

**From:** [Rabbitt, Brian \(OAG\)](#)  
**To:** (b)(6) - AG Barr (OAG)  
**Subject:** Fwd: questions for story tonight  
**Date:** Thursday, February 13, 2020 7:11:47 PM

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Sent from my iPhone

Begin forwarded message:

**From:** "Lloyd, Matt (PAO)" <mlloyd@jmd.usdoj.gov>  
**Date:** February 13, 2020 at 7:02:07 PM EST  
**To:** "Rabbitt, Brian (OAG)" <brrabbitt@jmd.usdoj.gov>  
**Subject:** FW: questions for story tonight

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**From:** Zapotosky, Matt <matt.zapotosky@washpost.com>  
**Sent:** Thursday, February 13, 2020 6:54 PM  
**To:** Lloyd, Matt (PAO) <mlloyd@jmd.usdoj.gov>  
**Subject:** questions for story tonight

Hey Matt--

In our Barr story tonight, we're going to publish a bevy of details I wanted to run by you. They are as follows below. I know you said you probably won't be able to answer many questions tonight, but wanted to run by you to see if you have any concerns or disputes. Please let me know.

Best,

Matt Zapotosky | The Washington Post

(b) (6) (cell)

1. POTUS is pushing for the Durham investigation findings to come and believes they will be a good cudgel for him to use in re-election, people familiar with his comments say.
2. POTUS has been especially incensed at the DOJ since early January, when the Flynn prosecutors said he should get jail time, and we reported that John Huber was done investigating and no one was going to be charged/in trouble out of that. "He has been raging for the last month, and a lot of it is directed at the FBI,

Comey, McCabe mostly, but also some of the others. He wants people charged. He expects people to be charged,” one person told us. He and Barr have spoken about the possibility of charging Comey.

3. Former USA Jessie Liu became a target for that rage in recent months, and Trump has complained to a lot of people about her in 2020. This is partly the work of Barbara Ledeen, partly the work of conservative media, but whatever the original impetus, Trump blames Liu specifically for the lack of charges against Comey and McCabe and others. Not that she is the only villain in his mind, but one of the main ones.
4. Trump cares more about using DOJ to punish his enemies than help his friends. The Stone thing upsets him, he more wants charges against adversaries.
5. Trump has repeatedly complained about FBI Director Christopher Wray in recent months, saying that Wray has not done enough to change the FBI’s culture, purge the bureau of people who are disloyal to him or change policies after FISA violations. He has complained at times that he should have never listened to Gov. Chris Christie, who recommended Wray for the post, White House officials said.
6. When FBI officials said in August they were not going to charge Comey, Trump erupted in rage, according to people briefed on his comments. He complained so loudly and swore so frequently in the Oval Office that some of his aides discussed it for days, these people said. Trump repeatedly said that Comey deserved to be charged. “Can you fucking believe they didn’t charge him?” Trump said that night.
7. Trump continues to smart over Andrew McCabe, complaining that he has not been charged, according to two administration officials.
8. Trump however does not harbor personal animosity toward Barr, believing that the attorney general is on his team and is loyal.
9. Barr has been locking horns lately with Kushner, because Kushner wants to decriminalize marijuana, and Barr is very much opposed.

**From:** [Rabbitt, Brian \(OAG\)](#)  
**To:** [\(b\)\(6\) - AG Barr \(OAG\)](#)  
**Subject:** Fwd: WSJ editorial  
**Date:** Thursday, February 13, 2020 8:12:07 PM

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**From:** "Lloyd, Matt (PAO)" <mlloyd@jmd.usdoj.gov>  
**Date:** February 13, 2020 at 7:48:22 PM EST  
**To:** "Rabbitt, Brian (OAG)" <brrabbitt@jmd.usdoj.gov>  
**Subject:** WSJ editorial

This is lead editorial for tomorrow:

[https://www.wsj.com/articles/trumps-worst-enemy-11581639143?mod=opinion\\_lead\\_pos1](https://www.wsj.com/articles/trumps-worst-enemy-11581639143?mod=opinion_lead_pos1)

*Trump's Worst Enemy*

He needs to stop tweeting about cases and let Barr do his job.

By

The Editorial Board

Feb. 13, 2020 7:12 pm ET

After his Senate impeachment acquittal, we wrote that President Trump's history is that he can't stand prosperity. Well, that was fast. The President's relentless popping off this week about the sentencing of supporter Roger Stone has hurt himself, his Justice Department, and the proper understanding of executive power. That's a notable trifecta of self-destructive behavior even by his standards.

Mr. Trump handed another sword to his opponents when he fulminated on [Twitter](#) about the initial recommendation of a seven-to-nine year prison sentence for Mr. Stone. He is right that such a sentence would be excessive. Mr. Stone was convicted of lying to Congress, which often receives minimal jail time. His conviction for witness tampering was more serious but involved a faux-macho threat ("prepare to die") that even the witness said he didn't take literally.

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As it happens, senior Justice officials had concluded on their own that the sentence recommendation was excessive and had decided to rescind it *before* Mr. Trump's tweet. But by ranting publicly as he did, the President gave Democrats an opening to claim that Attorney General Bill Barr was taking orders from the White House. Four prosecutors (two were part of Robert Mueller's investigation) withdrew from the Stone

case in protest, and Democrats had another Trump scandal to flog. Kim Strassel has more background [nearby](#).

The uproar is obscuring that Mr. Barr had every reason and authority to reduce the sentencing recommendation. Up to nine years is extreme, as even some career prosecutors believed. All prosecutors ultimately work for Mr. Barr, and he is accountable to the voters through the President.

If the decisions of line prosecutors can't be questioned by their political superiors, the chances increase of prosecutorial abuse. If career prosecutors are king, then why go through the trouble of nominating and confirming an Attorney General and his deputies? This erodes political accountability under the separation of powers.

But before Mr. Barr could explain any of this, Mr. Trump compounded his political felony by praising the AG for rescinding the sentencing recommendation. That gave more ammunition to Democrats and undermined Mr. Barr. The President then shot himself again by attacking Judge Amy Berman Jackson, who is presiding over the Stone case. "Is this the Judge that put Paul Manafort in SOLITARY CONFINEMENT, something that not even mobster Al Capone had to endure?" he tweeted.

Mr. Trump makes no friends in the judiciary with such political attacks, and it can't help Mr. Stone's chances of getting a reduced sentence. If the President dislikes the sentence, he has his pardon power. Meantime, knock it off.

Mr. Trump doesn't understand, or perhaps doesn't care, that all of this hurts Mr. Barr, whom he can ill-afford to lose. The AG is smart, tough and independent. He will give Mr. Trump his candid advice on the law, which is more than most of his advisers do. Mr. Barr finally spoke up in frustration about this Thursday, telling ABC News that Mr. Trump's outbursts are making it "impossible for me to do my job."

The President should listen because he needs Mr. Barr more than Mr. Barr needs to be AG. The danger for Mr. Trump is that Mr. Barr will resign because he is tired of having his credibility undermined by a President who can't control his political id no matter the damage it causes.

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Mr. Trump won't like to hear any of this, and no doubt his loyalists will blame Democrats, the media and Mr. Barr. But Mr. Trump is his own worst enemy. Time and again his need to dominate the news, to justify even his mistakes, and to rebut every critic gets him into needless trouble.

When he fired James Comey, he couldn't live with the Justice Department's cogent and correct explanation of the FBI director's many mistakes. Instead he tweeted the idle claim that he had taped his private conversations with Mr. Comey. That led to Robert

Mueller's two-year investigation.

When the Mueller probe finally ended, Mr. Trump could have claimed vindication and moved on. Instead he unleashed Rudy Giuliani to play in the mud bath of Ukrainian politics and attack a U.S. ambassador. He ignored warnings from other advisers until it was too late, and he gave Democrats the opening to impeach him.

In the wake of his Senate acquittal, Mr. Trump should be campaigning for re-election and enjoying the disarray of his opponents. Instead he gives every appearance of wanting to settle scores with anyone who contributed in any way to impeachment.

He is helping the Democrats who are running against the Senators who voted to acquit. And he is making millions of voters ask if they really want to take a risk on giving him so much power for another four years.

**Matt Lloyd**

**Principal Deputy Director, Public Affairs**

**U.S. Department of Justice**

**(b) (6) (cell)**

**From:** [Rabbitt, Brian \(OAG\)](#)  
**To:** [\(b\)\(6\) - AG Barr \(OAG\)](#)  
**Subject:** Fwd: Strassel column  
**Date:** Thursday, February 13, 2020 8:14:43 PM

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Begin forwarded message:

**From:** "Lloyd, Matt (PAO)" <mlloyd@jmd.usdoj.gov>  
**Date:** February 13, 2020 at 7:51:48 PM EST  
**To:** "Rabbitt, Brian (OAG)" <brrabbitt@jmd.usdoj.gov>  
**Subject:** Strassel column

[https://www.wsj.com/articles/the-trials-of-bill-barr-11581637977?mod=opinion\\_lead\\_pos9](https://www.wsj.com/articles/the-trials-of-bill-barr-11581637977?mod=opinion_lead_pos9)

*The Trials of Bill Barr*

Bureaucrats bristle as the attorney general delivers on his pledge of accountability.

By  
Kimberley A. Strassel  
Feb. 13, 2020 6:52 pm ET

The Roger Stone sentencing uproar is deeply important, and not because it's another Trump "scandal." Rather, it's a clash that was always coming—the moment at which an ungoverned bureaucracy smacked up against Attorney General William Barr's promise to restore equal justice and accountability at the Justice Department.

Democrats and the media are in a tizzy over the department leadership's Tuesday decision to file a sentencing memo calling for Mr. Stone to receive a shorter prison sentence than four line prosecutors originally recommended. The reversal came not long after President Trump tweeted his own outrage over the initial sentencing memo, leading to the inevitable conspiracy theories and calls for investigation.

Democrats claimed Mr. Trump politically interfered with justice, bullying the department into going easy on a political crony. Senate Minority Leader Chuck Schumer proclaims "a crisis in the rule of law." Rep. Adam Schiff (D., Impeachment) declared another "abuse of power." The press is casting it as Example A of how a postacquittal Trump feels emboldened to ignore the law.

This has it entirely backward. Here's what actually happened: Justice sources tell me

that interim U.S. Attorney Tim Shea had told the department's leadership he and other career officials in the office felt the proposed sentence was excessive. As the deadline for the filing neared, the prosecutors on the case nonetheless threatened to withdraw from the case unless they got their demands for these stiffest of penalties. Mr. Shea—new to the job—suffered a moment of cowardice and submitted to this ultimatum. The filing took Justice Department leaders by surprise, and the decision to reverse was made well before Mr. Trump tweeted, and with no communication with the White House. The revised filing, meanwhile, had the signature of the acting supervisor of the office's criminal division, who is a career civil servant, not a political appointee.

This is Mr. Barr getting rid of politics in justice—as he promised. In his confirmation hearing, the attorney general vowed an “even-handed application of the law” rather than judgments based on politics or favoritism (see Clinton investigation vs. Trump investigation). Before the president's tweet, even liberal commentators were acknowledging the initial recommendation of up to nine years in prison was harsh, given that Mr. Stone is a first-time offender. The request came from a prosecutorial team—which included two members of former special counsel Robert Mueller's staff—that wanted to punish Mr. Stone for his ties to a president they loathe.

And don't forget the mitigating factors. Remember how Mr. Stone ended up in the Justice Department's crosshairs. It was after Team Clinton, the Democratic National Committee and Fusion GPS weaponized the Federal Bureau of Investigation to go after political opponents. Mr. Mueller could easily have unraveled this ambush. Instead, he rampaged through dozens of lives, and—unable to find collusion between the Trump campaign and Russia, his original charge—obtained indictments for process crimes. That's no excuse for Mr. Stone's behavior, but his sentence ought to reflect that he was prosecuted by an overzealous, politicized Justice Department.

Mr. Barr also promised accountability, and the permanent bureaucracy is displaying its contempt for that mission. Line prosecutors made clear up front that they'd cause a political spectacle unless their demands were met. When overruled, four went on to withdraw. In a Washington Post op-ed, former Justice Department employee Chuck Rosenberg summed up the resistance to supervision: “We all understand that the leadership at the top of the department is politically appointed, and we make peace with that.”

Make peace with that? The Constitution provides for the election of the president and Senate. They appoint the officials who call shots and make policy. Career civil servants aren't some aristocratic class entitled to immunity from supervision. They are employees. The danger isn't political authority, but rather an unelected mandarin class that believes itself exempt from democratic accountability.

Mr. Barr's reassertion of basic principles is overdue and important. The pity is that President Trump is ruining the moment with ill-considered tweets and statements that feed the conspiracy narratives. Mr. Trump is right to distrust the bureaucrats, but he

should trust the attorney general to do the right thing—and give him the time and space to do it. His every comment on Mr. Stone puts Mr. Barr in a more difficult position—and for what? Mr. Barr on Thursday publicly asked the president to lay off, and he should.

Yet the real story this week is that in the end the Justice Department requested a reasonable sentence for Mr. Stone, and Mr. Barr schooled overzealous prosecutors in the importance of evenhandedness, integrity and respecting the chain of command. The only scandal, yet again, is that so much of partisan Washington is willing to throw mud on this progress in the name of damaging this White House.

*Write to [kim@wsj.com](mailto:kim@wsj.com).*

**Matt Lloyd**  
**Principal Deputy Director, Public Affairs**  
**U.S. Department of Justice**

(b) (6) (cell)

# U.S. House of Representatives

## Committee on the Judiciary

Washington, DC 20515–6216  
One Hundred Sixteenth Congress

February 12, 2020

The Honorable William Barr  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Mr. Attorney General:

We are writing to confirm your agreement to testify before the House Judiciary Committee on March 31, 2020.

In the interest of transparency, we wish to be candid about one set of concerns we plan to address at the hearing. Since President Trump took office, we have repeatedly warned you and your predecessors that the misuse of our criminal justice system for political purposes is both dangerous to our democracy and unacceptable to the House Judiciary Committee.<sup>1</sup> Our Republican colleagues have warned the Department of the same.<sup>2</sup> We have been consistent—and bipartisan—in this message for years.

In your tenure as Attorney General, you have engaged in a pattern of conduct in legal matters relating to the President that raises significant concerns for this Committee.<sup>3</sup> In the past

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<sup>1</sup> See, e.g., Letter from Ranking Member John Conyers, Jr., et al., to Attorney General Jeff Sessions, Mar. 17, 2017 (“Given the Trump Administration’s wide-ranging and ongoing conflict-of-interest troubles . . . we wonder if the wiser course of action would have been to allow these [U.S. attorneys] to stay on and act as an independent voice on matters that might directly impact President Trump.”); Letter from Ranking Member Jerrold Nadler to Acting Attorney General Matthew Whitaker, Nov. 13, 2018 (“I write with growing concern over President Trump’s repeated attacks on the integrity of the Department of Justice and the FBI—including, but not limited to, his decision to fire former Attorney General Jeff Sessions, his frequent statements about ongoing criminal investigations, and his personal attacks on senior Department officials.”); Letter from Chairman Jerrold Nadler, et al., to Attorney General William Barr, Mar. 25, 2019 (“Each of our committees is currently engaged in oversight activities that go directly to the President’s conduct, his open attempts to obstruct federal investigators . . . and other alleged instances of misconduct.”).

<sup>2</sup> See, e.g., Letter from Chairman Robert Goodlatte, et al., to Attorney General Jeff Sessions and Deputy Attorney General Rod Rosenstein, July 27, 2017 (“We need to enable these agencies to perform their necessary and important law enforcement and intelligence functions fully unhindered by politics.”).

<sup>3</sup> Carol E. Lee, Ken Dilanian, & Peter Alexander, *Barr takes control of legal matters of interest to Trump, including Stone sentencing*, NBC NEWS, Feb. 11, 2020.

week alone, you have taken steps that raise grave questions about your leadership of the Department of Justice. These include:

- The ongoing developments following the removal of U.S. Attorney Jessie Liu, who oversaw the prosecutions of President Trump’s deputy campaign chairman Rick Gates, President Trump’s former national security advisor Michael Flynn, and President Trump’s longtime political adviser Roger Stone.<sup>4</sup>
- The creation of a new “process” by which President Trump’s personal attorney Rudy Giuliani can feed the Department of Justice information, through you, about the President’s political rivals.<sup>5</sup>
- The decision to overrule your career prosecutors and significantly reduce the recommended sentence for Roger Stone, who has been convicted for lying under oath, at the apparent request of the President—a decision that led to all four prosecutors handling the case to withdraw from the proceedings in protest.<sup>6</sup>

These are not the only issues that our Committee intends to discuss with you when you appear, but they are enough to require our immediate attention.

