in him, he is disqualified from acting as counsel for the plaintiff in the subsequent representation, "in any capacity".

<sup>42</sup> District of Columbia Rules of Professional Conduct: Rule 1.11—Successive Government and Private Employment, Comment [2].



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. (emphasis added)

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.* (emphasis added) An employee is presumed to have a personal relationship with his father, mother, brother, sister, child and spouse. Whether relationships (including friendships) of an employee to other persons or organizations are "personal" must be judged on an individual basis with due regard given to the subjective opinion of the employee. (emphasis added)

Section 45.2(c)(2) defines a "Personal relationship" to mean the existence of "*a close and substantial connection of the type viewed as likely to induce partiality.*" The second sentence then creates a presumption of partiality with regard to familial relationships. It presumes that with regard to one's relationship with their family there exists "*a close and substantial connection of the type viewed as likely to induce partiality.*" The third sentence states that other relationships of an employee, other than those familial relationships specifically stated, must be judged on an individual basis to determine if the relationship constitutes "*a close and substantial connection of the type viewed as likely to induce partiality.*" There is no language that limits the definition of "Personal relationship" to only those relationships that are familial or personal friendships. The regulation specifically contemplates employee relationships with "organizations" which cannot possibly be familial or personal friendships. "Personal relationship" as defined in the regulation includes all relationships of an employee with "people or organizations" where there exists "*a close and substantial connection of the type viewed as likely to induce partiality.*" The determinative factor is the presence of "*a close and substantial connection of the type viewed as likely to induce partiality.*"

By law, a lawyer's relationship with his client is one where there exists "*a close and substantial connection of the type viewed as likely to induce partiality.*" The Rules of Professional Conduct require a relationship whereby the attorney is "*in-fact partial*" to his client,<sup>43</sup> not just "*likely to*" be partial. A lawyer's partiality to his client is required by law and is the essence of the relationship. It is a "*fiduciary*" relationship. The evidence provided in my previous letter<sup>44</sup> and publicly available records establish that AG Barr had an attorney-client relationship with Caterpillar Inc. This relationship is legally defined and there is no further evidence necessary to establish that this relationship constitutes "*a close and substantial connection of the type viewed as likely to induce partiality.*" In the federal case law regarding *side-switching*<sup>45</sup> the courts do not request or require evidence that an attorney-client relationship constitutes "*a close and substantial*

<sup>43</sup> For example, District of Columbia Rule 1.3 (duty of diligent and zealous representation), Rule 1.6 (duty of confidentiality), 1.7 & 1.8 (duty to avoid conflicts-of-interest), Rule 1.9 (duty to avoid conflicts-of-interest re former clients), etc.

<sup>44</sup> Copy attached.

<sup>45</sup> Note that 28 CFR §45.2 applies to an entire realm of conflicts that are lesser, and more indirect, than the self-evident conflict-of-interest inherent in *side-switching*.



*connection of the type viewed as likely to induce partiality*" because this is simply self-evident. As such, 28 CFR §45.2(a) precludes AG Barr from participating in the investigation of Caterpillar Inc. because he had an attorney-client relationship with the company which by law required a level of partiality that far exceeded the *"close and substantial connection of the type viewed as likely to induce partiality"* that is required by the regulation.

AG Barr's written response to Senate questions<sup>46</sup> demonstrates that he believes he "may" have a conflict in this matter and that it "may" be one that cannot be waived. As such, he has a legal responsibility<sup>47</sup> to report the matter and all attendant facts and circumstances. AG Barr must be relieved from participation.<sup>48</sup> A waiver from the DOJ is not possible here. The Rules of Professional Conduct and federal case law are resolute that *side-switching* not only *"create(s) an appearance of a conflict of interest likely to affect the public perception of the integrity of the investigation"*,<sup>49</sup> but that it is a forbidden conflict-of-interest that CANNOT be waived. Therefore, the waiver provision provided in 28 CFR §45.2(b) cannot apply. AG Barr must permanently recuse himself. The DOJ must implement screening procedures to ensure such recusal is in-fact effective.

