

Hamilton P. Fox, III
Office of Disciplinary Counsel
Board of Professional Responsibility
District of Columbia Court of Appeals
515 5th Street NW
Building A, Suite 117
Washington, DC 20001

May 14, 2021

Dear Mr. Fox:

We write to supplement our July 22, 2020, disciplinary [complaint](#), as amended July 23, 2020, calling upon the Office of Disciplinary Counsel to investigate violations of the DC of Professional Conduct (“RPC”) by former United States Attorney General William P. Barr. We submit a May 3, 2021, [decision](#) from DC district court Judge Amy Berman Jackson that independently affirms and augments Count I of our complaint, particularly Mr. Barr’s misrepresentations to Congress regarding the March 2019 Mueller Report. *See Citizens for Responsibility and Ethics in Washington v. U.S. Department of Justice*, Civil Action 19-1552 (ABJ) [“Opn.”].

The first “count” of our complaint alleged:

In absolving the president of criminal liability for obstructing justice upon receiving the Mueller Report, Mr. Barr repeatedly engaged in dishonest and deceitful conduct. His Senate defense of his determination of insufficient evidence to prove Mr. Trump’s obstruction was transparently untenable, as 1000 prosecutors publicly stated.

July 23, 2020 complaint [“Complaint”], p. 3.

The first count alleged violations of DC Rules of Professional Responsibility 8.4(c) which prohibits lawyers from engaging in conduct involving “dishonesty, . . . deceit and misrepresentation.” The count set forth misrepresentations of both fact and law around Mr. Barr’s March 24 and May 1, 2020 presentations to the public and the Congress, including demonstrably erroneous statements of law in oral testimony to the United States Senate about why Special Counsel Robert Mueller’s evidence was insufficient to prove Mr. Trump’s guilt for obstructing justice.

As Judge Jackson’s opinion emphasizes, the premise of Mr. Barr’s dishonest conclusion was that Mr. Mueller had failed to reach a prosecutorial decision of his own, leaving it up to the Attorney

General. Judge Jackson’s opinion makes clear that even this premise, conveyed to Congress in Barr’s March 24, 2019 letter, was a misrepresentation of fact in violation of Rule 8.4(c). Judge Jackson’s still-redacted opinion, set for full disclosure on May 27, 2021, states:

All of this [evidence] contradicts the [Barr 2020 Justice Department] declarant’s *ipse dixit* that since the Special Counsel did not resolve the question of whether the evidence would support a prosecution, “[a]s such, any determination as to whether the President committed an obstruction-of-justice offense was left to the purview of the Attorney General.” Brinkmann Decl. ¶ 11. *It also calls into question the accuracy of Attorney General Barr’s March 24 representation to Congress*: “The Special Counsel’s decision to describe the facts of his obstruction investigation without reaching any legal conclusions leaves it to the Attorney General to determine whether the conduct described in the report constitutes a crime.” March 24 Letter at 3. [Footnote omitted.]

Opn. at 22, (emphasis added).

In fact,

The [DOJ]’s redactions and incomplete explanations obfuscate the true purpose of the [OLC] memorandum [to Attorney General Barr], and the excised portions *belie the notion that it fell to the Attorney General to make a prosecution decision or that any such decision was on the table at any time.*

Opn. at 25 (emphasis added).

The “true purpose” was “strategic,” *id.* at 19, 29 n.17, and 30 -- what the prevailing party in *CREW* characterized as “how to ‘spin’ the report in a way that placed President Trump in the best light possible, while undermining any contrary conclusion the Special Counsel had reached.” *Id.* at 29 n.17. Judge Jackson’s opinion notes the most telling Mueller conclusion omitted from Mr. Barr’s letter to Congress: “[I]f we had confidence,” the Mueller Report states, “after a thorough investigation of the facts that the President clearly did not commit obstruction of justice, we would so state. Based on the facts and the applicable legal standards, however, we are unable to reach that judgment.” *Id.* at 22 n.12.

Judge Jackson’s findings echo those of a prior court in *Electric Privacy Information Center v. United States Department of Justice*, 442 F. Supp. 3d 37 [“*EPIC*”]. At pages 12-13, our complaint quoted Judge Walton’s decision in that case as follows:

[P]ortions of the redacted version of the Mueller Report that conflict with [Mr. Barr’s] statements [before the Mueller Report was released] cause the Court to seriously question whether Attorney General Barr made a calculated attempt to *influence public discourse*

about the Mueller Report in favor of President Trump despite certain findings in the redacted version of the Mueller Report to the contrary. [Italics added.]

Significantly, at pages 24-25 of her May 3, 2021 opinion, Judge Jackson reaffirms Judge Walton's conclusions in *EPIC* :

Another court in this district has expressed “grave concerns about the objectivity of the process that preceded the public release of the redacted version of the Mueller Report.” *EPIC*, 442 F. Supp. 3d at 48. . . . The review of the unredacted document in camera reveals that *the suspicions voiced by the judge in EPIC and the plaintiff here were well-founded, and that not only was the Attorney General being disingenuous then, but DOJ has been disingenuous to this Court with respect to the existence of a decision-making process that should be shielded by the deliberative process privilege.*

(Emphasis added.). On the last point, it is worth adding that Judge Jackson is speaking of misrepresentations made to the Court by DOJ attorney-declarants and brief-writers while Mr. Barr was at DOJ's helm, in a case in which he was the central actor:

[T]he *in camera* review of the document, which DOJ strongly resisted, see Def.'s Opp. to Pl.'s Cross Mot. [Dkt. # 19] (“Def.'s Opp.”) at 20–22 (“In Camera Review is Unwarranted and Unnecessary”), *raises serious questions about how the Department of Justice could make this series of representations to a court in support of its 2020 motion for summary judgment*

Opn. at 23 (emphasis added). Mr. Barr's supervisory role over these attorneys requires investigation as part of our previously requested review.

Thus, your office need not rely on the evaluation of the Bar members who have come forward to lodge this complaint. The findings of independent federal judges in the District, most recently Judge Jackson, confirm the substance of our allegations.

As lawyers who have affiliated with both political parties, we are committed to nonpartisanship in disciplinary matters, including this one. The evidence here establishes that the highest law enforcement officer of the country misled the Congress and the public by blatant and cynical misuse of his office. More than in Watergate and Iran Contra where there were criminal prosecutions that brought accountability and disbarments, the abuse of office by Mr. Barr and his subordinates is a critical test of the legal profession's ability to regulate itself. If Mr. Barr's misconduct is ignored or otherwise swept under the rug, the public may justly conclude that the powerful and connected are above the law.

We respectfully urge you, as an independent prosecutor charged with upholding the integrity of the legal profession, to pursue proceedings that will dispel that ugly conclusion.

Respectfully submitted,

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