We look forward to your testimony.

Sincerely,



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<sup>4</sup> Spencer S. Hsu, et al., *Trump withdraws Treasury nomination of former U.S. attorney for D.C. Jessie K. Liu after criticism of her oversight of Mueller prosecutions*, WASH. POST, Feb. 11, 2020.

<sup>5</sup> Matt Zapotosky and Devlin Barrett, *Barr acknowledges Justice Dept. has created ‘intake process’ to vet Giuliani’s information on Bidens*, WASH. POST, Feb. 10, 2020.

<sup>6</sup> Matt Zapotosky, *Prosecutors quit amid escalating Justice Dept. fight over Roger Stone’s prison term*, WASH. POST, Feb. 11, 2020.

Ann Swallow

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J. J. L.

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cc: Honorable Doug Collins, Ranking Member, House Committee on the Judiciary



## Ensberg Law Group

1609 West Garvey Ave. North | Phone: (626) 813-3744  
West Covina, CA 91790 | Fax: (626) 813-3886

February 12, 2020

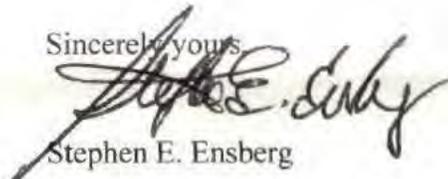
The Hon. William P. Barr,  
Attorney General of the United States of America  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Greetings:

I wish to communicate with you my concerns about the handling of the Roger Stone criminal matter by you and the Justice Department in Washington, D.C. Both you and the President are interfering with the administration of Justice in this matter, in derogation of your Oath to support and defend the Constitution of the United States, and the impartial and independent administration of Justice. You again appear to be acting on behalf of the President personally, and his friends, rather than upholding the independence of your Office, and that of the Justice Department to provide equal treatment under Law. The fact that the four directly involved Prosecutors resigned yesterday after the interference in the sentencing recommendation for Roger Stone by the Justice Department and you, tells us all we need to know about your commitment to the independency of the Justice Department.

Based further on your improper handling and reporting on the Mueller Report, and this most recent wrongful act, you should resign immediately, as you are destroying a central pillar of independence, the Justice system, of the United States.

Sincerely yours,



Stephen E. Ensberg

SEE/sss

cc. The Honorable Lindsey Graham, Senator and Chairman of the Senate Judiciary Committee  
The Honorable Jerrold Nadler, Chairman of the House Judiciary Committee

Stephen E. Ensberg • email: sensberg@aol.com | Larsen E. Ensberg • email: larsen@sensberglaw.com  
Nancy J. Skovholt • email: nancy@sensberglaw.com | Michelle Lee • email: michelle@sensberglaw.com

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# CONGRESSIONAL BLACK CAUCUS

February 14, 2020

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

Dear Inspector General Horowitz:

On behalf of the Congressional Black Caucus, I write to express our deep concern surrounding a pattern of potential misconduct and prosecutorial abuse within the Department of Justice (DOJ) involving United States Attorney General William P. Barr. According to public press reports and presidential communication, Attorney General Barr may have improperly intervened in criminal prosecutions counter to the interest of justice and in the advancement of political ends. We request that the Office of Inspector General (OIG) work to independently and impartially investigate these allegations of misconduct and provide its findings to Congress. Further, we request that all findings on Attorney General Barr's conduct be made available to the public.

On Friday, February 14, 2020, various media outlets reported that Attorney General William Barr has ordered an outside prosecutor to review the criminal case against Michael Flynn, President Trump's former national security adviser. As you know, such reviews are uncommon and raise suspicion about potential political inference by DOJ personnel into cases.

In addition, on Tuesday, February 11, 2020, several news outlets also reported Attorney General Barr's unprecedented and public intervention into a federal felony sentencing recommendation for a friend and political ally of the president – Roger Stone. The Washington Post reported that, "All four career prosecutors handling the case against Roger Stone withdrew from the legal proceedings Tuesday – and one quit his job entirely – after the Justice Department signaled it planned to undercut their sentencing recommendation for President Trump's longtime friend and confidant."<sup>1</sup> Those front-line prosecutors' sentencing recommendation for Roger Stone of seven to nine years in prison appears to have been superseded in a new

<sup>1</sup> [https://www.washingtonpost.com/national-security/justice-dept-to-reduce-sentencing-recommendation-for-trump-associate-roger-stone-official-says-after-president-calls-it-unfair/2020/02/11/ad81fd36-4cf0-11ea-bf44-f5043eb3918a\\_story.html](https://www.washingtonpost.com/national-security/justice-dept-to-reduce-sentencing-recommendation-for-trump-associate-roger-stone-official-says-after-president-calls-it-unfair/2020/02/11/ad81fd36-4cf0-11ea-bf44-f5043eb3918a_story.html)

filing. This new filing expressed the previous recommendation by nonpolitical attorneys, "does not accurately reflect the Department of Justice's position on what would be a reasonable sentence in this matter."<sup>2</sup> Further, the filing expressed that the previously recommended sentence "could be considered excessive and unwarranted under the circumstances," and requested the judge consider an "appropriate" sentence. This reversal came less than 24 hours after a presidential communication stating, "This is a horrible and very unfair situation. The real crimes were on the other side, as nothing happens to them. Cannot allow this miscarriage of justice!"<sup>3</sup> Following the DOJ's sentencing reversal, another presidential communication was released stating "Congratulations to Attorney General Bill Barr for taking charge of a case that was totally out of control and perhaps should not have been brought."<sup>4</sup>

This highlights a pattern of highly unusual interventions into criminal investigations by Attorney General Barr. According to an NBC news report on Tuesday, February 11, 2020, this was not the first instance in which senior political appointees have intervened to influence the federal felony prosecutions and sentencing in coordination with Attorney General Barr. The report highlighted the intervention into the sentencing recommendation of former national security advisor Michael Flynn, who pleaded guilty to lying to the Federal Bureau of Investigations (FBI). We understand that Federal prosecutors previously recommended up to six months in prison and their recent filing recommends probation. This recommendation follows several presidential communications condemning the prosecution.

News reports further indicate a possible connection between The White House's abrupt withdrawal of the nomination for Jessie Liu, the former US attorney who headed the office that oversaw Roger Stone's prosecution and a number of other cases linked to Special Counsel Muller's investigation, and Attorney General Barr's intervention into the Stone case. Reports indicate that there was possible coordination with the White House to remove former US Attorney Liu through the nomination so that Attorney General Barr could exert greater control over the case by appointing a U.S. attorney that would fulfill the political aims of the White House.<sup>5</sup>

Furthermore, reports indicate that on Wednesday, February 5, 2020, Attorney General Barr issued an order restricting the opening of politically sensitive investigations – an unprecedented and unusual requirement. The memo said that the FBI and all other divisions under the Justice Department's purview must receive Attorney General Barr's approval before investigating any of the 2020 presidential candidates and established a series of requirements governing whether investigators could open preliminary or full "politically sensitive" criminal and counterintelligence investigations into candidates or their donors.<sup>6</sup> This uncommon order came on the heels of a number of presidential communications highlighting the president's displeasure with investigations and federal indictments of associates of his campaign and frustration over his impeachment.

Since its establishment in 1971, the Congressional Black Caucus has been committed to using the full Constitutional power, statutory authority, and financial resources of the federal government to ensure that African Americans and other marginalized communities in the United States have the opportunity to achieve the American Dream. Critical to this dream is the fair and impartial justice under the law. Too often the scales of our criminal justice system have weighed heavy on lives and families of marginalized communities. Black and brown communities frequently find themselves facing an unbalanced and often overly harsh criminal justice system. It has been our consistent and unwavering position that all Americans deserve fair and equal justice under the law.

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<sup>2</sup> <https://www.nbcnews.com/politics/justice-department/barr-takes-control-legal-matters-interest-trump-including-stone-sentencing-n1135231>

<sup>3</sup> <https://twitter.com/realDonaldTrump/status/1227122206783811585>

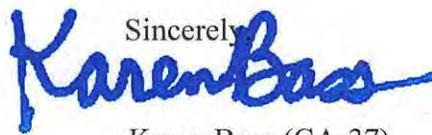
<sup>4</sup> [https://twitter.com/realDonaldTrump/status/1227561237782855680?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwttrm%5E1227561237782855680&ref\\_url=https%3A%2F%2Fwww.nbcnews.com%2Fpolitics%2Fjustice-department%2Fbarr-takes-control-legal-matters-interest-trump-including-stone-sentencing-n1135231](https://twitter.com/realDonaldTrump/status/1227561237782855680?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwttrm%5E1227561237782855680&ref_url=https%3A%2F%2Fwww.nbcnews.com%2Fpolitics%2Fjustice-department%2Fbarr-takes-control-legal-matters-interest-trump-including-stone-sentencing-n1135231)

<sup>5</sup> <https://www.cnn.com/2020/02/11/politics/jesse-liu-treasury-nomination-withdrawn/index.html>

<sup>6</sup> <https://www.nytimes.com/2020/02/05/us/politics/barr-2020-investigations.html>

In the spirit of the CBC's 49-year history on this point, and as the "Conscience of the Congress," we request that the OIG work to independently and impartially investigate all allegations of misconduct in violation of U.S. law, regulations and prosecutorial standards with all deliberate speed. We request that this investigation be conducted thoroughly and completely, including interviews of all relevant persons within the DOJ, federal government officials, or anyone with knowledge of possible misconduct in these areas. We request that you pursue any and all investigative leads and prosecutorial decisions and furnish your findings to Congress upon completion. Further, we request that all findings on Attorney General Barr's conduct be made available to the public to the maximum extent possible, so that we are free to make any necessary referrals to the appropriate law enforcement authorities or to the New York State and District of Columbia bar associations for possible adjudication and disposition.

Thank you for your attention to this important matter and we look forward to your response.

Sincerely,  


Karen Bass (CA-37)  
Chair, Congressional Black Caucus



2408 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20616  
(202) 226-5751  
(202) 226-5782 FAX

ROBERT A. ROE FEDERAL BUILDING  
200 FEDERAL PLAZA, SUITE 800  
PATERSON, NJ 07605  
(973) 623-5152  
(973) 623-0837 FAX

<http://pascrell.house.gov>  
[bill.pascrell@mail.house.gov](mailto:bill.pascrell@mail.house.gov)

**Congress of the United States**  
**House of Representatives**

February 11, 2020

The Honorable William P. Barr  
Attorney General  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

Dear Mr. Barr:

I write to you today regarding possible obstruction of justice by your department. On February 10, 2020, prosecutors from the Justice Department requested a federal judge to sentence Roger Stone to seven to nine years in prison for his conviction on seven federal felonies including obstruction, witness tampering, and making false statements.<sup>i</sup> However, on February 11, officials from Justice backtracked and indicated they would recommend a lighter sentence for Stone. Their stunning reversal came hours after Donald Trump threw a temper tantrum on Twitter at prosecutors' original sentencing recommendation for Stone, Mr. Trump's former advisor and close associate.<sup>ii</sup>

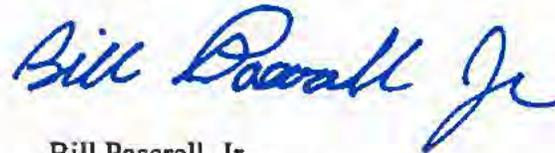
No rational or honest person can infer anything except that the outrageous decision to overturn your department's original sentencing recommendation was made in reaction to Trump's tirade. The decision to alter its sentencing recommendation is nothing less than a further escalation of your department's continuing full-frontal assault on the rule of law and bears more than a faint whiff of banana republicanism. Indeed, since the announcement was made, four prosecutors on the team involved in Mr. Stone's adjudication, Aaron Zelinsky, Jonathan Kravis, Adam Jed, and Michael Marado, have reportedly already requested resignation.<sup>iii</sup> In light of the actions today by your department, please provide answers to the questions below.

- Was the decision to reverse the department's original sentencing recommendation of Roger Stone made at the direct or indirect request of Donald Trump or any figures employed within the White House or acting on Mr. Trump's behalf?
- Did you or any officials within the Justice Department consult with Donald Trump, officials within the White House, or any other parties regarding Mr. Stone's sentencing prior to the original sentencing recommendation of February 10 or in the intervening period between Donald Trump's tweet of February 11, 2020 at 1:48 am EST<sup>iv</sup> and your department's announcement that it would offer a revised sentencing recommendation?
- At any point before or since Timothy Shea's elevation as Interim United States Attorney for the District of Columbia on January 30, 2020, have you or any of your adjutants had discussions with your former close aide Mr. Shea regarding Mr. Stone's case and sentencing? Did you or any adjutants working for you convey to Mr. Shea that he should alter or lighten sentencing recommendations for Mr. Stone?



Despite occupying your post for just shy of one year, you have presided over an institutional corruption of your sacred office not seen in our national history. Your openly stated viewpoints on executive power and your actions seeking to metamorphosize U.S. law enforcement into a bodyguard for the White House bear a fanaticism that, left unchecked, would render our vibrant constitutional order into an authoritarian monarchy. The actions by your department on February 11 confirm my worst fears of your leadership. Please provide answers to my questions immediately.

Sincerely,

A handwritten signature in blue ink that reads "Bill Pascrell Jr". The signature is fluid and cursive, with the first and last names being more prominent than the middle name.

Bill Pascrell, Jr.  
Member of Congress

---

<sup>i</sup> <https://www.cnn.com/2020/02/10/politics/federal-prosecutors-roger-stone-sentencing/index.html>

<sup>ii</sup> <https://www.npr.org/2020/02/11/804888522/doj-to-revise-sentencing-request-for-roger-stone-following-trump-tweet>

<sup>iii</sup> <https://politicalwire.com/2020/02/11/prosecutor-resigns-from-roger-stone-case/>

<sup>iv</sup> <https://twitter.com/realDonaldTrump/status/1227122206783811585>

**NEW YORK  
CITY BAR**

February 12, 2020

Hon. Jerrold Nadler  
Chair, Judiciary Committee  
U.S. House of Representatives  
2132 Rayburn House Office Building  
Washington, D.C. 20510

Hon. Doug Collins  
Ranking Member, Judiciary Committee  
U.S. House of Representatives  
1504 Longworth House Office Building  
Washington, D.C. 20510

Hon. Lindsey Graham  
Chair, Judiciary Committee  
U.S. Senate  
290 Russell Senate Office Building  
Washington, D.C. 20510

Hon. Dianne Feinstein  
Ranking Member, Judiciary Committee  
U.S. Senate  
331 Hart Senate Office Building  
Washington, D.C. 20510

Hon. Michael Horowitz  
Inspector General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

**Re: The Prosecution of Roger Stone and Related Actions by the Department of Justice**

Dear Representative Nadler, Representative Collins, Senator Graham, Senator Feinstein and Inspector General Horowitz:

We write to express our deep concerns about the impartial administration of justice in connection with the prosecution of Roger Stone in federal court in Washington, D.C., and to call for immediate investigations by Congress and by the Department of Justice Office of the Inspector General. Recent actions by the U.S. Attorney's Office for the District of Columbia, a component of the United States Department of Justice, raise serious questions about whether the Department of Justice is making prosecutorial decisions based not on neutral principles but in order to protect President Trump's supporters and friends. In our criminal justice system, a single standard must apply to all who are accused or convicted of violating the law—unequal treatment based on political influence is to be deplored in all cases but is especially dangerous if it emanates from the presidency.