### Policy

#### *The DOJ is putting its own investigation at-risk.*

It seems the DOJ has everything to lose, and nothing to gain, by not requiring a simple recusal of the Attorney General from an investigation he was defending 4 months ago for which he was paid \$1-2 million over less than 22 months. This investigation has been ongoing since January 2015, involves several federal agencies, and resulted in the execution of search warrants that lead to AG Barr's representation of Caterpillar.<sup>50</sup>

What value or benefit does the DOJ gain from AG Barr's involvement? Any additional value he could bring would inherently include his past representation of and the knowledge he gained defending Caterpillar, which is exactly the type of contribution that is prohibited by the Rules of Professional Conduct, and federal case law, statutes and regulations. Quite honestly, it is simply unfair to put Mr. Barr or any attorney in this position. **His actual or even perceived possible participation or involvement puts the government's investigation at risk of Caterpillar claiming it is "tainted".** It contradicts federal case law, statutes, and regulations. It contradicts the Rules of Professional Conduct. It contradicts Justice Department norms. It condones and permits a *non-waivable conflict-of-interest*; and creates the *appearance of either unfairness or favoritism toward Caterpillar Inc.*

I believe it is fair to say that if the DOJ requires recusal and implements effective screening procedures in this case, there is no harm to anyone, and a positive outcome for everyone, including

<sup>46</sup> <https://www.judiciary.senate.gov/imo/media/doc/Barr%20Responses%20to%20Whitehouse%20QFRs.pdf> (see Questions #55)

<sup>47</sup> 28 CFR §45.2(b).

<sup>48</sup> 28 CFR §45.2(b).

<sup>49</sup> 28 CFR §45.2(b).

<sup>50</sup> See <https://www.caterpillar.com/en/news/corporate-press-releases/lv/new-caterpillar-ceo-asks-former-us-attorney-general-to-assess-and-help-address-ongoing-government-investigation.html>

## AG Barr and Caterpillar Inc.

### Recusal with effective screening procedures

- Safeguards AG Barr's former client, thereby protecting him.
- Eliminates the appearance of a conflict-of-interest, bias, unfairness, etc.
- Complies with the Rules of Professional Conduct, and federal law & regulation.
- Eliminates a patent conflict-of-interest.
- Is consistent with AG Barr's written comments to the Senate.

### Non-recusal

- Puts everyone involved at-risk.
- Could taint a 4-year multi-agency investigation.
- Condone a patent conflict-of-interest, setting a terrible precedent.
- Creates the appearance of a conflict-of-interest, which is prohibited by all relevant authority.

## Conclusion

The District of Columbia has stated that, "Lawyers who leave private practice to enter government service must be vigilant to protect the interests of former clients while representing their new clients with diligence and zeal. A government lawyer owes continuing obligations to her former clients to protect client confidences and secrets both from disclosure to others and from use by the lawyer to the disadvantage of the former clients. A government lawyer may not (shall not in the case of *side-switching*) undertake work that is the same as or substantially related to work done for a former client.... While disqualification of a government lawyer from a matter due to work done for a prior client is not imputed to other lawyers in the government agency or entity, screening measures should be considered in appropriate cases (required in this case)."<sup>51</sup>

The Attorney General is the head of the Department of Justice.<sup>52</sup> Congress has "vested" in the Attorney General virtually "[a]ll functions of other officers of the Department,"<sup>53</sup> and has empowered the Attorney General to authorize other Department officials to perform the functions of the Attorney General.<sup>54</sup> The Attorney General is responsible for all functions and actions of the DOJ. The Attorney General has supervisory authority for the entire DOJ. Courts have found that an attorney is involved in a matter even where he is only supervising other lawyers who are in charge of an investigation and only attends high-level meetings about the case.<sup>55</sup> In this case in

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<sup>51</sup> See, District of Columbia Ethics Opinion 308 – Ethical Constraints on Lawyers Who Leave Private Employment for Government Service.

<sup>52</sup> 28 U.S.C. § 503.

<sup>53</sup> 28 U.S.C. § 509.

<sup>54</sup> 28 U.S.C. § 510.

<sup>55</sup> United States Attorney's Bulletin, September 2009, p.6. "Although the term "substantially" might suggest that an attorney's participation in a prior matter must be extensive to justify disqualification, the case law demonstrates otherwise. The "substantial" participation requirement means participation in the substance of the prior matter and does not require some particular quantum of effort expended. The rule requires some involvement but does not require that the attorney was directly responsible for the prior matter in question. See, e.g., *United States v. Smith*, 995 F.2d 662, 675-76 (7th Cir. 1993) (court found that an AUSA's



which the lawyer involved is the Attorney General of the United States, the inherent ethical issues cannot be resolved by merely moving the investigation of his former client to a peer within the DOJ for which he has no responsibility. All of the DOJ and its employees are encompassed within the responsibility, purview and authority of the Attorney General. There are four options.

