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TASK FORCE ON THE RULE OF LAW

June 23, 2020

Sent via Facsimile & E-Mail

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Majority Leader
U.S. Senate
317 Russell Senate Office Building
Washington, DC 20510

Hon. Charles Schumer
Democratic Leader
U.S. Senate
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Hon. Nancy Pelosi
Speaker
U.S. House of Representatives
1236 Longworth House Office Building
Washington, DC 20515

Hon. Kevin McCarthy
Republican Leader
U.S. House of Representatives
2468 Rayburn House Office Building
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Hon. Lindsey Graham
Chair, Judiciary Committee
U.S. Senate
290 Russell Senate Office Building
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Hon. Dianne Feinstein
Ranking Member, Judiciary Committee
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331 Hart Senate Office Building
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Hon. Jerry Nadler
Chair, Judiciary Committee
U.S. House of Representatives
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Hon. Jim Jordan
Ranking Member, Judiciary Committee
U.S. House of Representatives
2056 Rayburn House Office Building
Washington, DC 20515

Re: The Attorney General's Conduct – Removal of Mr. Geoffrey Berman as U.S. Attorney for the Southern District of New York

Dear Members of Congress:

We write on behalf of the New York City Bar Association (the “City Bar”) in response to continuing actions by Attorney General William P. Barr that raise the most serious questions about Mr. Barr’s fitness for the high office that he holds. As described below, Mr. Barr’s recent actions in connection with the removal of Geoffrey Berman as U.S. Attorney for the Southern District of New York (SDNY) continue -- and exacerbate -- a pattern of conduct that has undermined public

confidence in the role of the Department of Justice (DOJ) in enforcing the rule of law in our nation. That is the exact opposite of the Attorney General's proper role, which Mr. Barr correctly acknowledged at his Senate confirmation hearing must be to lead a DOJ that is the "place in government where the rule of law – not politics – holds sway and where [the American people] will be treated fairly based solely on the facts and an even handed application of the law."¹

THE BERMAN REMOVAL

On Friday evening, June 19, 2020, Attorney General Barr issued a press release announcing that Mr. Berman had stepped down from his position as United States Attorney, effective as of July 3, 2020, and that President Trump intended to nominate Jay Clayton to replace him. Mr. Barr also stated that upon his recommendation, the President appointed Craig Carpenito, currently the U.S. Attorney for the District of New Jersey, to serve as the Acting United States Attorney for the SDNY while the Senate considered Mr. Clayton's nomination. The designation of Mr. Carpenito as Acting U.S. Attorney prevented the Deputy U.S. Attorney for the SDNY from serving as interim leader of that office, as normally occurs while a new appointee is awaiting Senate confirmation.²

That same evening, Mr. Berman issued a statement³ indicating that he had not in fact resigned. Mr. Berman, who was appointed to his post by the federal judges of the Southern District of New York, after an initial 120-day appointment by the President, went on to state that he intended to step down only if the President appointed a successor who was confirmed by the Senate and that his office's "investigations would move forward without delay or interruption."

By Saturday, June 20, the Attorney General apparently recognized that, at least according to a 1979 opinion by the Department of Justice's Office of Legal Counsel,⁴ only the President, not the Attorney General, had the authority to remove a judicially appointed U.S. Attorney. Presumably in accordance with that Opinion, Mr. Barr announced in a publicly released letter⁵ that President Trump had fired Mr. Berman, acknowledging that Mr. Berman had not resigned, as Mr. Barr had stated less than 24 hours earlier. Mr. Barr also stated that he had tried to persuade Mr. Berman to resign by offering him another position in the federal government, including to serve as head of the DOJ's Civil Division or as the Chair of the Securities and Exchange Commission, a position requiring Presidential nomination and currently held by Mr. Clayton. Shortly after Mr. Barr's announcement on June 20, the President told reporters: "I wasn't involved" in Mr. Berman's removal and "that's all up to the attorney general. Attorney General Barr is working on that. That's his department, not my department."⁶

Faced with this contradictory situation, Mr. Barr spoke again with Mr. Berman and indicated, according to Mr. Berman, that Mr. Barr would "respect the normal operation of law and have Deputy U.S. Attorney Audrey Strauss become Acting U.S. Attorney." Mr. Berman then agreed he would "be leaving the U.S. Attorney's Office for the Southern District of New York, effective immediately."⁷ Whether he resigned or was actually removed by the President remains unclear.⁸