## The Stone Sentencing

Roger Stone was convicted after a jury trial in 2019 and is scheduled to be sentenced later in February 2020. On Monday, the federal prosecutors responsible for the Stone prosecution filed a sentencing brief endorsing the imposition of a sentence of between 87 and 108 months, consistent with the Federal Sentencing Guidelines (the “Guidelines”) range recommended by the United States Probation Office.<sup>1</sup> This is consistent with usual Department of Justice practice, which is to ask the district court to follow the advisory Guidelines. Early on Tuesday morning, just after 1:00 a.m., President Trump tweeted that a sentence of this length would be “horrible and very unfair.”<sup>2</sup>

Just a few hours later, an unidentified Department of Justice spokesperson stated that the Department of Justice found the recommendation “extreme and excessive and disproportionate to Stone’s offenses.” Later on Tuesday, the Department of Justice filed a new sentencing brief that stated—without explanation—that the prior sentencing brief “does not accurately reflect the Department of Justice’s position on what would be a reasonable sentence in this matter.”<sup>3</sup> The new brief stated that the Guidelines range of 87 to 108 months’ imprisonment “would not be appropriate or serve the interests of justice.”<sup>3</sup>

In the aftermath of these events, the four career prosecutors involved in the Stone prosecution filed notices of withdrawal from the case; one of them also resigned from the Department of Justice. The Department of Justice has acknowledged that these withdrawals were meant to protest the about-face in Tuesday’s sentencing submission. Later on Tuesday, the former U.S. Attorney for the District of Columbia, Jessie Liu, who had supervised the Stone prosecution after Special Counsel Mueller completed his tenure, was withdrawn as the Administration’s nominee for a senior position in the Department of Treasury. It was further reported on Tuesday evening that Attorney General Barr has taken personal control over cases of interest to President Trump, including the prosecution of Michael Flynn, in which prosecutors originally sought a sentence of imprisonment, but then in a reply brief advised the court that a sentence of probation would also be reasonable. It has been reported that this notable change of position came only after the intervention of senior Department of Justice officials.<sup>4</sup>

### These Unusual Events Reflect Disregard for the Rule of Law

The events that have transpired in the past two days are highly unusual and irregular. The Department of Justice is not in the habit of taking one position in court and then, without explanation, taking a startling different position on the very next day. This sudden turnabout is itself disturbing. In addition, the Department of Justice is known for rarely asking the sentencing court to impose a sentence below the Guidelines range, other than when the defendant is a cooperating witness or when the defendant’s case presents unusual mitigating factors. Neither

<sup>1</sup> United States Sentencing Commission Guidelines, <https://www.ussc.gov/guidelines>.

<sup>2</sup> @realDonaldTrump. (Feb. 11, 2020) “This is a horrible and very unfair situation. The real crimes were on the other side, as nothing happens to them. Cannot allow this miscarriage of justice!” [Tweet]. <https://twitter.com/realDonaldTrump/status/1227122206783811585?s=20>.

<sup>3</sup> *United States v. Stone*, 19-cr-18 (ABJ) (D.D.C.), Dkt. No. 286, at 1.

<sup>4</sup> Carol Lee et al., “Barr takes control of legal matters of interest to Trump, including stone Sentencing,” NBC News (Feb. 11, 2020), at <https://www.nbcnews.com/politics/justice-department/barr-takes-control-legal-matters-interest-trump-including-stone-sentencing-n1135231>.

circumstance exists here. To be clear, the Guidelines can produce recommendations of incarceration that exceed what is warranted. We would applaud a generalized initiative by the Department of Justice that encourages judges to depart from those recommendations when justice requires.

But this is not what the Department of Justice has done here. There is no broad effort to address the over-punishment of the Guidelines. Rather, this appears from all external circumstances to be an instance of President Trump and Attorney General Barr acting in concert to protect Stone from punishment. Stone is a lifelong friend and advisor of President Trump. Indeed, Stone's conviction was for obstructing an investigation into President Trump, his family, and his advisors for encouraging Russian interference with the 2016 election. While the connecting events may never be fully known, the mere fact and timing of the Department of Justice decision to overrule the prosecutors who handled the case—just hours after President Trump's tweet—is itself suggestive of improper influence. Even this appearance of improper influence is detrimental to the fair administration of justice, the rule of law and the public's trust in the justice system.

### **The City Bar Calls for Investigation of these Events**

The City Bar has previously criticized the Attorney General for his failure to recuse himself from the Department of Justice's review of the whistleblower complaint, in which the Attorney General was himself mentioned during the Trump-Zelensky phone call of July 25, 2019.<sup>5</sup> We also have also called for congressional investigation of several public pronouncements by the Attorney General that we believe were inconsistent with the independence required of his office.<sup>6</sup> The present case raises more direct, and more serious, questions concerning the role of presidential influence in prosecuting individual criminal cases. All prior Presidents, at least since Watergate, made it a practice to decline to comment on ongoing cases being handled by the Department of Justice. This practice protected the criminal justice system from improper presidential influence. The new practice, in which the President makes public comments that are critical of prosecutions of his allies and in which the Department of Justice contradicts the sentencing recommendations of the prosecutors who handled the case to advance the President's personal and political ends, cannot be tolerated. If it is tolerated, it will undermine the rule of law on which our nation was founded and on which we rely as a foundation of our democracy.

For this reason, we call for Congress and the Department of Justice Office of the Inspector General to begin immediate investigations into these unusual and troubling events. Only a thorough public investigation can lay bare the true facts relating to the Stone sentencing. Nothing is more important to safeguarding the proper functioning and reputation of our criminal justice system than its commitment—and ability—to deliver justice impartially for all. Special treatment for the President's friends cannot be reconciled with the ideals that govern that system.

---

<sup>5</sup> Attorney General Barr Should Recuse Himself from Department of Justice Review of Ukraine Matter, Statement of the New York City Bar Association (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>.

<sup>6</sup> Letter requesting formal Congressional inquiries into conduct of Attorney General William P. Barr (Jan. 9, 2020), [http://documents.nycbar.org/files/Exercising\\_Congressional\\_Oversight\\_AG\\_Barr\\_01082020.pdf](http://documents.nycbar.org/files/Exercising_Congressional_Oversight_AG_Barr_01082020.pdf).

Respectfully,

Roger Juan Maldonado  
President

Harry Sandick  
Chair, Committee on Federal Courts

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

Christopher M. Pioch  
Jessenia Vazcones-Yagual  
Co-Chairs, Task Force on the Independence  
of Lawyers and Judges<sup>7</sup>

Cc: Hon. William P. Barr  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20515

---

<sup>7</sup> The signatory committees and task forces are comprised of lawyers occupying a wide range of positions within the profession, including, law firm and nonprofit attorneys, solo practitioners, former federal and state prosecutors, defense attorneys, and academics.

**From:** [Kupec, Kerri \(OPA\)](#)  
**To:** [\(b\)\(6\) - AG Barr \(OAG\)](#)  
**Cc:** [Rabbitt, Brian \(OAG\)](#); [Levi, William \(OAG\)](#)  
**Subject:** Working doc - press conference prep  
**Date:** Sunday, January 12, 2020 5:54:40 PM  
**Attachments:** [OffTopicQs\\_WorkingDoc\\_Jan2020.docx](#)

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See attached.

**Kerri Kupec**  
Director  
Office of Public Affairs  
U.S. Department of Justice

(b) (6)  
(b) (6)

**From:** [Rabbitt, Brian \(OAG\)](#)  
**To:** (b)(6) - AG Barr [OAG](#)  
**Subject:** Fwd: fyi "Barr Once Contradicted Trump's Claim That Abuse of Power Is Not Impeachable"  
**Date:** Tuesday, January 21, 2020 6:05:05 PM  
**Attachments:** [image001.png](#)

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Sent from my iPhone

Begin forwarded message:

**From:** "Kupec, Kerri (OPA)" (b) (6)  
**Date:** January 21, 2020 at 5:32:00 PM EST  
**To:** "Rabbitt, Brian (OAG)" <brrabbitt@jmd.usdoj.gov>, "Levi, William (OAG)" <wlevi@jmd.usdoj.gov>  
**Subject:** fyi "Barr Once Contradicted Trump's Claim That Abuse of Power Is Not Impeachable"

## ***Barr Once Contradicted Trump's Claim That Abuse of Power Is Not Impeachable***

In a memo for the Trump team during the Russia investigation, the attorney general wrote that presidents who misuse their authority are subject to impeachment.



**By [Charlie Savage](#)**

<!--[if !supportLists]-->• <!--[endif]-->Jan. 21, 2020, 5:16 p.m. ET

<!--[if !supportLists]-->• <!--[endif]-->WASHINGTON — Scholars have [roundly rejected a central argument of President Trump's lawyers](#) that abuse of power is not by itself an impeachable offense. But it turns out that another important legal figure has contradicted that idea: Mr. Trump's attorney general and close ally, William P. Barr.

In summer 2018, when he was still in private practice, Mr. Barr wrote a confidential memo for the Justice Department and Mr. Trump's legal team to help the president get out of a problem. The special counsel, Robert S.

Mueller III, was pressuring him to answer questions about whether he had illegally impeded the Russia investigation.

Mr. Trump should not talk to investigators about his actions as president, even under a subpoena, Mr. Barr wrote in his [19-page memo](#), which [became public during his confirmation](#). Mr. Barr based his advice on a sweeping theory of executive power under which obstruction of justice laws do not apply to presidents, even if they misuse their authority over the Justice Department to block investigations into themselves or their associates for corrupt reasons.

But Mr. Barr tempered his theory with a reassurance. Even without the possibility of criminal penalties, he wrote, a check is in place on presidents who abuse their discretionary powers — impeachment.

he fact that the president “is ultimately subject to the judgment of Congress through the impeachment process means that the president is *not* the judge in his own cause,” he wrote.

He added, “The remedy of impeachment demonstrates that the president remains accountable under law for his misdeeds in office,” [quoting from a 1982 Supreme Court case](#).

Mr. Barr has long [embraced a maximalist philosophy of executive power](#). But in espousing the view that abuse of power can be an impeachable offense, he put himself squarely in the mainstream of legal thinking. [Most constitutional scholars broadly agree](#) that the constitutional term “high crimes and misdemeanors” for which an official may be impeached includes abuse of power.

But in a [110-page brief on Monday](#), Mr. Trump’s impeachment team — led by [Pat A. Cipollone](#), the White House counsel and a former aide to Mr. Barr in the first Bush administration, and Mr. Trump’s personal lawyer [Jay Sekulow](#) — portrayed the article of impeachment claiming that Mr. Trump abused his power in the Ukraine affair as unconstitutional because he was not accused of an ordinary crime.

“House Democrats’ novel conception of ‘abuse of power’ as a supposedly impeachable offense is constitutionally defective,” they wrote. “It supplants the framers’ standard of ‘high crimes and misdemeanors’ with a made-up theory that the president can be impeached and removed from office under an amorphous and undefined standard of ‘abuse of power.’”

Contrary to what Mr. Barr wrote 20 months ago, the Trump defense team also insisted that the framers did not want Congress to judge whether presidents abused their discretion and made decisions based on improper motives.

“House Democrats’ conception of ‘abuse of power’ is especially dangerous because it rests on the even more radical claim that a president can be impeached and removed from office solely for doing something he is allowed to do, if he did it for the ‘wrong’ subjective reasons,” the Trump team wrote.

A spokeswoman for Mr. Barr declined to comment. A spokesman for Mr. Trump’s impeachment defense team did not respond to a request for

comment about the tensions.

But Mr. Barr's view was no passing thought. His 2018 memo emphasized that presidents who misuse their authority by acting with an improper motive are politically accountable, not just in elections but also via impeachment.

Between elections, "the people's representatives stand watch and have the tools to oversee, discipline, and, if they deem appropriate, remove the president from office," he wrote. "Under the framers' plan, the determination whether the president is making decisions based on 'improper' motives or whether he is 'faithfully' discharging his responsibilities is left to the people, through the election process, and the Congress, through the impeachment process."

The result of Mr. Barr's main argument in 2018 and the Trump team's theory in 2020 is identical: Both posited that facts were immaterial, both in a way that was convenient to counter the threat Mr. Trump faced at that moment.

If Mr. Barr's obstruction of justice theory is correct — and many legal scholars reject it — then Mr. Mueller had no basis to scrutinize Mr. Trump's [actions that interfered with the Russia investigation](#).

Similarly, if the Trump impeachment team's theory is correct, the Senate has no basis to subpoena documents or call witnesses. The lawyers are implying that even if Mr. Trump did abuse his power to conduct foreign policy by trying to coerce Ukraine into announcing investigations that could help him in the 2020 election, the Senate should acquit Mr. Trump anyway.

Another member of Mr. Trump's legal team, Alan Dershowitz, a professor emeritus at Harvard Law School and criminal defense lawyer, is expected to make a presentation to the Senate trial this week laying out in detail the theory that abuses of power are not impeachable without an ordinary criminal violation.

Critics of Mr. Dershowitz's arguments have pointed to the seeming tension with [comments he made in 1998](#), when he did not have a client facing impeachment for abuse of power: "If you have somebody who completely corrupts the office of president and who abuses trust and who poses great danger to our liberty, you don't need a technical crime."

[In an interview this week](#), Mr. Dershowitz argued that his position now was not inconsistent with what he said in 1998, pointing to his use then of the phrase "technical crime" and saying that he is arguing today that impeachment requires "crimelike" conduct.

Mr. Dershowitz went further on Tuesday, [saying on Twitter](#) that he had not thoroughly researched the question in 1998 but recently has done so. "To the extent therefore that my 1998 off-the-cuff interview statement suggested the opposite," he wrote, "I retract it."

**Kerri Kupec**

Director

Office of Public Affairs  
U.S. Department of Justice

(b) (6)

(b) (6)

**From:** [Kupec, Kerri \(OPA\)](#)  
**To:** (b)(6) - AG Barr (OAG)  
**Subject:** AP Exclusive: Barr names new U.S. attorney in DC  
**Date:** Thursday, January 30, 2020 4:51:21 PM

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AP Exclusive: Barr names new U.S. attorney in DC  
Associated Press  
Michael Balsamo  
January 30, 2020  
<https://apnews.com/940f5fb382a31399544429a700e56385>

WASHINGTON (AP) — Attorney General William Barr on Thursday nominated Timothy Shea, one of his closest advisers, to be the next top prosecutor in the nation's capital.

Shea will lead the largest United States attorney's office in the country, which has been historically responsible for some of the most significant and politically sensitive cases the Justice Department brings in the U.S.

He is a senior counselor to the attorney general and was Barr's right-hand man helping institute reforms at the federal Bureau of Prisons after Jeffrey Epstein's death at the Metropolitan Correctional Center in New York City.

As the U.S. attorney in the District of Columbia, Shea would oversee some of the lingering cases from special counsel Robert Mueller's Russia investigation, along with a number of politically charged investigations. The office is also generally responsible for handling potential prosecutions if Congress finds a witness in contempt.

Prosecutors from the U.S. attorney's office had been investigating former FBI Deputy Director Andrew McCabe, a frequent target of President Donald Trump's wrath, and the prospect of charges seemed likely in the fall after his lawyers failed to persuade senior Justice Department officials that he didn't intentionally lie to internal investigators. Little has been said about the case in recent months

Shea, a Boston-area native who comes from a family of first responders, is widely seen as being able to bridge a gap between law enforcement officials and the community, especially in Washington. The office is unique because its 300 or so prosecutors have jurisdiction to prosecute both local and federal crimes in the nation's capital.

"He's the definitive public servant," said Jim Pasco, the executive director of the National Fraternal Order of Police. "He has a real reverence for the law and a real dedication to making communities safer."

Shea has served in a variety of roles in the Justice Department from working as a line prosecutor to being associate deputy attorney general. As an assistant U.S. attorney, he prosecuted violent crimes, fraud, public corruption and drug trafficking cases and he's also led a task force that was responsible for investigating and prosecuting prison crimes and had also worked as a congressional staffer in the House and Senate.

He was the chief counsel and staff director for the U.S. Senate Permanent Subcommittee on

Investigations, which was chaired at the time by Sen. Susan Collins, a Maine Republican, and also worked on the staff of the House Appropriations Committee.

Collins said in a statement that Shea “did an outstanding job leading in-depth investigations into issues ranging from consumer protection to government waste, fraud, and abuse.”

“With his decades of legal experience in both the private and public sectors, Tim has a wealth of knowledge that will serve him well in his new role,” she added.

In the wake of Epstein’s death, Barr and Shea worked hand-in-hand to manage the crisis and investigation into the circumstances surrounding the wealthy financier’s death. Shea visited the jail days after Epstein’s suicide and helped advise the attorney general as Barr shook up the agency’s leadership, removing its acting director.

Shea would replace Jessie Liu, who has been nominated to become the undersecretary for terrorism and financial crimes at the Treasury Department, as the Trump administration imposes economic sanctions as a national security tool.

Barr had nominated Liu to become the associate attorney general, the third-highest job in the department, overseeing civil litigation, but she withdrew from consideration after encountering opposition on the Republican-led Senate Judiciary Committee because of her past membership in a lawyers’ group that has supported abortion rights.

Liu would be first U.S. attorney to assume the role at Treasury. When she was U.S. attorney, her office brought several sanctions-related cases and issued a warrant to seize an Iranian supertanker caught in a diplomatic standoff because of violations of U.S. sanctions, money laundering and terrorism statutes.

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To Unsubscribe Email [COMMSALERT-signoff-request@L.GOP.COM](mailto:COMMSALERT-signoff-request@L.GOP.COM)

February 8, 2020

OPA<sup>c</sup>

Department of Justice  
United States Attorney General (USAG)  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Attn: USAG William Barr  
Rea: Copy of Letter to USDAG Jeffery Rosen

Dear Mr. Attorney General,

I have sent to you, for your review, correspondence sent to USDAG Rosen in hope that your office will investigate as to why Mr. Rosen's office refused to acknowledge my request on this very serious matter.