1. AG Barr resigns his position as Attorney General of the United States; or
2. AG Barr permanently recuses himself from participation in the Caterpillar investigation and the Deputy AG appoints a Special Counsel;<sup>56</sup> or
3. AG Barr permanently recuses himself from participation in the Caterpillar investigation and the DOJ immediately implements effective screening measures; or
4. AG Barr is in violation of the Rules of Professional Responsibility and federal case law, statutes and regulations, which is sanctioned by the Justice Department.

The apparent remedy is the immediate permanent recusal and the immediate implementation of effective screening measures such as those in the Rules of Professional Conduct.<sup>57</sup> While disclosures and screening measures are not required per-se, as a practical matter they are to comply with the Rules.<sup>58</sup> The D.C. Bar Association suggests consideration and

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involvement was "personal" and "substantial" under Illinois Rule of Professional Conduct 1.11(a) (similar to the Model Rule 1.11) when he supervised another AUSA in charge of investigating a related case, attended high-level meetings about the case, and signed an immunity agreement for one of the government's witnesses); *Sec. Investor Prot. Corp. v. Vigman*, 587 F. Supp. 1358, 1367 (C.D. Cal. 1984) (district court found that, when the SEC Regional Administrator signed a complaint and a trial brief, he assumed the "personal and substantial responsibility of ensuring that there existed good grounds to support the SEC's case"). The same is true with regard to the subsequent representation. *TC Theatre Corp. v. Warner Bros. Pictures*, 113 F. Supp. 265, 271 (S.D.N.Y. 1953). When the lawyer's subsequent representation deals with matters as to which his former client reposed confidence in him, he is disqualified from acting as counsel for the plaintiff in the subsequent representation, "in any capacity".

<sup>56</sup> See 28 CFR §600.1. A Special Counsel is appropriate because: there is already an investigation underway; the AG has a conflict-of-interest; and it is always in the public interest (and legally required) for the Justice Department to avoid even the appearance of impropriety to maintain the public trust. Since effective screening measures are required here for an effective recusal of the AG and such measures were not deployed promptly, the disqualification could be imputed beyond the AG to other high-level DOJ officials. ("The screen must be erected promptly. See *Analytica, Inc. v. NPD Research Inc.*, 708 F.2d 1263, 1267-68 (7th Cir. 1983) ("[I]t was not enough that the lawyer 'did not disclose to any person associated with the firm any information . . . on any matter relevant to this litigation,' for 'no specific institutional mechanisms were in place to insure that information was not shared, even if inadvertently,' until the disqualification motion was filed—months after the lawyer had joined the firm."); see also *United States v. Goot*, 894 F.2d 231, 235 (7th Cir. 1990) ("The predominant theme running through this court's prior decisions is that disqualification is required when screening devices were not employed or were not timely employed.") (emphasis added); *Atasi Corp. v. Seagate Tech.*, 847 F.2d 826, 831 (Fed. Cir. 1988) (presumption of shared confidences was not clearly overcome because oral screening measures were not timely employed or adequately communicated); *Cobb Publ'g, Inc. v. Hearst Corp.*, 907 F. Supp. 1038 (E.D. Mich. 1995) (delay of 11 or 18 days in setting up ethical wall is too long).")

<sup>57</sup> See, District of Columbia Rules of Professional Conduct: Rule 1.11(a)—Successive Government and Private Employment, and Comments. If a Special Counsel is not going to be appointed, the OPR should recommend an investigation by the Office of Inspector General to determine who in addition to the AG may be required to be screened from the investigation.