REMAINING QUESTIONS ABOUT THE BERMAN REMOVAL

While Mr. Berman's decision to step down obviates, at least for now, the question of whether Mr. Barr, the President or the judges who appointed him had the authority to remove Mr. Berman, Mr. Barr's actions raise enormous concerns about what prompted the Attorney General's

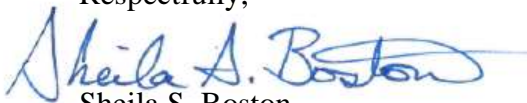
grossly irregular actions. To summarily remove a U.S. Attorney in a context in which associates of the President (and possibly the President himself)⁹ are reported to be under active investigation by that office¹⁰ suggests political interference and undermines confidence in the integrity of our justice system. For this reason, we believe it essential that Congress examine closely Mr. Barr's motives for taking this precipitous action and whether or not he communicated with the President before, during or after doing so. It will also be important to determine whether Mr. Barr was aware, at least generally, of the nature and status of any of the investigations into the President's associates (and possibly the President) and, if he was, whether he disclosed any of that information to the President or took, either on his own initiative or at the direction of the President, his actions for the purpose of retarding or limiting those investigations.

A PATTERN OF CONDUCT


Unfortunately, the Attorney General's actions in connection with Mr. Berman's removal cannot be seen in isolation. As we have previously noted, Mr. Barr's conduct as Attorney General has raised recurring questions about his commitment to the impartial rule of law that is, and must continue to be, the hallmark of our Department of Justice. We have previously noted, for example, Mr. Barr's material mischaracterization of the Mueller report, his failure to recuse himself from the Ukraine "whistleblower" complaint (in which his name appeared), his series of speeches in which he appeared to place his personal and political beliefs on a preferred status within DOJ, his premature release of information about a pending investigation, overriding the sentencing recommendation and prerogatives of the local district in the Roger Stone case, the similar departure from DOJ norms in moving to dismiss all charges against Michael Flynn after Flynn's two guilty pleas, and his extraordinary and still unexplained role in ordering federal security personnel (many with identifying insignia removed) to violently clear Lafayette Square Park of peaceful demonstrators.¹¹

As we noted at the time, each of these actions raised serious concerns about Mr. Barr's stewardship of DOJ. Cumulatively, they form an overwhelming public impression of an Attorney General whose primary loyalty is to the President who appointed him, not to the American public or the rule of law. We believe this public impression is reasonable based on the pattern of conduct outlined above and described in detail in our previous reports, and we are of the view that the latest events have now rendered Mr. Barr unfit for the high position he occupies in our federal government.¹² He has repeatedly flouted the very standard that he embraced when he sought confirmation as Attorney General and should now step aside and permit his successor to begin the process of rebuilding the DOJ's role and reputation as a defender of the rule of law for the American people.

Respectfully,



Sheila S. Boston
President



Stephen L. Kass
Chair, Task Force on the Rule of Law

Cc: Hon. William P. Barr, Attorney General of the United States

¹ Statement of the New York City Bar Association, “Attorney General Barr Should Recuse Himself from Department of Justice Review of Ukraine Matter,” Oct. 23, 2019, <https://www.nycbar.org/media-listing/media/detail/attorney-general-barr-should-recuse-himself-from-department-of-justice-review-of-ukraine-matter> (citing The Washington Post) (all websites last visited June 23, 2020).

² Press Release: Attorney General William P. Barr on the Nomination of Jay Clayton to Serve as U.S. Attorney for the Southern District of New York, U.S. Dept. of Justice, June 19, 2020, <https://www.justice.gov/opa/pr/attorney-general-william-p-barr-nomination-jay-clayton-serve-us-attorney-southern-district>.

³ @SDNYnews, Tweet, June 20, 2020, <https://twitter.com/SDNYnews/status/1274466470970474498?s=20>.

⁴ Available at https://www.justice.gov/sites/default/files/olc/opinions/1979/11/31/op-olc-v003-p0448_0.pdf.

⁵ Available at <https://www.cnn.com/2020/06/20/politics/william-barr-geoffrey-berman-letter-fired-trump/index.html>.

⁶ See Rebecca Davis O’Brien, Sadie Gurman and Rebecca Ballhaus, “Trump Fires Manhattan U.S. Attorney,” The Wall Street Journal, June 20, 2020, <https://www.wsj.com/articles/barr-says-trump-removed-top-federal-prosecutor-at-his-request-11592681906>.