Thanking you in advance for your consideration in my request.

Sincerely, (b) (6)  
(b) (6)

(b) (6)

February 6 2020

Department of Justice  
United States Deputy Attorney General, (DAG)  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Attn: Jeffery A. Rosen, DAG

Rea: Pending Clemency File Number (b) (6) 2<sup>ND</sup> REQUEST

Dear Deputy Attorney General Rosen,

Now that the impeachment is over, I hope that your office will go back to work and take the appropriate actions on the letter and information I had sent to your office on November 4, 2019, that so far has been met with silence.

It truly saddens me, my family and everybody that knows of the crimes committed against me, by your federal prosecutors in (b) (6) and the silence of Washington to take any action upon my behalf.

Based on the Department of Justice's (DOJ), refusal to deny or challenge the criminal charges against these government attorneys, under the rule of law, they are guilty and I have proven my innocence, which is undeniable on any legal level.

I now make demand on this office to immediately forward my Petition for Clemency to the President of the United States for his approval.

Understand, I am no longer waiting for the DOJ to do the job the American taxpayers are paying them to do and seeking legal counsel to file for compensation for the damage and hardship they have caused and still cause me and my family with my continuing home confinement and thief of my social security on a restitution I do not owe the government.

I am sure that the public and especially the millions children who were abused while in Foster Care, since your federal prosecutors (b) (6), will

have something to say, in this election year, (each week over 60,000 children in the United States are reported abused or neglected).

I would hope that you find a conscience and do the right thing for the general public and not just protect and cover up the crimes committed by one or more of your own.

DAG Rosen, I am a [REDACTED] (b) (6)

[REDACTED] but I promise you my legacy will not be.

Sincerely,

(b) (6)

(b) (6)

Cc. United States Attorney General William Barr  
Congressman Ted Budd (R-NC)

January 27<sup>th</sup>, 2020

William Barr, Attorney General  
Office of the Attorney General  
950 Pennsylvania Ave NW  
Washington, DC 20530

CRM<sup>c</sup>

Attorney General Barr,

I'm an [REDACTED] (b) (6)

I'm writing to you out of frustration and concern for the country that I was born and raised, the Greatest Country that man has created.

I [REDACTED] (b) (6), so I see first hand the change in the cultural divide and wonder if our Republic is to survive?

The vile and vicious vitriol out of the mouths of politicians today is beyond comprehension; I can't begin to understand the logic of partisan ideologue that is sweeping the country and the minds of nearly half of the population.

Some time ago I wrote to the Republican Party of Florida, requesting support for a referendum to be placed on the Florida ballot that would require politicians that refuse to hold criminals from ICE and release them into the community, only to have them carry out another serious crimes, to be held liable for those continuing atrocities. **I received no response!**

My logic was simple:

If the **Dram Shop Act** and **case law** in 38 states makes a business which sells alcoholic drinks or a host who serves liquor to a drinker who is obviously intoxicated or close to it, strictly liable to anyone injured by the drunken patron or guest:

- In some states, dram shop laws can allow the victims of **drunk drivers** and their families to sue liquor vendors for providing alcohol to a clearly **intoxicated** person who later causes an accident.
- In other states, **someone** who throws a party can be held accountable if a tipsy guest gets behind the wheel after **leaving** the party. For example, New Jersey law allows the victim of a DUI accident to sue and recover damages from a social host **when**: the host provided alcohol to a "visibly intoxicated" guest.

**Why can't we apply that same logic and pass a law that to go after political hacks that are hell bent on destroying our American culture by holding them criminally liable for their actions and vicious rhetoric?** They champion sanctuary cities, free gun zones, social benefits for illegal aliens, and in some cases the right to vote **thereby placing a financial and politically correct burden** on the majority of legal law-biding citizens. It's a modern day version of "Taxation without Representation" (re: Revolt against the British Empire).

Everyday I hear this and that is unconstitutional and no one, **NO ONE**, goes to jail. I'm waiting with bated breath to see if your appointed special prosecutor in CT will arrest and try someone for his or her crimes. To charge those who have deceived the people, stolen government money, and are trying to impeach POTUS because he wants to remove corruption within our government (aka drain the swamp).

To paraphrase Voltaire, "*Those who try to make us believe absurdities, commit atrocities*" **and get away with it!**

Respectfully yours,  
[REDACTED] (b) (6)

CR1 C

1/23/2020

Attorney General William Barr  
U.S. Department of Justice  
950 Pennsylvania Ave. NW  
Washington DC 20530-0001

Dear Mr. Barr:

For the past 63 years of my life I've always believed that we are a nation of laws and as a result of this principle our nation has thrived beyond something the founders could have never imagined. I also mostly trusted the integrity of those we give our hopes and dreams to that they will follow those laws and protect the law abiding from criminals. I no longer believe that premise.

I'm not blind to criminal elements within our government but somehow justice was always served and wrongs were righted. That is now gone. Since the election of President Trump there has been a worrisome attack on our system of justice, daily the laws that would have anyone else in prison are openly being flaunted by our elected officials. We now have a 2 tiered form of justice and if that remains will lead to the destruction of the intuitions that form the backbone of our civilization.

Like so many of the hopeless letters I've written in the past I truly pray that justice will be done. The treason being committed against President Trump is so massive and deep it shows that those who voted for him are ignored. The changes that lead to his election, Fast and Furious, Benghazi, IRS targeting, Voter Fraud all have their roots in the lack of justice in this country.

I fear that if that if those responsible for the crimes being exposed before us daily are not brought to justice then we no longer have a nation of laws and our society will crumble. It is obvious that the leaders of this treason think they will never face justice and it seems they are correct in their assumptions. Without justice our law makers will go from one impeachment hearing to another silently working on a coup without repercussions. It will destroy our nation.

What is also being displayed is the fact that money is the only thing that Washington respects, not the rule of law nor the principles of our founding. The net or corruption and colusion can be spread far and wide and those without means can only watch as our elected servants do anything but respect those they were elected to serve and the principle of our country being a nation of laws. What does matter to them is who has the biggest and fattest checkbook.

I'm just a person who is sick of Washington, sick of the corruption, sick of the thought that my children and grandchildren will no longer have the opportunities I've enjoyed due to our 2 tiered justice system. We are now a nation of serfs, and those in charge will enrich themselves while destroying those that put them in their positions. This will lead to a revolution and probably loss of life for thousands due to this.

Recently in Virginia there was a rally for our rights, our 2<sup>nd</sup> Amendment rights. A peaceful gathering with not one crime committed. It was attended by thousands of law abiding Americans who like me are tired of those attacking our rights and the rulers of our 2 tiered justice system in operation today. It should be obvious to our rulers that our backs are against the wall, however I seriously doubt they think that far ahead.

Please Mr. Barr, please bring justice to those who are destroying our nation from within, you have the ability to do that and millions of Americans like me are watching

Sincerely

(b) (6)

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(b) (6)

The Honorable William P. Barr  
Attorney General  
950 Pennsylvania Ave NW  
Washington, DC 20530

Dear Attorney General Barr,

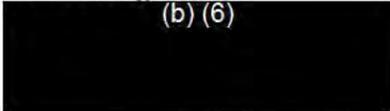
I'm a (b) (6) who has been doing research on collusion. I began researching this topic in October of 2019 for my (b) (6). The specific type of collusion i have been researching is the suspected collusion between President Donald Trump and Ukraine Prime Minister Volodymyr Zelensky. I'm writing to share my thoughts on this topic.

I'm not supporting collusion because I don't think it's right. However it's happened in the past and no president has ever been impeached for collusion. I believe that the Democrats just want Donald Trump removed from office. Accusing him of collusion could get him removed from office through impeachment. If he wasn't accused of collusion the Democrats would find another way to get him out of office. If Donald Trump were to be impeached I have a concern that the pattern could continue. As you know Vice President Pence would be appointed president. His views aren't much different than Donald Trump's. Would the Democrats try to get Pence out office too? It's impossible to know if the pattern would continue until Democrats are in the White House. I urge you to support keeping our president in office. I know you don't get a vote for or against impeachment but please use your voice to support our president.

Specifically, reinforce that this is a witch hunt against our president. I look forward to hearing a response with your opinion on this topic.

Sincerely,

(b) (6)

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CRT<sup>c</sup>

Manuel P. Asensio  
Institute of Judicial Conduct, Inc.  
641 Lexington Avenue, Suite 1533  
New York, NY 10022

January 21, 2020

The Honorable William Pelham Barr  
Attorney General of the United States  
US Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

**PETITION TO INVESTIGATE  
CHIEF JUSTICE ROBERTS'S "DRE"<sup>1</sup> COVER-UP**

*The Hon. John C. Roberts, Jr., is engaged in a cover-up of federal judicial misconduct complaints filed in the petitioner's New York State civil rights case. Chief Justice Roberts is attempting to cover up his leadership role in fabricating federal family law policies at the US Judicial Conference as its presiding judge. These nationwide policies are concealed and unauthorized. In New York State, the policies are allowing state judges to coerce Americans who hold conservative political and traditional religious beliefs in order to impose their politics, militant secularization, and so-called "progressive" reforms in their families.<sup>2</sup>*

Dear Hon. Attorney General Barr:

1. Charles Tilly described a way to measure democracy.<sup>3</sup> He gauged it by measuring the "political relations between the state and its citizens." He focused on features that determined if the relation was "broad, equal, [and] protected," and if it relied on "mutually binding consultations." By these measures, the position of the presiding judge at the US Judicial Conference held by the Hon. John G. Roberts, Jr. is by far the least democratic, and most dangerous, of any in the US government. Chief Justice Roberts is using this strange position to fabricate family law policies nationwide. He is also using this unknown position to engage in a coverup. Why the coverup? Chief Justice Roberts fabricated his family law policies without notice or authority. Also, his policies allow the use of federal judicial misconduct and usurp Americans unassailable liberties and freedoms.

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1. The so-called "domestic relations [and violence] exception ("DRE") to federal subject matter jurisdiction."

2. In his speech at the University of Notre Dame Law School's Nicola Center for Ethics and Culture, US Attorney General Barr announced that he had established a task force within the Department of Justice to "keep an eye out for cases" involving freedom to live according to religious beliefs and to deploy the Department's resources to defend individuals that resist efforts by the forces of secularization to drive religious viewpoints from the public square.

3. Tilly, C. (2007), *Democracy*, Cambridge: Cambridge University Press

2. These unassailable liberties and freedoms are rights that government cannot legitimately regulate “at all, no matter what process is provided” [Note 1]. These are liberties that have been ruled to be “far more precious than property rights” [Note 2]. These are liberties with which neither public power nor majoritarian views can interfere—these are liberties that cannot be codified under neutral principles.<sup>4</sup> Thus, neither judges nor legitimate law can govern them [Note 3]. They are sacred private privileges [Note 4] that belong exclusively to individual Americans that are far beyond the legitimate powers of government to regulate [Note 5].

3. The Hon. US Attorney General William P. Barr [Note 6] has identified organized federal judicial misconduct the primary threat to Americans’ liberty and America’s constitutional democracy.<sup>5</sup> Former US Attorney General Jefferson B. Sessions remarked that “Judicial activism is . . . a threat to our representative government and the liberty it secures.” [Note 7]

4. Attorney General Barr has explicitly remarked that organized federal judicial misconduct leads to government with “no liberty, just tyranny,” [Note 8] and that “free government was only suitable and sustainable for a religious people—a people who recognized that there was a transcendent moral order antecedent to both the state and man-made law and who had the discipline to control themselves according to those enduring principles.” Attorney General Barr remarked on federal judges who use the law as a “battering ram to break down traditional moral values and to establish moral relativism as a new orthodoxy” and who “take a delight in compelling people to violate their conscience” [Note 9]. Federal judges claim to be on a “holy mission” to excuse their deliberate lawbreaking by claiming to be “virtuous people pursuing a deific end” [Note 10]. Attorney General Barr remarked on how federal judges he identified as “so-called progressives” treat politics as their religion—how they claim to be on a holy mission; how they use their political offices to coerce Americans to accept their political nonsense as if it were a legitimate authority over private liberties, morality, and codes of conduct; and how they have justified their official misconduct by believing they are “virtuous people pursuing a deific end” [Note 11].

5. In the Federalist Society speech, Attorney General Barr remarked on the 40 nationwide injunctions [Note 12] against the present administration’s presidential executive orders. He listed 11 so called “legal flaws” that are unmistakable evidence of deliberate and malicious federal judicial misconduct. A review of the issuance of an order to depose the US Secretary of Commerce in the *State of New York et al. v. United States Department of Commerce et al.* case also provides straightforward evidence of federal judicial misconduct. Yet Attorney General Barr has commented on Chief Justice Roberts’s responsibility, or filed, and perhaps not considered filing, judicial conduct complaints against any of the judges. In fact, Attorney General Barr did not

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<sup>4</sup>. The neutrality principle “forbids courts to ‘mak[e] law or policy out of whole cloth, [or] . . . to impose substantive judicial judgments on disputes not capable of resolution through the application of neutral principles to sharply defined sets of facts.’” Richard H. Fallon, Jr., *Reflections on the Hart and Wechsler Paradigm*, 47 *Vand. L. Rev.* 953,976 (1994).

<sup>5</sup>. Most recently in Attorney General Barr’s 2019 speeches at the Federalist Society on deliberate and malicious judicial misconduct and at Notre Dame University on militant secularization and religious freedom, and at the *Wall Street Journal* CEO Council on December 10, 2019 on the Mueller investigation’s use of criminal law for political purposes.

mention Chief Justice Roberts at all. Chief Justice Roberts is responsible for regulating federal judicial misconduct and who has absolute control over US Court policies and the rules that govern federal judicial misconduct in his speeches.

6. The evidence shows Chief Justice Roberts has tampered with complaints, witnesses, and evidence and aided and abetted in a cover-up<sup>6</sup> of collusion between the Hon. Robert Allen Katzmann (Chief Judge of the US Court of Appeals for the Second Circuit and the Judicial Council for the Second Circuit), the Hon. Colleen McMahon (Chief Judge of the Southern District of New York), and the New York State defendants, as well as in the fabrication of fictitious official proceedings and documents in the DRE case. The evidence also concerns Chief Justice Roberts's use of the Hon. Anthony J. Scirica (Chair of the US Judicial Conduct Committee) and James C. Duff (Director of the Administrative Office of the US Courts) [Note 13] to execute his coverup.

7. This is a petition for Attorney General Barr to open an investigation into Chief Justice Roberts's deliberate misconduct in the petitioner's [Note 14] DRE civil rights and judicial conduct cases [Note 15]. The DRE case is a serious and genuine nationwide matter. Attorney General Barr is familiar and comfortable with the problem that underlies this petition, as he marked in the Federalist Society speech, "By and large, the Founding generation's view of human nature was drawn from the classical Christian tradition. These practical statesmen understood that individuals, while having the potential for great good, also had the capacity for great evil. Men are subject to powerful passions and appetites, and, if unrestrained, are capable of ruthlessly riding roughshod over their neighbors and the community at large. No society can exist without some means for restraining individual rapacity. But, if you rely on the coercive power of government to impose restraints, this will inevitably lead to a government that is too controlling, and you will end up with no liberty, just tyranny" [Note 16]. As Attorney General Barr knows, the only single US official "with unrestrained capacity to] ruthlessly rid[e] roughshod over [his] neighbors and the community at large" is Chief Justice Roberts, not the president or Congress. It is the chief justice acting as the president judge of the US Judicial Conference.

8. The first step is to clarify Attorney General Barr's policy towards law enforcement on use of the position of presiding judge of the US Judicial Conference as Chief Justice Roberts is using that position in the DRE case.

#### **ATTORNEY GENERAL BARR'S POLICIES TOWARD ORGANIZED FEDERAL JUDICIAL MISCONDUCT**

9. This petition concerns Chief Justice Roberts's misconduct aimed at allowing New York federal judges in the Southern District of New York and the Second Circuit to protect New York State's policy of manufacturing so-called "domestic violence" crimes as a family law scheme. This policy allows the fabrication of so-called "interim" fees and parenting suspensions. The policy aims to coerce New Yorkers into accepting so-called "progressive" religious and political reforms. This multilayering of unauthorized policies creates income streams for the members of the New York City Bar Association. The policies also advance New York State's political interests. An

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6. There are documents that prove Chief Justice Roberts deliberately violated Title 28 of the US Code Chapter 16 §§ 359 and 455(b) (iii) as part of his cover-up.

example is the New York City Bar Association's militant campaign to impeach and investigate Attorney General Barr "for making conservative political statements" [Note 17]. Meanwhile, every member the NYC Bar Association that practices in family court uses and benefits from these concealed and unauthorized policies.