<sup>58</sup> See, District of Columbia Ethics Opinion 308 – Ethical Constraints on Lawyers Who Leave Private Employment for Government Service: Due to the draconian effects of imputed disqualification on the ability of the government to obtain legal services, however, the principles of imputed disqualification do not apply to disqualify government lawyers who practice in a government agency with a lawyer who is disqualified



implementation of these procedures to insulate the disqualified lawyer from the ongoing matter, to provide important assurances to the lawyer's former client that he is meeting his ethical obligations which protects the lawyer, and to signal a recognition by the DOJ of the importance of these ethical obligations, thereby avoiding the appearance of anything less than full compliance with the law in-fact and in-appearance, beyond question.<sup>59</sup> The public is generally more concerned about government improprieties than private ones and, thus, the appearance problem is more severe because the public is likely to be more critical of the potential misuse of information.<sup>60</sup> Effective screening measures are required in this case to meet these objectives.

In a case such as this involving direct *side-switching* in the *exact same matter* by the highest law enforcement officer in the nation who speaks and acts for the entire DOJ, screening measures are essential for an effective recusal. Screening measures should be erected promptly.<sup>61</sup> Where there are no screening measures, one cannot argue that a former client's confidences were not violated.<sup>62</sup> So without effective screening measures, the DOJ cannot argue that AG Barr will not violate his former client's confidences. **SCREENING MEASURES MUST BE IMPLEMENTED!**

Additionally, Mr. Barr's Ethics Agreement should be amended and republished setting forth his immediate permanent recusal, and the immediate implementation of effective screening measures, including the nature of these measures.

Recusal and effective screening measures harm nobody nor anything, and yet protect everybody and everything; particularly AG Barr, Caterpillar Inc., and the public's confidence in

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because of prior client representation. Rule 1.10, Comment [1] ("For purposes of the Rules of Professional Conduct, the term 'firm' . . . does not include a government agency or other government entity."). Thus, unlike the situation in private practice where all lawyers associated in a law firm with a lawyer disqualified under Rule 1.9 also are disqualified through imputation under Rule 1.10, in the government context, the lawyers in a government office, agency, or department who work with a personally disqualified lawyer are not barred from representation adverse to the lawyer's former client.

<sup>59</sup> See, District of Columbia Ethics Opinion 308 – Ethical Constraints on Lawyers Who Leave Private Employment for Government Service: While our Rules do not expressly require such screening in the government context for a lawyer who is disqualified by a prior client relationship under Rule 1.9, consideration and implementation by the government agency of voluntary screening measures that effectively insulate the lawyer from ongoing contact with the matter from which she is disqualified should be considered. Such measures provide important assurances to the lawyer's former clients that the lawyer's ethical obligations under Rules 1.6 and 1.9 are being met and signal an appropriate recognition by the government agency of the importance of these obligations.

<sup>60</sup> United States Attorney's Bulletin, September 2009, p.4.

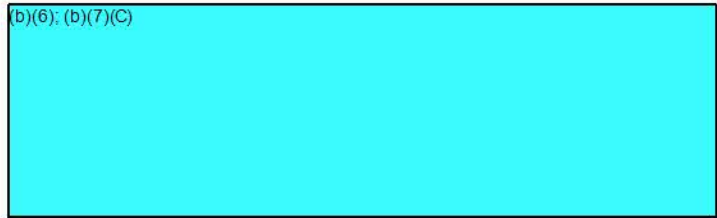
<sup>61</sup> United States Attorney's Bulletin, September 2009, p.6. "The screen must be erected promptly. See *Analytica, Inc. v. NPD Research Inc.*, 708 F.2d 1263, 1267-68 (7th Cir. 1983) ("[I]t was not enough that the lawyer 'did not disclose to any person associated with the firm any information . . . on any matter relevant to this litigation,' for 'no specific institutional mechanisms were in place to insure that information was not shared, even if inadvertently,' until the disqualification motion was filed—months after the lawyer had joined the firm."); see also *United States v. Goot*, 894 F.2d 231, 235 (7th Cir. 1990) ("The predominant theme running through this court's prior decisions is that disqualification is required when screening devices were not employed or were not timely employed.") (emphasis added); *Atasi Corp. v. Seagate Tech.*, 847 F.2d 826, 831 (Fed. Cir. 1988) (presumption of shared confidences was not clearly overcome because oral screening measures were not timely employed or adequately communicated); *Cobb Publ'g, Inc. v. Hearst Corp.*, 907 F. Supp. 1038 (E.D. Mich. 1995) (delay of 11 or 18 days in setting up ethical wall is too long)."