⁷ Statement Of Geoffrey S. Berman, U.S. Dept. of Justice, June 20, 2020, <https://www.justice.gov/usao-sdny/pr/statement-geoffrey-s-berman>.

⁸ Following the President’s statement that he was “not involved” (*supra* note 6), the White House Press Secretary stated that the President was “involved in the sign-off capacity.” See Paul LeBlanc, Kara Scannell and Kevin Liptak, “White House admits Trump was involved in firing of top US attorney after Trump claimed he wasn’t,” CNN, June 22, 2020, <https://www.cnn.com/2020/06/22/politics/trump-us-attorney-fired/index.html>.

⁹ See *i.e.* Andrew Prokop, “Mueller is done. Trump’s legal woes aren’t.” Vox, March 23, 2019, <https://www.vox.com/2019/3/20/18241825/trump-investigations-sdny-inauguration-state-congress>; and Tessa Berenson, “Geoffrey Berman’s Investigations Into Trump Associates Raise Concerns Over His Firing,” Time, June 22, 2020, <https://time.com/5857204/berman-trump-firing-questions/>.

¹⁰ See Alan Feuer, Katie Benner, Ben Protess, Maggie Haberman, William K. Rashbaum, Nicole Hong, Benjamin Weiser, “Trump Fires U.S. Attorney in New York Who Investigated His Inner Circle,” N.Y. Times, June 20, 2020, <https://www.nytimes.com/2020/06/20/nyregion/trump-geoffrey-berman-fired-sdny.html>.

¹¹ See, *e.g.*, New York City Bar Association, *Lafayette Square Protests: Investigation Request*, June 9, 2020, <https://www.nycbar.org/media-listing/media/detail/lafayette-square-protests-city-bar-asks-congressional-leaders-to-investigate>; New York City Bar Association, *Protecting the Independence of the Federal Inspector General Offices: Call for Congressional Oversight and Hearings*, Apr. 25, 2020, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/protect-independence-of-federal-inspector-general-offices>; New York City Bar Association, *Prosecution of Roger Stone and Related Actions by the Department of Justice*, Feb. 12, 2020, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/prosecution-of-roger-stone-and-related-actions-by-the-department-of-justice>; New York City Bar Association, *Request for Formal Congressional Inquiries into Conduct of Attorney General William P. Barr*, Jan. 9, 2020, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/request-for-formal-congressional-inquiries-into-conduct-of-attorney-general-william-p-barr>; New York City Bar Association, *Mr. Barr Should Recuse Himself from Department of Justice Review of Ukraine Matter*, Oct. 23, 2019, <https://www.nycbar.org/media-listing/media/detail/attorney-general-barr-should-recuse-himself-from-department-of-justice-review-of-ukraine-matter>; see also Brief of the New York City Bar Association as Amicus Curiae, *In re Michael Flynn*, No. 20-5143 (D.C. Cir.) (filed June 1, 2020), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/in-re-michael-t-flynn-amicus-brief> (opposing petition for writ of mandamus).

¹² A wide range of public officials have indicated that Mr. Barr should resign and/or is deserving of impeachment, including House Judiciary Chairman Jerrold Nadler, Former Deputy Attorney General under George H.W. Bush, Donald Ayer and 2,300 former federal prosecutors under both Republican and Democratic administrations; see, *e.g.*, Sarah Westwood, “Nadler says Attorney General Barr deserves to be impeached but that it would be a ‘waste of time’,” CNN, June 21, 2020, <https://www.cnn.com/2020/06/21/politics/william-barr-attorney-general-impeached-nadler-cnntv/index.html>; David Brennan, “Bill Barr Is Undermining the DOJ and ‘Not Fit for Office,’ Former Deputy Attorney General Who Worked With Him Says,” Newsweek, Feb. 14, 2020,

<https://www.newsweek.com/bill-barr-undermining-doj-not-fit-office-former-deputy-attorney-general-donald-ayer-1487360>; DOJ Alumni Statement on Flynn Case, May 11, 2020, *available at* <https://medium.com/@dojalumni/doj-alumni-statement-on-flynn-case-7c38a9a945b9>. We agree with these viewpoints, and urge Congress to pursue a searching and public inquiry into Mr. Barr's conduct and whether he is fit to remain as Attorney General.