10. Speaking at the *Wall Street Journal* CEO Council on December 10, 2019, Attorney General Barr remarked on the "use of the criminal law process as a political weapon." In the speeches referenced above, Attorney General Barr remarked on large city "District Attorneys who style themselves as 'social justice' reformers." [Note 18] The manufacturing of criminal indictments as a "social justice" reform policy is the primary issue underlying this petition.

11. Point 9 of Attorney General Barr's 11 points in Note 4 remarks on the damage to "public confidence in the integrity of the judiciary" caused by evidence of federal judicial misconduct in the nationwide injunction matter.

12. Chief Justice Roberts is the presiding judge in the presidential impeachment trial. Chief Justice Roberts sits in that position comfortably understanding the seriousness of the DRE case and knowing that evidence exists showing he is leading a cover-up to protect himself from scandal in the nationwide DRE case.

13. Thus, in support of this petition, the petitioner is requesting that Attorney General Barr disclose his policy on enforcing the law in cases of deliberate and malicious federal judicial misconduct. The petitioner makes this request in a separate petition filed on this day, titled, "*US Attorney General's Policies toward the DRE and Organized Federal Judicial Misconduct*."

#### **CHIEF JUSTICE ROBERTS'S UNDENIABLE MOTIVE FOR ENGAGING IN A COVER-UP**

14. The petitioner's case is against Chief Justice Roberts's unauthorized use of the so-called "*domestic relations [and domestic violence] exception [DRE] to federal subject matter jurisdiction*" in US courts (the DRE case). The DRE lacks any foundation in the Constitution [Note 19] or law [Note 20]. Further, the DRE is an unauthorized denial of Americans' Article III constitutional rights to access US judicial power to protect their rights under the First, Fifth, and Tenth Amendments [Note 21].

15. Inexorable evidence proves that Chief Justice Roberts is promulgating the false predication that the DRE is *v. legitimate judicial doctrine of deference to federalism in family law* as an excuse to deny all Americans access to federal justice. Furthermore, Chief Justice Roberts is purposefully doing this so that states can assert jurisdiction and govern religious and political beliefs, and unassailable liberties and freedoms.

16. As Thomas Jefferson wrote, it is only free enquiry that leads to the truth, and only error that needs the support of government [Note 22]. Chief Justice Roberts knows that an enquiry into his conduct will reveal the gravity of his misconduct. Thus, he has chosen to close off enquiry by engaging in a cover-up of the judicial conduct complaints. Chief Justice Roberts's cover-up of evidence in judicial conduct proceedings is at war with justice and defeats the sole purpose of a

trial court and is a perjurious violation of the oath of his office [Note 23].

17. By allowing states to interfere with unassailable liberties and freedoms, and denying Americans the right to access federal justice to defend themselves against the states and *any form of questioning or enquiry whatsoever*, Chief Justice Roberts is *eliminating basic human rights* in America. These are rights dating back to the Assize of Clarendon Act of 1166 and the Magna Carta of 1215. The spirit of the Assize of Clarendon Act and the Magna Carta is incorporated into America's laws [Note 24].

18. The evidence shows that Chief Justice Roberts has been sanctioning and protecting so-called "progressive" policies. In Attorney General Barr's own words, this suggests that Chief Justice Roberts is the leader of the "holy mission . . . to use the coercive power of the State to remake man and society." The policies mean that "whatever means they use are therefore justified because, by definition, [Chief Justice Roberts and Judges Katzmann, McMahon, and Scirica] are a virtuous people pursuing a deific end."

19. Therefore, it is Chief Roberts that is allowing New York State (and states nationwide) to use of the criminal law process as a political weapon in family court. The DRE case exposed these policies that are concealed and unauthorized. The policies are aimed at interfering with the above-mentioned freedom and liberty of Americans who have done no wrong, violated no law, nor imposed themselves on any other person's rights—all in order to "reform" these Americans—in New York State according to so-called "progressive" policies domiciled. By definition, it is Chief Justice Roberts who sanctions the so-called "ends justify the means" federal judicial misconduct. This is cited in Attorney General Barr's Federalist Society speech [Note 25].

20. The evidence shows Chief Justice Roberts is using his control of the US Judicial Conference to allow New York's federal judges and state judges—county district attorneys who are self-styled "social justice" reformers—to fabricate illegal processes that include (a) the manufacturing of domestic relations violence charges that do not and cannot exist under New York State's Penal Code (b) using these charges in family courts to manufacture so-called "interim" parenting suspension and supervision orders without authority or stated cause because they cannot be codified under the neutrality principle, (c) manufacturing fee orders in favor of political appointees<sup>7</sup> that are summarily collected by unauthorized contempt orders, and (d) the manufacturing of so-called "interim" parenting suspension and supervision orders. In New York State, these so-called "interim" orders are made unreviewable under the law to further coerce Americans to surrender their liberties. This is all done without an iota of legitimate state purpose under the cover of Chief Justice Roberts's DRE policies.

### **CHIEF JUSTICE ROBERTS'S IMPERMISSIBLE ABSOLUTE CONTROL OF ORGANIZED FEDERAL JUDICIAL MISCONDUCT**

21. The source of the problem is Chief Justice Roberts's absolute control over federal judicial

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7. These are private parties who are forced upon families without respecting the parents' cultural, religious, and political beliefs and without any representation or control. In New York State, particularly New York City, these are allies of the present city administration, which appoints all state judges in family court in the city's five counties.

misconduct. This includes absolute control over his own misconduct, which allows Chief Justice Roberts to privately fabricate DRE rules at the US Judicial Conference. These rules protect state defendants—such as New York State in the petitioner’s DRE case.

22. As shown in **Note 6**, the DRE case has two parts: (a) the US court cases and federal judicial conduct complaints that deal with Chief Justice Roberts’s tampering with witnesses and evidence and (b) the cover-up of these judicial conduct complaints and court cases.

23. The DRE complaints are filed under the “Judicial Council Reform and Judicial Conduct and Disability Act” of 1980 (US Code, Title 28 Judiciary and Judicial Procedure, Part I: Organization of Courts, Chapter 16, titled “Complaints against Judges and Judicial Discipline” [§§ 351–364]; hereafter **Conduct Act**) [**Note 26**]. The Conduct Act states that any person may file a complaint alleging that a federal judge has engaged in conduct prejudicial to the effective and expeditious administration of justice.

24. The intent of Congress and President James E. Carter (in signing the Conduct Act) was for the American people to an absolute, simple and effective recourse against federal judicial misconduct [**Note 27**]. Further, the Conferences and Councils of Judges Law<sup>8</sup> (**Council Act**) establishes that the presiding judge of the US Judicial Conference is the Chief Justice of the US Supreme Court, Chief Justice Roberts, and grants him exclusive jurisdiction over the Conduct Act.

25. As the presiding judge of the US Judicial Conference, Chief Justice Roberts not only controls the Conduct and Council Acts but also controls the administration of the “Rules Enabling Act of 1934” (US Code [USC] Title 28 §§2071 to §2077 [**Rules Act**]) and the Federal Rules of Civil Procedure (**FRCP**). This is how Chief Justice Roberts operates the enforcement machine in secret.

26. The Conduct, Council, and Rules Acts and the FRCP are intended to be an effective safeguard preventing Chief Justice Roberts from affecting US rights without legal authority. However, legal experts have labeled this idea as “absurd” and as “political nonsense” [**Note 28**]. The DRE is proof that Chief Justice Roberts is using supposedly innocuous “housekeeping” authority to eviscerate the rule of law through exercising “decisions, interred by antipathy” and through deliberately allowing federal judges to “tread on contested fact issues” [**Note 29**].

27. Chief Justice Roberts has absolute control over federal judicial misconduct, including his own, as well as control of the Council and Rule Acts and the FRCP. Historically, this control is described as absolutely corrupt power [**Note 30**].

28. The U.S. Supreme Court agrees: “*It would be very strange if our system of law permitted a judge to act as a grand jury and then try the very persons accused as a result of his investigations. . . . Having been a part of that process, a judge cannot be, in the very nature of things, wholly disinterested in the conviction or acquittal of those accused.*” In *re Murchison*, 349 US 133, 137

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8. The “21st Century Department of Justice Appropriations Authorization Act” was enacted under Pub. L. 107-273 and incorporates the “Judicial Improvements Act of 2002,” which enacts USC Title 28 Chapter 16 and amends §§ 331, 332, 372, 375, and 604. For the legislative history, see H.R. Rep. 107-459 (2002).

(1955), "*A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But the United States system of law has always endeavored to prevent even the probability of unfairness*" (*Id.* at 136, emphasis supplied). Thus, the DRE and Chief Justice Roberts's absolute control of the Conduct, Council, and Rules Acts and the FRCP are a nationwide "very strange" system.

29. As presiding judge, Chief Justice Roberts controls the creation and enforcement of judicial conduct codes and conduct advisory notices, as well as the machinery of self-enforcement applicable to lawbreaking federal judges and his own conduct [Note 31]. He has this control without supervision. This is an absolute truth—a fact that leaves the nation vulnerable to a presiding judge of the US Judicial Conference who is willing to use his control of the Conference Act, Conduct Act, Rules Act, and FRCP guidelines in bad faith.

30. Chief Justice Roberts not only has total control over the federal judicial conduct apparatus at the US Judicial Conference but also is the chair of the Federal Judicial Center, where he is responsible for the education and training of federal judges and court staff.

#### **CHIEF JUSTICE ROBERTS'S CONCERTED AND COORDINATED BAD FAITH ACTS WITH NEW YORK STATE'S CHIEF JUDGE**

31. New York State Chief Judge Janet Marie DiFiore controls New York State's Unified Court System's internal judicial conduct apparatus. Along with the state's governor, Judge DiFiore controls the New York State Commission on Judicial Conduct. Furthermore, just as Chief Justice Roberts does at the Federal Judicial Center, Judge DiFiore controls the education and training of judges and court staff in New York State [Note 32]. She also controls both the state's rulemaking and constitutional machinery. This gives Judge DiFiore the ability to close off all remedies available to the petitioner to protect himself and his family from unauthorized rulemaking [Note 33].

32. Thus, Chief Justice Roberts, acting as the presiding judge of the US Judicial Conference, and Judge DiFiore, acting as chair of New York State's Administrative Board of the Courts, can fabricate and have fabricated absolute power for themselves without any controls, accountability, or supervision over policy, court rules, policing, and judicial misconduct in US and New York State courts applicable to the DRE.

33. Under the DRE, Chief Justice Roberts and Judge DiFiore are able to create interim suspensions, supervision and fee orders, and fictitious crimes that cannot and do not exist under law. They manufacture crimes against parents and take children out of healthy family units under unauthorized so-called "interim" suspensions that interfere with children's religious and moral education. Together, Chief Justice Roberts and Judge DiFiore have fabricated a political system without a legal process that is entirely devoid of neutrality principles in New York family courts.

34. One of the central issues in the DRE in New York State is the relationship between Judge Katzmann and Chief Justice Roberts. Judge Katzmann is Chief Justice Roberts's appointed member of his Executive and Judiciary Committees at the US Judicial Conference, and he acts as

Chief Justice Roberts's chief strategist and deputy in Congress [Note 34]. In his own words, Judge Katzmnn proclaims he likes to "soak and poke" in Congress's legislative business. Furthermore, he declares he likes to "marinate" himself in what he calls the "inter-branch understanding." Judge Katzmnn is not what Chief Justice Roberts has called an apolitical "neutral umpire." The evidence indicates that Chief Justice Roberts has allowed Judge Katzmnn to use his judgeship to advance his insidious leftist political agenda [Note 35].

35. Judge Katzmnn is a central figure in the DRE judicial conduct case; this case commenced as a conduct complaint against the Hon. Ronnie Abrams. The moment it became clear to the petitioner that Judge Katzmnn had no interest in resolving the Abrams complaint or in fulfilling his legal obligation to review the judicial conduct complaint expeditiously in any way, the petitioner filed a complaint against Judge Katzmnn [Note 36]. The petitioner immediately served notice on Chief Justice Roberts and requested Chief Justice Roberts assume control over the process of resolving the dispute [Note 37].

36. The petitioner has pleaded with Judge Abrams to recuse herself. The petitioner even pled with Judge Abrams based on the closeness of her own family's relationship as well as her brother's close relationship with Floyd Abrams, their father. Judges McMahon and DiFiore espouse great love for family—its importance in their daily lives—yet Judges McMahon, Abrams, and DiFiore united against the DRE case and ignored the unprecedented cruelties the DRE causes for millions of Americans every year [Note 38].

#### CHIEF JUSTICE ROBERTS'S COVER-UP

37. Two undeniable pieces of evidence prove Chief Justice Roberts's leadership role in directing the cover-up of the DRE case and DRE federal judicial conduct complaints. Alternatively, others are shielding Chief Justice Roberts and using his official positions under a blanket agreement to protect the DRE he himself put in place.

38. First, documents exist in the record<sup>9</sup> proving Chief Justice Roberts deliberately violated his mandatory obligation to restrict Judges Katzmnn and McMahon from appearing at the US Judicial Conference and the US Judicial Council for the Second Circuit. Chief Justice Roberts's obligation is to comply with, and assure compliance with, Title 28 of the US Code Chapter 16 § 359 [Note 39], which requires Judges Katzmnn and McMahon to be restricted from appearing at the US Judicial Conference and the US Judicial Council for the Second Circuit until the DRE case is resolved. The clear, simple, undeniable reason for US Code Chapter 16 § 359 is to protect evidence and documents in judicial conduct proceedings.

39. Second, documents exist in the record<sup>10</sup> proving Chief Justice Roberts sanctioned Judges Scirica and Katzmnn for arranging for Judge Abrams's protection so she could violate Title 28

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9. *Asensio et al. v. DiFiore et al.* Case 1:18-cv-10933-RA Document 94 Filed 06/12/19 Page 1 of 2; and Document 94-1 Filed 06/12/19 Page 1 of 3. [Mandatory Restrictions]

10. *Asensio et al. v. DiFiore et al.* Case 1:18-cv-10933-RA Document 53 Filed 04/17/19 Page 1 of 3 [Mandatory Recusal]

USC Section 455(b) (iii); Canon 3(C) (1) (d) (i) and (iii) of the Code of Conduct for U.S. Judges; and the US Judicial Conference's Advisory Opinion No. 103, which mandates as a matter of black letter law that she recuse herself from the DRE case. Instead, Chief Justice Roberts and Judge Katzmann allowed Judge Abrams to violate these laws so she could continue to deliberately mishandle the DRE case [Note 40].

## CONCLUSION

40. Attorney General William Barr remarked on the constitutional importance of the executive branch to the success of the American Republic [Note 41]. If the Office of the American Presidency cannot defend its executive powers against Chief Justice Roberts's federal judicial misconduct policies [Note 42], how can any American family protect freedoms of religion, speech, political liberty, and family unity under Chief Justice Roberts's double cover-up of his concealed DRE lobbying and concealed DRE rules?

41. Chief Justice Roberts is the only individual in the US Courts, or at the US Judicial Conference, who can resolve the federal judicial conduct complaints in *Asensio et al. v. DiFiore et al.* and *Asensio et al. v. Roberts et al.* Only two docket numbers have been assigned to these cases: numbers 02-19-90052-jm and 02-19-90053-jm. Chief Justice Roberts and Judges Scirica and Katzmann have simply taken it upon themselves not to issue docket numbers for the other complaints in the file. Chief Justice Roberts's tampering with the docket of the petitioner's complaints must be resolved; it is patently unfair and an act of lawbreaking.

42. Under *Murchison*, 349 US 133, 137 (1955), Chief Justice Roberts is the party responsible for the creation of a "very strange" family law scheme in New York State and nationwide. The petitioner's case is an uncomplicated and routine family matter [None 43]. Only under the protection of the DRE could New York State convert liberties that government cannot regulate "at all, no matter what process is provided" and liberties with which neither public power nor majoritarian views can interfere [Note 44] into a cash cow for its political operatives.

43. Under the DRE, state judges wrongly "act as a grand jury and then try the very persons accused [without codified neutral principles or authorized charges] as a result of his investigations" and make themselves gatekeepers to keep out issues one party tries to raise, only to then decide in the other party's favor. They manufacture criminal charges [Note 45] to enforce a gender bias [Note 46] in determining child custody cases nationwide. However, the petitioner's DRE case is focused on Chief Justice Roberts's deliberate lawbreaking [Note 47] (which is clearly set forth herein), not only on gender bias.