<sup>62</sup> *Analytica, Inc. v. NPD Research, Inc.*, 708 F.2d 1263, 1267-1268 (7th Cir. 1983).

the DOJ. To not do so is problematic to say the least. The fact that Caterpillar Inc. is not demanding this recusal is itself significant. Recusal and effective screening measures avoid serious problems and create none. If there is any doubt, it is to be resolved in favor of disqualification (i.e. recusal with screening measures).<sup>63</sup>

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. The ongoing investigation is an important matter for the DOJ by all of its published measurements. There are few greater public policies than the enforcement of our tax laws. Without revenue to run the government, there can be no government, and no democracy.

(b)(6); (b)(7)(C)



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<sup>63</sup> Brown v. District of Columbia Board of Zoning Adjustment, 486 A.2d 37, 42 (D.C. 1984).



(b)(6); (b)(7)(C)

February 15, 2019

Robin C. Ashton, Counsel  
U.S. Department of Justice  
Office of Professional Responsibility  
950 Pennsylvania Ave., NW  
Suite 3529  
Washington, DC 20530

Corey R. Amundson, Director & Chief Counsel  
U.S. Department of Justice  
Office of Professional Responsibility  
950 Pennsylvania Ave., NW  
Suite 3529  
Washington, DC 20530

Michael E. Horowitz, Inspector General  
U.S. Department of Justice  
Office of the Inspector General  
950 Pennsylvania Ave., NW  
Suite 4706  
Washington, D. C. 20530-0001

Jonathan M. Malis, General Counsel  
U.S. Department of Justice  
Office of the Inspector General  
Office of the General Counsel  
950 Pennsylvania Ave., NW, Room 4726  
Washington, D.C. 20530

cc: Richard E. Zuckerman, Principal  
Deputy Assistant Attorney General  
U.S. Department of Justice  
Tax Division  
950 Pennsylvania Ave., NW  
Washington, D.C. 20530-0001

The Honorable Sheldon Whitehouse  
U.S. Senator for Rhode Island  
Hart Senate Office Bldg., Rm 530  
Washington, D.C. 20510

(b)(6); (b)(7)(C)

Assistant United States Attorney  
201 S. Vine Street  
Suite 226  
Urbana, IL 61802

Federal Deposit Insurance Corp.  
Special Agent, (b)(6); (b)(7)(C)  
FDIC-OIG  
300 S. Riverside Plaza – Suite 1700  
Chicago, IL 60606

(b)(6); (b)(7)(C)

### 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.<sup>1</sup> This is one of those conflicts. He was required to report the matter and all attendant facts and circumstances<sup>2</sup> 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<sup>3</sup> and at the center of the investigation, which is larger than any reported case of this kind.<sup>4</sup>

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.<sup>5</sup> This investigation led to the production of evidence, expert opinions,<sup>6</sup> 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

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

<sup>2</sup> 28 CFR § 45.2(a)&(b)

<sup>3</sup> 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.

<sup>4</sup> <https://extapps2.oge.gov/201/Presiden%20D4CD873798AD3D1F85258381002E4CEE/FILE/Barr,%20William%20OP,%20%20finalEA%20.pdf>.

<sup>5</sup> 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.

<sup>6</sup> 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](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/>.

<sup>7</sup> <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.<sup>7</sup> Immediately following the raid, Caterpillar Inc.'s CEO personally asked Mr. Barr to provide legal representation regarding the matter.<sup>8</sup> 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<sup>9</sup> which routinely represents PriceWaterhouseCoopers (PwC).<sup>10</sup> PwC is Caterpillar's public auditor and the primary architect, implementer and overseer of the tax scheme that is the subject of the investigation.<sup>11</sup> Kirkland & Ellis entered its appearance<sup>12</sup> as the attorney for PwC in a Sarbanes-Oxley lawsuit against Caterpillar Inc. pertaining to this particular tax matter.<sup>13</sup> 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.<sup>14</sup>

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.<sup>15</sup> 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.<sup>16</sup> In 1988, OPR, in response to a complaint filed by Common Cause, exercised its jurisdiction to investigate Edwin Meese to determine if

<sup>7</sup> See <https://www.forbes.com/sites/antoinegarn/2017/03/02/caterpillars-headquarters-raided-by-federal-authorities-including-doi-and-irs/#33ade397613a> and <https://www.nytimes.com/2017/03/02/business/caterpillar-raid-tax-practices.html> and <https://www.chicagotribune.com/business/cj-law-enforcement-search-caterpillar-0302-hiz-20170302-story.html>.

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

<sup>9</sup> 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.

<sup>10</sup> See <https://www.kirkland.com/lawyers/b/becker-whitney-j> and <https://www.law.com/therecorder/almID/1203758297218/Kirkland-amp-Ellis-to-Defend-PriceWaterhouseCoopers-in-Discrimination-Suit/?streturn=20190109163554> and <https://www.legal.com/decision/inlden20170505n48>.

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

<sup>12</sup> *Schlicksup vs. Caterpillar, Inc.*, PACER case No. 09-cv-1208, U.S. District Court, C.D. Illinois, Peoria Division, document #02, appearance of counsel filed Monday, 16 May, 2011. Mark Nomellini of Kirkland & Ellis appearing on behalf of PriceWaterhouseCoopers LLP.

<sup>13</sup> *Schlicksup vs. Caterpillar, Inc.*, PACER case No. 09-cv-1208, U.S. District Court, C.D. Illinois, Peoria Division.

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

<sup>15</sup> 28 C.F.R. 45.12

<sup>16</sup> See [https://www.washingtonpost.com/powerpost/top-gop-lawmaker-calls-in-sessions-to-recuse-himself-from-russia-investigation/2017/03/02/148e07ac-ff46-11e6-8cbe-6e0dbe4f2bca\\_story.html?noredirect=on&utm\\_term=.41563110ef71](https://www.washingtonpost.com/powerpost/top-gop-lawmaker-calls-in-sessions-to-recuse-himself-from-russia-investigation/2017/03/02/148e07ac-ff46-11e6-8cbe-6e0dbe4f2bca_story.html?noredirect=on&utm_term=.41563110ef71).

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.<sup>17</sup> OPR found that Meese as Attorney General had violated these rules as they applied to Justice Department officials.<sup>18</sup>

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.<sup>19</sup> He committed that upon confirmation he “will resign from his position with the law firm Kirkland & Ellis LLP.”<sup>20</sup> 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);”<sup>21</sup> (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);”<sup>22</sup> (emphasis added) and
3. “I (Mr. Barr) agree to comply with the conflict of interest statutes and regulations, ....”<sup>23</sup> (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.<sup>24</sup>

(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

<sup>17</sup> “Meese’s Department Probes Him,” *New York Times News Service* (July 20, 1988).

<sup>18</sup> “Justice Department Rips Meese,” *New York Times*, (January 18, 1989).

<sup>19</sup> Ethics Agreement letter to the U.S. Office of Government Ethics, dated January 11, 2019.

<sup>20</sup> <https://extapps2.oge.gov/2019/presiden.asp/D4C1D873798AD31D1F85258381002F4CEE/FILE/Barr.%20William%20OP.%20%20finalEA%20.pdf>.

<sup>21</sup> Ethics Agreement letter to the U.S. Office of Government Ethics, dated January 11, 2019, page 1.

<sup>22</sup> Ethics Agreement letter to the U.S. Office of Government Ethics, dated January 11, 2019, page 2.

<sup>23</sup> Ethics Agreement letter to the U.S. Office of Government Ethics, dated January 11, 2019, page 2.

<sup>24</sup> Ethics Agreement letter to the U.S. Office of Government Ethics, dated January 11, 2019, Nominee Statement attached to the letter.

<sup>25</sup> <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.

**DOJ Regulations Require Reporting & Recusal**  
**Waiver NOT Possible**

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.<sup>25</sup> Mr. Barr was paid more than \$1.2 million by Kirkland & Ellis for representing Caterpillar in 2018 alone.<sup>26</sup> 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

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

<sup>26</sup> Executive Branch Personnel Public Financial Disclosure Report (OGE Form 278e), page 4-5.