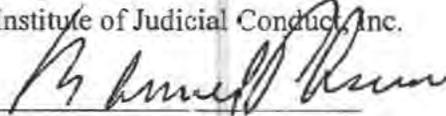
44. Chief Justice Roberts's DRE policies inflict unheard-of cruelties on Americans who have done no wrong, violated no law, nor imposed themselves on any other person's rights. This is precisely why Chief Justice Roberts is tampering with witnesses and evidence. This is Chief Justice Roberts's motive for engaging in a cover-up. This is the reason and the motive underlying Chief Justice Roberts's decision to violate Title 28 of the US Code Chapter 16 §§ 359 and 455(b) (iii) as well as tamper with evidence in, and interfere with, judicial conduct complaints as part of his cover-up.

45. Chief Justice Roberts is concealing the DRE matter from the American people, the president, and Congress. This is a nationwide cover-up of a matter that touches every American by the judge presiding over a presidential impeachment trial. Under these conditions, the petitioner respectfully request that Attorney General Barr give them notice. Otherwise, the Department of Justice should immediately and publicly notify the president and Congress.

46. According to Tilly, the goodness and fairness of government can be measured by the openness of the relationship between government officials and the people, and the degree of mutual binding consultations. Chief Justice Roberts erred terribly by allowing the federal judges to join with the state judges against the people's most cherished freedoms and liberties without an iota of democracy, authority, or consultation, or notice.

47. The petitioner eagerly anticipates the opportunity to discuss this matter further in person.

Respectfully submitted,  
Institute of Judicial Conduct, Inc.

  
Manuel P. Asensio  
Founder and Director

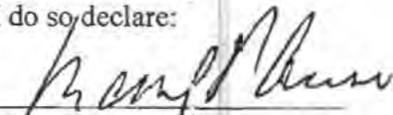
  
**SAMUEL T RICHMAN**  
Notary Public, State of New York  
No. 01RI6339167  
Qualified in Kings County  
Commission Expires March 28, 2020

cc: The Hon. John G. Roberts, Jr.

1/21/20

I, Manuel P. Asensio, swear that I am the petitioner in the "Petition To Investigate Chief Justice Roberts's "DRE" Cover-Up," the plaintiff in *Asensio et al. v. DiFiore et al.*, 18 CV-10933 (Abrams) and *Asensio et al. v. Roberts et al.*, 19 CV-03384 (Failla) and the Complainant in five the actions filed under the "Judicial Council Reform and Judicial Conduct and Disability Act of 1980" docketed at the Judicial Council for the Second Circuit and at the US Judicial Conference under numbers 02-19-90052-jm and 02-19-90053-jm. I also swear that the statements contained in this Petition are complete, correct and true to the best of my knowledge, and that any statements I make based upon information and belief are based upon due and fair consideration of all the facts, factors and circumstances that I know to be relevant.

I do so declare:

  
Manuel P. Asensio

January 21, 2020

  
**SAMUEL T RICHMAN**  
Notary Public, State of New York  
No. 01RI6339167  
Qualified in Kings County  
Commission Expires March 28, 2020

1/21/20

<sup>1</sup> Neither Congress nor judges have the power to govern fundamental liberties simply because they cannot be prescribed by law, statute, rule, policies, codes or judged by neutral principles. “The neutrality principle” forbids courts to “**mak[e] law or policy out of whole cloth**, [or] . . . to impose substantive judicial judgments on disputes not capable of resolution through the application of neutral principles to sharply defined sets of facts.” Richard H. Fallon, Jr., *Reflections on the Hart and Wechsler Paradigm*, 47 Vand. L. Rev. 953, 976 (1994).

“The identification and protection of fundamental rights” (see *Obergefell v. Hodges*, 135 S.Ct. 2584, 2597–98, 192 L.Ed. 2d 609 [2015]) and the duty to protect fundamental liberties “deeply rooted in this Nation’s history and tradition” (*id.*, at 503, 97 S.Ct., at 1938 [plurality opinion] *Snyder v. Massachusetts*, 291 U.S. 97, 105, 54 S.Ct. 330, 332, 78 L.Ed. 674 [1934]) that are “so rooted in the traditions and conscience of our people as to be ranked as fundamental” and so “implicit in the concept of ordered liberty” that “neither liberty nor justice would exist if they were sacrificed” (*Palko v. Connecticut*, 302 U.S. 319, 325, 326, 58 S.Ct. 149, 152, 82 L.Ed. 288 [1937]) and that neither judges nor Congress can govern, “at all, no matter what process is provided” (*Washington v. Glucksberg*, 521 U.S. 702, 719–21, 117 S. Ct. 2258, 2267–68, 138 L. Ed. 2d 772 [1997]).

“The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures—Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes . . . The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One’s right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections . . . Nor does our duty to apply the Bill of Rights to assertions of official authority depend upon our possession of marked competence in the field where the invasion of rights occurs. True, the task of translating the majestic generalities of the Bill of Rights, conceived as part of the pattern of liberal government in the eighteenth century, into concrete restraints on officials dealing with the problems of the twentieth century, is one to disturb self-confidence. **These principles grew in soil which also produced a philosophy that the individual was the center of society, that his liberty was attainable through mere absence of governmental restraints, and that government should be entrusted with few controls and only the mildest supervision over men’s affairs.** We must transplant these rights to a soil in which the laissez-faire concept or principle of non-interference has withered. . . .” *W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637, 63 S.Ct. 1178, 1185, 87 L.Ed. 1628 (1943).

Under the Due Process Clause of the Fourteenth Amendment, no state shall “deprive any person of life, liberty, or property, without due process of law.” The fundamental liberties protected by this clause include most of the rights enumerated in the Bill of Rights. See *Duncan v. Louisiana*, 391 U.S. 145, 147–149, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968). In addition, these liberties extend to certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs. See, e.g., *Eisenstadt v. Baird*, 405 U.S. 438, 453, 92 S.Ct. 1029, 31 L.Ed.2d 349 (1972) and *Griswold v. Connecticut*, 381 U.S. 479, 484–486, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965). **The identification and protection of fundamental rights is an enduring part of the judicial duty to interpret the Constitution.** See *Obergefell v. Hodges*, 135 S.Ct. 2584, 2597–98, 192 L.Ed. 2d 609 (2015).

<sup>2</sup> “The Court has frequently emphasized the importance of the family. The rights to conceive and to raise one’s children have been deemed ‘essential,’<sup>1</sup> ‘basic civil rights of man,’<sup>2</sup> and ‘**rights far more precious . . . than property rights**.’<sup>3</sup> It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.<sup>4</sup> The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, the Equal Protection Clause of the Fourteenth Amendment,<sup>2</sup> and the Ninth Amendment.”<sup>5</sup> *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 1212–13, 31 L.Ed. 2d 551 (1972):

<sup>1</sup> *Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S.Ct. 625, 626, 67 L.Ed. 1042 (1923)

- 2 *Skinner v. Oklahoma*, 316 U.S. 535, 541, 62 S.Ct. 1110, 1113, 86 L.Ed. 1655 (1942)  
 3 *May v. Anderson*, 345 U.S. 528, 533, 73 S.Ct. 840, 843, 97 L.Ed. 1221 (1953)  
 4 *Prince v. Massachusetts*, 321 U.S. 158, 166, 64 S.Ct. 438, 442, 88 L.Ed. 645 (1944)  
 5 *Griswold v. Connecticut*, 381 U.S. 479, 496, 85 S.Ct. 1678, 14 L.Ed. 2d 510 (1965)  
 6 *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 1212-13, 31 L.Ed. 2d 551 (1972)

"Neither decisional rule nor statute can displace a fit parent . . . the courts and the law would, under existing constitutional principles, be powerless to supplant parents except for grievous cause or necessity in which the principle is plainly stated and stressed as more significant than other essential constitutional rights . . . The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection. It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children come(s) to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements . . . It is firmly established . . . that . . . wherever possible, the best interests of a child lie in his being nurtured and guided by both of his natural parents . . . Interference with the relationship between the child and the non-custodial parent is 'an act so inconsistent with the best interest of the child that it raises a strong presumption that the offending parent is unfit to act as custodial parent . . . The custodial parent's anger, hostility and attitude toward the non-custodial parent can substantially interfere with her ability to place the needs of the children before her own in fostering a continued relationship with then on custodial parent . . . Furthermore, the custodial parent's conduct can be so egregious as to warrant a change of custody . . . The fostering of a relationship with the noncustodial parent is an important consideration in a custody determination."

*Bennett v. Jeffreys*, 40 N.Y.2d 543, 548, 356 N.E.2d 277, 282-83 (1976) *Daghir v. Daghir*, 92 A.D.2d 191, 193, 441 N.Y.S.2d 494 (2d Dept. 1981) *Prugh v. Prugh*, 298 A.D.2d 569 (2nd Dept. 2002) *Young v. Young*, 212 A.D.2d 114, 123 (2nd Dept. 1995) *Landau v. Landau*, 214 A.D.2d 541 (2nd Dept. 1995) *Matter of Esterle v. Dellay*, supra, 281 A.D.2d at 726.

"It is firmly established . . . that . . . wherever possible, the best interests of a child lie in his being nurtured and guided by both of his natural parents." *Daghir v. Daghir*, 92 A.D.2d 191, 193, 441 N.Y.S.2d 494 (2d Dept. 1981).

"Interference with the relationship between the child and the noncustodial parent is 'an act so inconsistent with the best interest of the child that it raises a strong presumption that the offending parent is unfit to act as custodial parent.'" *Prugh v. Prugh*, 298 A.D.2d 569 (2nd Dept. 2002).

"The fostering of a relationship with the noncustodial parent is an important consideration in a custody determination." *Matter of Esterle v. Dellay*, supra, 281 A.D.2d at 726.

"A parent's desire for and right to the companionship, care, custody, and management of his or her children is an important interest that undeniably warrants deference and, absent a powerful countervailing interest, protection. . . . [P]arent's interest in accuracy and justice of decision to terminate parental status is an extremely important one." *Lassiter v. Department of Social Services of Durham County, N.C.*, 452 U.S. 18, 101 S.Ct. 2153, 68 L.Ed. 2d 640 (1981).

"The right to be heard is fundamental to our system of justice . . . [and p]arents have an equally fundamental interest in the liberty, care and control of their children." *In re Jung*, 11 N.Y.3d 365 (N.Y., 2008).

"The right of a parent to the custody and control of a minor child is one of our fundamental rights as United States citizens." *Mark N. v. Runaway Homeless Youth Shelter*, 189 Misc. 2d 245, 733 N.Y.S.2d 566 (Fam.Ct. 2001).

<sup>3</sup> The due process, rule of law, or any other form of justice cannot exist without neutral principles. The neutrality principle "forbids courts to 'mak[e] law or policy out of whole cloth, [or] . . . to impose substantive judicial judgments on disputes not capable of resolution through the application of neutral principles to sharply defined sets of facts.'" Richard H. Fallon, Jr., *Reflections on the Hart and Wechsler Paradigm*, 47 *V and L. Rev.* 953,976 (1994)

<sup>4</sup> US Supreme Court Louis Dembitz Brandeis and his law partner, Samuel D. Warren, published an article in the *Harvard Law Review* in December 1890 titled "**The Right to Privacy.**" In this article Justice Brandeis wrote

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that “to protect Americans in their beliefs, their thoughts, their emotions and their sensations . . . against the Government, the right to be let alone [is] the most comprehensive of rights and the right most valued by civilized men.” The DRE is the most violent and intolerable offense on the right to “let alone.”

<sup>5</sup> “The legitimate powers of government extend to such acts only as are injurious to others. But it does me no injury for my neighbor to say there are twenty gods, or no god. It neither picks my pocket nor breaks my leg.” Thomas Jefferson, *Notes on the State of Virginia. Query XVII*. Published in English in London in 1787. Published anonymously in Paris in 1785.

6. In late 2019, in two speeches, Attorney General Barr committed resources to keep an eye out for cases in two areas. One is to protect religious liberties. Two is to protect the Constitution and rule law from “leftist . . . militant secularists . . . so-called progressive” federal judicial that “seem to take a delight in compelling people to violate their conscience [or acquiesce] . . . [that] eliminate laws that reflect traditional moral norms.

One of the speeches was presented at University of Notre Dame Law School and its Nicola Center for Ethics and Culture. The other was presented in honor of 19th Annual Barbara K. Olson Memorial Lecture at the Federalist Society’s 2019 National Lawyers Convention. The excerpts in endnotes from a transcript of Attorney General William P. Barr’s “Notre Dame 2019” speech posted on the Department of Justice’s website under the title of “Attorney General Barr Delivers Remarks to the Law School and the de Nicola Center for Ethics and Culture at the University of Notre Dame, South Bend, IN Friday, October 11, 2019” and from a transcript of Attorney General Barr’s “Federalist Society 2019” speech posted on the Department of Justice’s website under the title of “Attorney General William P. Barr Delivers the 19th Annual Barbara K. Olson Memorial Lecture at the Federalist Society’s 2019 National Lawyers Convention Washington, DC Friday, November 15, 2019.”

In the Notre Dame speech, “The Attorney General committed to “set up a task force within the Department with different components that have equities in these areas, including the Solicitor General’s Office, the Civil Division, the Office of Legal Counsel, and other offices; be involved in regular meetings on these matters, to keep an eye out for cases or events around the country that discriminate against people of faith, or impinge upon the free exercise of religion, and to be vigilant to resist efforts by the forces of secularization to drive religious viewpoints from the public square and to impinge upon the free exercise of our faith.” He gave an assurance you that “as long as he is Attorney General, the Department of Justice will be at the forefront of this effort, ready to fight for the most cherished liberties: the freedom to live according to our faith.”

Notre Dame 2019. <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-remarks-law-school-and-de-nicola-center-ethics>

Federalist Society 2019. <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-19th-annual-barbara-k-olson-memorial-lecture>

7. In a speech at **Heritage Foundation** on October 2018, former US Attorney General Jefferson B. Sessions delivered “Remarks to the Heritage Foundation on Judicial Encroachment.” He remarked that “empathy” is “more akin to emotion, bias, and politics than law” and that “Judicial activism is therefore a threat to our representative government and the liberty it secures. We at the DOJ fight against this heresy relentlessly.” The former Attorney General remarked, “In effect, activist advocates want judges who will do for them what they have been unable to achieve at the ballot box. It is fundamentally undemocratic. Too many judges believe it is their right, their duty, to act upon their sympathies and policy preferences.”

Heritage Foundation 2018. <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-heritage-foundation-judicial-encroachment>

8. Notre Dame 2019. “Men are subject to powerful passions and appetites, and, if unrestrained, are capable of ruthlessly riding roughshod over their neighbors and the community at large. No society can exist without some means for restraining individual rapacity. But, if you rely on the coercive power of government to impose restraints,

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this will inevitably lead to a government that is too controlling, and you will end up with no liberty, just tyranny. On the other hand, unless you have some effective restraint, you end up with something equally dangerous – licentiousness – the unbridled pursuit of personal appetites at the expense of the common good. This is just another form of tyranny – where the individual is enslaved by his appetites, and the possibility of any healthy community life crumbles. “In the words of Madison, “We have staked our future on the ability of each of us to govern ourselves...” This is really what was meant by “self-government.” It did not mean primarily the mechanics by which we select a representative legislative body. It referred to the capacity of each individual to restrain and govern themselves.”

The “force, fervor, and comprehensiveness of the assault on religion we are experiencing today. This is not decay; it is organized destruction. Secularists, and their allies among the “progressives,” have marshaled all the force of mass communications, popular culture, the entertainment industry, and academia in an unremitting assault on religion and traditional values. These instruments are used not only to affirmatively promote secular orthodoxy, but also drown out and silence opposing voices, and to attack viciously and hold up to ridicule any dissenters. One of the ironies, as some have observed, is that the secular project has itself become a religion, pursued with religious fervor. It is taking on all the trappings of a religion, including inquisitions and excommunication. Those who defy the creed risk a figurative burning at the stake – social, educational, and professional ostracism and exclusion waged through lawsuits and savage social media campaigns . . . today – in the face of all the increasing pathologies – instead of addressing the underlying cause, we have the State in the role of alleviator of bad consequences. We call on the State to mitigate the social costs of personal misconduct and irresponsibility. So[,] the reaction to growing illegitimacy is not sexual responsibility, but abortion. The reaction to drug addiction is safe injection sites. The solution to the breakdown of the family is for the State to set itself up as the ersatz husband for single mothers and the ersatz father to their children. The call comes for more and more social programs to deal with the wreckage. While we think we are solving problems, we are underwriting them. We start with an untrammelled freedom and we end up as dependents of a coercive state on which we depend. Interestingly, this idea of the State as the alleviator of bad consequences has given rise to a new moral system that goes hand-in-hand with the secularization of society. It can be called the system of “macro-morality.” It is in some ways an inversion of Christian morality. Christianity teaches a micro-morality. We transform the world by focusing on our own personal morality and transformation. The new secular religion teaches macro-morality. One’s morality is not gauged by their private conduct, but rather on their commitment to political causes and collective action to address social problems.”

“It is hard to resist the constant seductions of our contemporary society. This is where we need grace, prayer, and the help of our church. Beyond this, we must place greater emphasis on the moral education of our children. Education is not vocational training. It is leading our children to the recognition that there is truth and helping them develop the faculties to discern and love the truth and the discipline to live by it. We cannot have a moral renaissance unless we succeed in passing to the next generation our faith and values in full vigor. The times are hostile to this. Public agencies, including public schools, are becoming secularized and increasingly are actively promoting moral relativism. If ever there was a need for a resurgence of Catholic education – and more generally religiously-affiliated schools – it is today. I think we should do all we can to promote and support authentic Catholic education at all levels. Finally, as lawyers, we should be particularly active in the struggle that is being waged against religion on the legal plane. We must be vigilant to resist efforts by the forces of secularization to drive religious viewpoints from the public square and to impinge upon the free exercise of our faith. I can assure you that, as long as I am Attorney General, the Department of Justice will be at the forefront of this effort, ready to fight for the most cherished of our liberties: the freedom to live according to our faith.”

9. Notre Dame 2019. “A third phenomenon which makes it difficult for the pendulum to swing back is the way law is being used as a battering ram to break down traditional moral values and to establish moral relativism as a new orthodoxy. Law is being used as weapon in a couple of ways. First, either through legislation but more frequently through judicial interpretation, secularists have been continually seeking to eliminate laws that reflect traditional moral norms. At first, this involved rolling back laws that prohibited certain kinds of conduct. Thus, the watershed decision legalizing abortion. And since then, the legalization of euthanasia. The list goes on. More recently, we have seen the law used aggressively to force religious people and entities to subscribe to practices and policies that are antithetical to their faith. The problem is not that religion is being forced on others. The problem is that irreligion and secular values are being forced on people of faith. This reminds me of how some Roman emperors could not leave their loyal Christian subjects in peace but would mandate that they violate their conscience by offering religious sacrifice to the

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emperor as a god. Similarly, militant secularists today do not have a live and let live spirit - they are not content to leave religious people alone to practice their faith. Instead, they seem to take a delight in compelling people to violate their conscience."

10. Federalist Society 2019. "In any age, the so-called progressives treat politics as their religion. Their holy mission is to use the coercive power of the State to remake man and society in their own image, according to an abstract ideal of perfection. Whatever means they use are therefore justified because, by definition, they are a virtuous people pursuing a deific end. They are willing to use any means necessary to gain momentary advantage in achieving their end, regardless of collateral consequences and the systemic implications. They never ask whether the actions they take could be justified as a general rule of conduct, equally applicable to all sides."

11. Federalist Society 2019. "In any age, the so-called progressives treat politics as their religion. Their holy mission is to use the coercive power of the State to remake man and society in their own image, according to an abstract ideal of perfection. Whatever means they use are therefore justified because, by definition, they are a virtuous people pursuing a deific end. They are willing to use any means necessary to gain momentary advantage in achieving their end, regardless of collateral consequences and the systemic implications. They never ask whether the actions they take could be justified as a general rule of conduct, equally applicable to all sides."

Conservatives, on the other hand, do not seek an earthly paradise. We are interested in preserving over the long run the proper balance of freedom and order necessary for healthy development of natural civil society and individual human flourishing. This means that we naturally test the propriety and wisdom of action under a "rule of law" standard. The essence of this standard is to ask what the overall impact on society over the long run if the action we are taking, or principle we are applying, in a given circumstance was universalized - that is, would it be good for society over the long haul if this was done in all like circumstances?

For these reasons, conservatives tend to have more scruple over their political tactics and rarely feel that the ends justify the means. And this is as it should be, but there is no getting around the fact that this puts conservatives at a disadvantage when facing progressive holy war, especially when doing so under the weight of a hyper-partisan media."

12. Federalist Society 2019. The impact of these judicial intrusions on Executive responsibility have been hugely magnified by another judicial innovation - the nationwide injunction. First used in 1963, and sparsely since then until recently, these court orders enjoin enforcement of a policy not just against the parties to a case, but against everyone. Since President Trump took office, district courts have issued over 40 nationwide injunctions against the government. By comparison, during President Obama's first two years, district courts issued a total of two nationwide injunctions against the government. Both were vacated by the Ninth Circuit.

It is no exaggeration to say that virtually every major policy of the Trump Administration has been subjected to immediate freezing by the lower courts. No other President has been subjected to such sustained efforts to debilitate his policy agenda.

The legal flaws underlying nationwide injunctions are myriad. Just to summarize briefly, [1] nationwide injunctions have no foundation in courts' Article III jurisdiction or [2] traditional equitable powers; [3] they radically inflate the role of district judges, [4] allowing any one of more than 600 individuals to singlehandedly freeze a policy nationwide, [5] a power that no single appellate judge or Justice can accomplish; [6] they foreclose percolation and reasoned debate among lower courts, [7] often requiring the Supreme Court to decide complex legal issues in an emergency posture with limited briefing; [8] they enable transparent forum shopping, [9] which saps public confidence in the integrity of the judiciary; and [10] they displace the settled mechanisms for aggregate litigation of genuinely nationwide claims, such as Rule 23 class actions.

Of particular relevance to my topic tonight, [11] nationwide injunctions also disrupt the political process. There is no better example than the courts' handling of the rescission of DACA. As you recall, DACA was a discretionary policy of enforcement forbearance adopted by President Obama's administration. The Fifth Circuit

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concluded that the closely related DAPA policy (along with an expansion of DACA) was unlawful, and the Supreme Court affirmed that decision by an equally divided vote. Given that DACA was *discretionary* — and that four Justices apparently thought a legally indistinguishable policy was *unlawful* — President Trump’s administration understandably decided to rescind DACA.

Importantly, however, the President coupled that rescission with negotiations over legislation that would create a lawful and better alternative as part of a broader immigration compromise. In the middle of those negotiations — indeed, on the same day the President invited cameras into the Cabinet Room to broadcast his negotiations with bipartisan leaders from both Houses of Congress — a district judge in the Northern District of California enjoined the rescission of DACA nationwide. Unsurprisingly, the negotiations over immigration legislation collapsed after one side achieved its preferred outcome through judicial means. A humanitarian crisis at the southern border ensued. And just this week, the Supreme Court finally heard argument on the legality of the DACA rescission. The Court will not likely decide the case until next summer, meaning that President Trump will have spent almost his entire first term enforcing President Obama’s signature immigration policy, even though that policy is *discretionary* and half the Supreme Court concluded that a legally indistinguishable policy was *unlawful*. That is not how our democratic system is supposed to work.

13. From 1996 to 2000, Mr. Duff was Chief Justice William Rehnquist’s administrative assistant, now called “Counselor to the Chief Justice.” As such, Duff served as former Chief Justice Rehnquist’s liaison with both Congress and state judges. Even more, Mr. Duff served as the executive director of the Judicial Fellows Commission. From July 2006 to September 15, 2011, Duff served as the director of the Administrative Office of the United States Courts. Chief Justice Roberts was reappointed to the position on January 1, 2015. He also served as counselor to the chief justice as the presiding officer of the US Senate’s 1999 presidential impeachment trial. In September 2005, Duff was a pallbearer at former Chief Justice Rehnquist’s funeral, alongside seven of former Chief Justice Rehnquist’s former law clerks. Duff authored a tribute to former Chief Justice Rehnquist in the November 2005 edition of the Harvard Law Review and spoke at the unveiling ceremony for the William H. Rehnquist bust in the Great Hall of the Supreme Court in December 2009. The position is authorized under 28 U.S.C.A Chapter 41. Administrative Office of United States Courts § 601. Creation; Director and Deputy Director: The Administrative Office of the United States Courts shall be maintained at the seat of government. It shall be supervised by a Director and a Deputy Director appointed and subject to removal by the Chief Justice of the United States, after consulting with the Judicial Conference. The Director and Deputy Director shall be deemed to be officers for purposes of title 5, United States Code.”

14. On May 15, 2014, the petitioner, commenced an investigation into the administration of US laws that apply to domestic relations in New York State. This investigation, as the Hon. William P. Barr knows, leads to Chief Justice Roberts and his conduct as the presiding judge of the US Judicial Conference. The petitioner is the founder of the Institute of Judicial Conduct, Inc., the nation’s only independent research organization dedicated to resolving federal judicial misconduct complaints. He has experience conducting this type of investigation. Following are excerpts for the petitioner’s professional biography.

“Bringing short-selling into public dialogue and making short-focused research available to all investors have been core parts of asensio.com’s mission since 1996 – the New York Times labeled asensio.com’s work “something radical and remarkable” in 1998. This article was published at the birth of the Internet. It is difficult to imagine a time when stock news website did not exist and the brokerage firms were not yet on the Internet. Investors access to new and reports on publicly traded company was restricted to sell-side analyst reports, company publications and most the Dow Jones newswire and the Wall Street Journal. This was the environment in 1996 when asensio.com issued its first report. Eighteen years later, in January 2014, the National Bureau of Economic Research, [“NBER”] published a research paper titled “...”, the study found that the “pioneer is Manuel Asensio of Asensio & Co., which was founded in 1992 and started publishing reports on overvalued companies in 1994” and that “Asensio & Co.’s reports yield the highest returns’ by the study’s measure and during the study’s timeframe.” <https://asensio.com/category/pioneer-of-information-arbitrage/>”

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"A Cuban immigrant, Mr. Asensio completed an undergraduate degree at the Wharton School at the University of Pennsylvania and an MBA at Harvard Business School. In his post-MBA career, Mr. Asensio began working at Bear Stearns in mergers and acquisitions in 1986, after selling his first FINRA-member firm, which Mr. Asensio formed directly after graduating from Harvard. In 1993, Mr. Asensio founded Asensio & Company, Inc. (ACO), which became the first FINRA- and SEC-registered brokerage firm dedicated to short-focused research and trading. asensio.com was initially started in 1996 as a venue to release ACO's short-selling research to the public, making it the first website to be exclusively focused on distributing original short-selling ideas." <https://asensio.com/manuel-p-asensio-professional-biography/>

15. The Petitioner, Manuel P. Asensio, is the Plaintiff in the DRE federal court cases and Compliant in the federal judicial conduct complaints identified below.

The DRE case has two parts, the court cases and judicial conduct complaints. The courts cases are titled: *Asensio et al. v. DiFiore et al.*, 18 CV-10933 (Abrams) and *Asensio et al. v. Roberts et al.*, 19 CV-03384 (Failla). There are five separate actions filed under the "Judicial Council Reform and Judicial Conduct and Disability Act of 1980." These are docketed at the Judicial Council for the Second Circuit and at the US Judicial Conference. The parties in the DRE courts and conduct cases are:

Manuel P. Asensio, individually and as the parent of Eva Asensio, a minor child, Plaintiffs, against **the Hon. John G. Roberts, Jr., Chief Justice of the United States and Presiding Justice of the Judicial Conference of the United States, the Hon. Robert A. Katzmann; the Chief Judge of the United States Court of Appeals for the Second Circuit; and the Hon. Ronnie Abrams, a judge of the US District Court for the Southern District of New York, Defendants.**

Manuel P. Asensio, individually and as the parent of Eva Asensio, a minor child, Plaintiffs, against **Janet DiFiore, Chief Judge of New York State; Barbara Underwood, Attorney General of New York State Andrew M. Cuomo, Governor of New York State; Adetokunbo O. Fasanya, New York County Family Court Magistrate; and Emilie Marie Bosak, individually, Defendants.**

16. Federalist Society 2019. "In the 20th century, our form of free society faced a severe test.

There had always been the question whether a democracy so solicitous of individual freedom could stand up against a regimented totalitarian state.

That question was answered with a resounding "yes" as the United States stood up against and defeated, first fascism, and then communism.

But in the 21st century, we face an entirely different kind of challenge.

The challenge we face is precisely what the Founding Fathers foresaw would be our supreme test as a free society.

They never thought the main danger to the republic came from external foes. The central question was whether, over the long haul, we could handle freedom. The question was whether the citizens in such a free society could maintain the moral discipline and virtue necessary for the survival of free institutions.

By and large, the Founding generation's view of human nature was drawn from the classical Christian tradition.

These practical statesmen understood that individuals, while having the potential for great good, also had the capacity for great evil.

Men are subject to powerful passions and appetites, and, if unrestrained, are capable of ruthlessly riding roughshod over their neighbors and the community at large.

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No society can exist without some means for restraining individual rapacity.

But, if you rely on the coercive power of government to impose restraints, this will inevitably lead to a government that is too controlling, and you will end up with no liberty, just tyranny”

17. "The [New York City] legal bar is supposed to be a professional group that enforces standards for lawyers, yet it increasingly seems to be one more partisan political outfit. The latest example is the New York City Bar Association's letter to Congress demanding it 'investigate' Attorney General Bill Barr for making conservative political statements."

Among other things, the organization is incensed that Mr. Barr gave a speech at the University of Notre Dame praising "Judeo-Christian values." They say he implicitly rejected other religions and therefore disregarded his obligation to appear unbiased. Apparently without realizing it, the bar is demonstrating the merit of Mr. Barr's argument about the importance of religious liberty. His appreciation for religion's role in society is being used by a professional group as a possible disqualification for public office.

The bar continues with a laundry-list of partisan complaints about Mr. Barr, including his vocal opposition to criminal-justice reform, his summary of the Mueller investigation and his interpretation of the Inspector General's report on the FBI's conduct in the 2016 election."

<https://www.nycbar.org/media-listing/media/detail/the-trumped-up-case-of-bar-v-barr-wall-street-journal>  
*Wall Street Journal*, January 10, 2020 <https://www.wsj.com/articles/the-trumped-up-case-of-bar-v-barr-11578699265>

18. On August 12, 2019, Attorney General remarked at the Grand Lodge Fraternal Order of Police's 64th National Biennial Conference on a "the emergence in some of our large cities of District Attorneys that style themselves as "social justice" reformers, who spend their time undercutting the police, letting criminals off the hook, and refusing to enforce the law. These anti-law enforcement DAs have tended to emerge in jurisdictions where the election is largely determined by the primary. Frequently, these candidates ambush an incumbent DA in the primary with misleading campaigns and large infusions of money from outside groups. Once in office, they have been announcing their refusal to enforce broad swathes of the criminal law."

19. "the domestic relations exception to federal jurisdiction [DRE] is an archaic, historical remnant that should be overruled by the U.S. Supreme Court, and thus, the Article III federal courts have jurisdiction to hear pure marital status cases despite their domestic nature. We call on the Supreme Court to eliminate the domestic relations exception as to all forms of federal jurisdiction.

Steven G. Calabresi & Genna L. Sinel [The Same-Sex Marriage Cases and Federal Jurisdiction: On Third-Party Standing and Why the Domestic Relations Exception to Federal Jurisdiction Should Be Overruled](#)

"The current formulation and application of the domestic relations exception [DRE] poses serious problems. From a practical perspective, the domestic relations exception jurisprudence features contradiction, confusion, and inconsistency. From a policy perspective, the domestic relations exception risks foreclosing the invaluable federal forum to family law issues—even fundamental constitutional issues, as in *Elk Grove*. From the statutory interpretation perspective, the only current, expressly-accepted foundation for the domestic relations exception articulated by the Supreme Court requires people to accept the counterintuitive notion that the unambiguous breadth of the statutory phrase 'all civil actions' should be superseded by Congress's failure to explicitly reject dicta from an 1858 case that provided no reasoning or authority . . ."

[Family Law Is Not "Civil": The Faulty Foundation Of The Domestic Relations Exception To Federal Jurisdiction](#), Joseph Carroll, winner of the First Place, 2017 Howard C. Schwab Memorial Essay.

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Applying the exception to bar federal courts [DRE] from jurisdiction over bona fide federal questions would violate Article III, which endows federal courts with jurisdiction over all federal-question case in law or equity. Additionally, the federal-question jurisdiction statute is best read as reflecting a Congressional intent that federal jurisdiction extends to domestic-relations matters that raise questions of federal law. Federal courts have the authority to resolve important and timely questions of federal law. The domestic-relations exception should not be misconstrued to stand in their way.”

“Federal Questions and the Domestic-Relations Exception.” The Yale Law Journal, Bradley G. Silverman

“Much domestic relations law fails to present a “controversy” within the meaning of Article III; the consensual nature of many status-altering acts (marriage, consensual divorce, adoption) forecloses a federal dispute-resolution role. But when federal courts hear “cases” arising under federal law, they have full power to exercise both contentious and (what Roman and civil lawyers refer to as) non-contentious jurisdiction. Our non-contentious account explains a range of puzzles, including why Article III courts can issue decrees at the core of the domestic relations exception [DRE] when the matter at hand implicates federal law.”