[https://extapps2.oge.gov/201/Presidents/PAS/Index/E446AE51F24A2D685258381002F483C/SFI1\\_E/Barr,%20William%20P,%20%20final278%20.pdf](https://extapps2.oge.gov/201/Presidents/PAS/Index/E446AE51F24A2D685258381002F483C/SFI1_E/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."<sup>27</sup> 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 than 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)

(b)(6); (b)(7)(C)

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

**From:** Birney, William J (OPR)  
**To:** (b)(6); (b)(7)(C)  
**Subject:** FW: New Incoming Regarding AG William P. Barr  
**Date:** Friday, March 8, 2019 2:25:23 PM

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(b)(6); (b)(7)(C)

This is in response to your letter to the Department of Justice Office of Professional Responsibility (OPR), asserting that Attorney General William P. Barr is in violation of Department regulations that require him to immediately and permanently recuse himself from all matters regarding Caterpillar Inc. on the ground that before becoming Attorney General, Mr. Barr represented Caterpillar in connection with an ongoing criminal tax investigation. Based on a careful review of your letter, OPR concluded that your allegations are without foundation and do not warrant further inquiry by OPR.

As your letter acknowledges, the Justice Management Division (JMD) has advised the Office of Government Ethics (OGE) that it conducted a thorough review of Mr. Barr's financial disclosure report and concluded that "the report presents no conflicts of interest under applicable laws and regulations." JMD noted that Mr. Barr would resign from his position with the law firm of Kirkland & Ellis, LLP, and that for a period of one year after his resignation, he would not participate personally and substantially in any particular matter involving specific parties in which knows the firm is a party or represents a party, without first obtaining authorization under 5 C.F.R. § 2635 502(d). JMD also noted that Mr. Barr would not participate personally and substantially in any particular matter involving specific parties in which he knows that a former client of his is a party or represents a party, for a period of one year after he has provided service to that client.

Under 18 U.S.C. § 208, Mr. Barr is required to recuse himself from participating personally and substantially in any particular matter in which he knows that he has a financial interest directly and predictably affected by the matter, or in which he knows that a person whose interests are imputed to him has a financial interest directly and predictably affected by the matter. JMD noted that Mr. Barr will consult Department ethics officials in determining whether a particular matter has a direct and predictable effect on his financial interests or on those of any other person whose interests are imputed to him, including his spouse and minor children.

There is no basis for your assertion that Mr. Barr is required by 28 C.F.R. § 45.2 to permanently recuse himself from all matters involving Caterpillar. Section 45.2 provides that "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 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 of prosecution." (Emphasis added.) A "personal relationship" is understood to mean a close



friendship or a familial relationship. Your allegation that Mr. Barr has a "personal relationship" with Caterpillar that requires him to immediately and permanently recuse himself from any criminal investigation or prosecution involving Caterpillar is wholly unsubstantiated. There is no indication that Mr. Barr had anything other than an attorney-client relationship with Caterpillar, and your letter contains no facts supporting the conclusion that he has a conflict of interest that requires him to recuse himself from all matters involving Caterpillar pursuant to 28 C.F.R. § 45.2.

OPR concluded that your allegations do not warrant further inquiry, and we consider this matter to be closed.

William J. Birney  
Deputy Director  
Office of Professional Responsibility  
U.S. Department of Justice  
Washington, D.C. 20530

**From:** Robertson, Jacqueline T (OPR) <[Jacqueline.T.Robertson@opr.usdoj.gov](mailto:Jacqueline.T.Robertson@opr.usdoj.gov)>  
**Sent:** Wednesday, March 6, 2019 10:41 AM  
**To:** Birney, William J (OPR) <[William.J.Birney@opr.usdoj.gov](mailto:William.J.Birney@opr.usdoj.gov)>  
**Subject:** New Incoming Regarding AG William P. Barr - LM #201900290

Bill,

Please see attached new incoming correspondence regarding AG Barr. Thanks,

*Jacqueline Robertson*  
Program Analyst  
Office of Professional Responsibility  
Department of Justice  
Washington, D.C. 20530

(b)(6); (b)(7)(C)

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PRESS FIRMLY TO SEAL

# PRIORITY MAIL



DATE OF DELIVERY SPECIFIED \*



USPS TRACKING™ INCLUDED \*



INSURANCE INCLUDED \*



PICKUP AVAILABLE

\* Domestic only

DOJ-FASS



Tracking No:

(b)(6); (b)(7)(C)

OIG/MAIN 4706

OIG - MAIN - -

Building: MAIN

Room:

Dept: OIG

Received On: 04-22-2019 11:50am

Route:

INSPECTED 26

14F July 2013  
12.5 x 9.5

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PRIORITY MAIL  
TAG REQUIRED