A Non-Contentious Account Of Article III’s Domestic Relations Exception James E. Pfander & Emily K. Damrau Notre Dame Law Review

One may question the continued vitality of the domestic relations exception [DRE] given the vast amount of federal court involvement in family law matters. For example, in the recent landmark case *Obergefell v. Hodges*, the Supreme Court held that same-sex individuals have a fundamental right to marry.<sup>11</sup> Moreover, under its Commerce, Full Faith and Credit, and Spending Clause powers, Congress has passed many laws in the area of domestic relations.<sup>12</sup> Of course, being that it is the federal judiciary’s “province and duty” to say what the law is,<sup>13</sup> federal courts routinely review these laws. Yet despite the large quantity of family law activity in the federal sphere, the domestic relations exception survives, albeit inconsistently applied in federal courts across the country. . . . The diverse inter- and intra-circuit treatment of the domestic relations exception stems from the different weight courts place on the exception’s underlying values: stare decisis, federalism, and access to courts. Some federal courts only apply the exception because it has long been a part of precedent; otherwise, they would overrule it. Other courts apply the exception rigorously, concluding that family law matters are properly left to state courts, elevating federalism ideas. Even still, there are courts that recognize and apply the exception, but believe federalism should always take a back seat to a litigant’s right to access a federal forum.

Let’s Not Throw Out The Baby With The Bathwater: A Uniform Approach To The Domestic Relations Exception Karla M. Doe, Emory Law Journal

“judicial review is necessary as a constitutional guard against state incursions on federal, constitutional rights. Even state regulation of traditionally state matters cannot run afoul of federal, constitutional limits, and this will at least sometimes require the presence of a federal forum to make such determinations. Thus, regardless of the extent of Congress’s role in regulating and shaping American families, the federal judicial role in protecting them must remain intact . . . monolithic view of the family as an exclusively local subject is both misguided and unworkable [DRE]. Guarding personal autonomy against unwarranted intrusion by the state demands a federal forum to ensure that fundamental rights of the family remain secure. Supporting, empowering, and protecting contemporary families and family members is the joint work of local, state, and federal systems.

Is the Family a Federal Question? Meredith Johnson Harbach Washington and Lee Law Review

20. Chief Justice Roberts has fabricated a set of elaborate unethical DRE policies, decisions and rules without notice, an iota of authority, or legal foundation. These acts are a blatantly illegal abrogation of all the most important US citizens’ constitutional and legal rights. In fact, Chief Justice Roberts’s concealed DRE plans and standards are a violation of the first and most important law governing the chief justice’s conduct: Title 28, Chapter 131, USC §2072(b) that specifically prohibits federal judges from creating or implementing policies or rules that “abridge, enlarge or modify any substantive right.”

“[T]he domestic-relations exception [DRE] encompasses only cases involving the issuance of a divorce, alimony, or child custody decree.” *Ankenbrandt*, 504 U.S. at 704, 112 S.Ct. 2206 **not** federal civil rights claims under fundamental liberty, due process or the right to be free from judicial fraud and manufactured crimes. It is not ‘compelled by the text of the Constitution or federal statute’ but is rather a ‘judicially created doctrine’ . . . stemming in large measure from misty understandings of English legal history.” *Marshall*, 547 U.S. at 299, 126 S.Ct. 1735. [Emphasis added by author]. *Chevalier v. Estate of Barnhart*, 803 F.3d 789, 794 (6th Cir. 2015).

In the 5–4 split opinion of *Barber v. Barber*, the dissent strongly contested, that “[i]t is not in accordance with the design and operation of a [state] Government . . . [to] assume to regulate the domestic relations of society . . . [to take an] inquisitorial authority, [to] enter the habitations and even into the chambers and nurseries of private families, and inquire into and pronounce upon the morals and habits and affections or antipathies of the members of every household. . . . [This is the case] whether [a statute] expressly conferred upon the State courts, or [is] tacitly assumed by them, [and] their example and practice cannot be recognized as sources of authority by the courts of the United States. The origin and the extent of their jurisdiction must be sought in the laws of the United States.” See *Barber v. Barber*, 62 US 582 (1858).

In *Cohens v. Virginia*, Chief Justice Marshall famously cautioned: “It is most true that this Court will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction if it should. . . We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.” 6 *Wheat* 264, 404, 5 L.Ed. 257 (1821). **Among longstanding limitations on federal jurisdiction [DRE] otherwise properly exercised are the so-called “domestic relations” and “probate” exceptions. Neither is compelled by the text of the Constitution or federal statute. Both are judicially created doctrines stemming in large measure from misty understandings of English legal history.** See, e.g., *Atwood, Domestic Relations Case in Federal Court: Toward a Principled Exercise of Jurisdiction*, 35 *Hastings L.J.* 571, 584–588 (1984); *Spindel v. Spindel*, 283 F.Supp. 797, 802 (E.D.N.Y.1968) (collecting case and commentary revealing vulnerability of historical explanation for domestic relations exception); Winkler, *The Probate Jurisdiction of the Federal Courts*, 14 *Probate L.J.* 77, 125–126, and n. 256 (1997) (describing historical explanation for probate exception as ‘an exercise in mythography’). “In the years following Marshall’s 1821 pronouncement, **courts have sometimes lost sight of his admonition and have rendered decisions expansively interpreting the two exceptions.** In *Ankenbrandt v. Richards*, 504 U.S. 689, 112 S.Ct. 2206, 119 L.Ed.2d 468 (1992), this Court reined in the ‘domestic relations exception.’ Earlier, in *Markham v. Allen*, 326 U.S. 490, 66 S.Ct. 296, 90 L.Ed. 256 (1946), the Court endeavored similarly to curtail the ‘probate exception.’” *Marshall v. Marshall*, 547 U.S. 293, 298–99, 126 S. Ct. 1735, 1741, 164 L. Ed. 2d 480 (2006).

21. The DRE violates Article III of the US Constitution established Americans’ access to US judicial power; First Amendment’s prohibition of laws on the exercise of religious beliefs and that protects freedom of speech and the right to petition the Government for a redress of grievances; the Due Process Clause of the Fifth Amendment, and the Equal Protection Clause of the Fourteenth Amendment, and the Tenth Amendment limits the federal government to powers granted in the US Constitution and reserves all other power to the States and the people.

<https://www.archives.gov/founding-docs/bill-of-rights-transcript#toc-amendment-i>

22. “Had not the Roman government permitted free enquiry; Christianity could never have been introduced. Had not free enquiry been indulged, at the area of the reformation, the corruptions of Christianity could not have been purged away. If it be restrained now, the present corruptions will be protected, and new ones encouraged. Galileo was sent to the inquisition for affirming that the earth was a sphere: the government had declared it to be as flat as a trencher, and Galileo was obliged to abjure his error. This error however at length prevailed, the earth became a globe, and Descartes declared it was whirled round its axis by a vortex. The government in which he lived was wise enough to see that this was no question of civil jurisdiction, or we should all have been involved by authority in vortices. In fact, the vortices have been exploded, and the Newtonian principle of gravitation is now more firmly established, on the basis of reason, than it would be were the government to step in, and to make it an article of necessary faith. Reason and experiment have been indulged, and error has fled before them. **It is error alone which needs the support of government. Truth can stand by itself. Subject opinion to coercion: whom will you make your inquisitors.**”

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Thomas Jefferson, *Notes on the State of Virginia. Query XVII* Published in English in London in 1787. Published anonymously in Paris in 1785.

23. *In re Michael*, all "perjured relevant testimony is at war with justice, since it may produce a judgment not resting on truth. Therefore, it cannot be denied that it tends to defeat the sole ultimate objective of a trial." *re Michael*, 326 U.S. 224, 227 (1945). Perjury is defined as "deliberately making false or misleading statements while under oath." BLACK'S LAW DICTIONARY 1175 (8th ed. 2004).

<sup>24</sup>. "We hold here that the right to a speedy trial is as fundamental as any of the rights secured by the Sixth Amendment. That right has its roots at the very foundation of our English law heritage. Its first articulation in modern jurisprudence appears to have been made in *Magna Carta* (1215), wherein it was written, 'We will sell to no man, we will not deny or defer to any man either justice or right'; but evidence of recognition of the right to speedy justice in even earlier times is found in the *Assize of Clarendon* (1166)." *Klopfer v. State of N.C.*, 386 U.S. 213, 223, 87 S.Ct. 988, 993, 18 L.Ed. 2d 1 (1967).

("And when a robber or murderer or thief or receiver of them has been arrested through the aforesaid oath, if the justices are not about to come speedily enough into the country where they have been taken, let the sheriffs send word to the nearest justice by some well-informed person that they have arrested such men, and the justices shall send back word to the sheriffs informing them where they desire the men to be brought before them; and let the sheriffs bring them before the justices." English Historical Documents 408 [1953]).

25. Federalist Society 2019. "In any age, the so-called progressives treat politics as their religion. Their holy mission is to use the coercive power of the State to remake man and society in their own image, according to an abstract ideal of perfection. Whatever means they use are therefore justified because, by definition, they are a virtuous people pursuing a deft end. They are willing to use any means necessary to gain momentary advantage in achieving their end, regardless of collateral consequences and the systemic implications. They never ask whether the actions they take could be justified as a general rule of conduct, equally applicable to all sides.

Conservatives, on the other hand, do not seek an earthly paradise. We are interested in preserving over the long run the proper balance of freedom and order necessary for healthy development of natural civil society and individual human flourishing. This means that we naturally test the propriety and wisdom of action under a "rule of law" standard. The essence of this standard is to ask what the overall impact on society over the long run if the action we are taking, or principle we are applying, in a given circumstance was universalized – that is, would it be good for society over the long haul if this was done in all like circumstances?

For these reasons, conservatives tend to have more scruple over their political tactics and rarely feel that the ends justify the means. And this is as it should be, but there is no getting around the fact that this puts conservatives at a disadvantage when facing progressive holy war, especially when doing so under the weight of a hyper-partisan media."

26. Under the Judicial Council Reform and Judicial Conduct and Disability Act of 1980 (Act) (Title 28 of the US Code Chapter 16 §§ 351-364) the chief justice acting as the presiding judge of the US Judicial Conference controls the nation's policing, prosecution and punishment of criminal, fraudulent, malicious and unethical judicial conduct in federal court. The follow are the sections in the Act that govern the adjudication of complaints.

#### U.S. Code CHAPTER 16 (§§ 351-364)—COMPLAINTS AGAINST JUDGES AND JUDICIAL DISCIPLINE

##### § 351.Complaints; judge defined

- (a) **Filing of Complaint by Any Person.**—Any person alleging that a judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such judge is unable to discharge all the duties of office by reason of mental or physical disability, may

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file with the clerk of the court of appeals for the circuit a written complaint containing a brief statement of the facts constituting such conduct.

**§ 352. Review of complaint by chief judge**

- (a) (intentionally left blank)
- (b) (intentionally left blank)
- (c) **Review of Orders of Chief Judge.** A complainant or judge aggrieved by a final order of the chief judge under this section may petition the judicial council of the circuit for review thereof. The denial of a petition for review of the chief judge's order shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

**§ 357. Review of orders and actions**

- (a) **Review of Action of Judicial Council.** A complainant or judge aggrieved by an action of the judicial council under section 354 may petition the Judicial Conference of the United States for review thereof.
- (b) **Action of Judicial Conference.** The Judicial Conference, or the standing committee established under section 331 [of USC, Title 28, Chapter 15, "Conferences and Councils of Judges," §§331-335] may grant a petition filed by a complainant or judge under subsection (a).
- (c) **No Judicial Review.** Except as expressly provided in this section and section 352(c), all orders and determinations, including denials of petitions for review, shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

27. As President Jimmy Carter wrote in his 1980 signing statement that enacted the Conduct Act: "*Judges are human and experience has shown that if only the massive machinery of impeachment is available, some valid complaints will not be remedied*" and that the American people must be assured that a complaint filed under the Conduct Act's "*system will receive fair and serious attention throughout the process.*" Notably, the federal judges took 28 years (until 2008) to finally create the system.

Weekly Compilation of Presidential Documents, vol. 16, no. 42, Oct. 15, 1980, pp. 2239–2240.

<sup>28</sup>. "[T]he notion that by confining the Rules to matters of 'procedure,' as the Rules Enabling Act of 1934 directed, one could somehow prevent them from having important and controversial socio-economic and political consequences outside the courtroom is **absurd** . . . it is perhaps unreasonable anachronistically to superimpose on the Congressional drafters a sophisticated understanding of how procedural choices may impact substantive policies." [Emphasis added by author.] See 356 U.S. 525, 549 (1958) (Whittaker, J., concurring in part and dissenting in part.) ("The words 'substantive' and 'procedural' are mere conceptual labels and in no sense talismanic.") and 304 U.S. 64, 91–92 (1938) (Reed, J., concurring) ("The line between procedural and substantive law is hazy . . .").

The Rules Enabling Act is intended to preserve Congress' legislative power. In *The Supreme Court, The Rules Enabling Act, and the Politicization of the Federal Rules: Constitutional and Statutory Implications*, 90 MINN. L. REV. 1303, 1307–08, 1326 (2006), author Martin H. Redish wrote: "The reasoning appears to have been that where the Court merely promulgates rules of 'procedure,' it is not overstepping its constitutionally limited bounds because procedure is, by definition, internal to the operation of the judiciary; it has no impact outside the four walls of the courthouse. We now know—and probably should have known at the time of the Act's passage—that this is **political nonsense**. In numerous instances, procedural choices inevitably—and often **intentionally—impact the scope of substantive political choices**. This recognition should logically raise a concern that the Act unconstitutionally vests in the Supreme Court power that is reserved, in a constitutional democracy, for those who are representative of and accountable to the electorate."

Karen Nelson Moore, *The Supreme Court's Role in Interpreting the Federal Rules of Civil Procedure*, 44 HASTINGS L.J. 1039, 1043 (1993) (“[C]ommentators have placed recent emphasis on the relationship between Congress and the Court in the rulemaking process as the source of the restriction against affecting substantive rights.”); Martin H. Redish, *The Supreme Court, The Rules Enabling Act, and the Politicization of the Federal Rules: Constitutional and Statutory Implications*, 90 MINN. L. REV. 1303, 1307–08, 1326 (2006) (“**arguing that current rulemaking oversteps constitutional bounds because the committee produces substantive rules and proposing that rules falling into a ‘non-housekeeping’ category of procedural rules or that ‘are found to implicate significant economic, social, or political dispute(s)’ should require Congressional and presidential approval**”); Stephen B. Burbank, *Ignorance and Procedural Law Reform: A Call for a Moratorium*, 59 BROOK. L. REV. 841, 841–42 (1993) (“arguing that the rulemaking process should rely more heavily on empiricism and called for a moratorium on rulemaking pending further study”); Linda S. Mullenix, *Hope Over Experience: Mandatory Informal Discovery and the Politics of Rulemaking*, 69 N.C. L. REV. 795 (1991) (“arguing that the discovery proposals lacked empirical foundation and calling for reform of the rulemaking process”); Laurens Walker, *A Comprehensive Reform for Federal Civil Rulemaking*, 61 GEO. WASH. L. REV. 455, 481 (1993) (“arguing for a limit on the Committee’s discretion to be accomplished through a set of administrative agency-like guidelines”); Marc S. Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. EMPIRICAL LEGAL STUD. 459, 491 (2004); Professor Richard L. Marcus has noted, we have a “litigation machine that often seems indifferent to the merits.” Richard L. Marcus, *Of Babies and Bathwater: The Prospects for Procedural Progress*, 59 BROOK. L. REV. 761, 766 (1993).

Sarah Staszak, “The Administrative Role of the Chief Justice: Law, Politics, and Procedure in the Roberts Court Era.” *Laws* (ISSN 2075-471X), a peer-reviewed journal of legal systems, theory, and institutions, published quarterly online by MDPI: “The Chief Justice of the Supreme Court plays a critical role in shaping national politics and public policy. While political scientists tend to focus on the ways in which the chief affects the Court’s jurisprudence, **relatively little attention has been devoted to the unique administrative aspects of the position that allow for strategic influence over political and legal outcomes.** This article examines the role of the chief justice as the head of the Judicial Conference, which is the primary policy making body for federal courts in the United States.” <https://www.mdpi.com/2075-471X/7/2/15/htm>

Dawn M. Chutkow, “The Chief Justice as Executive: Judicial Conference Committee Appointments,” *Journal of Law and Courts* 2, no. 2 (2014): 301–25. doi:10.1086/677172: “This article is the first comprehensive empirical study of chief justice appointments to the Judicial Conference committees of the US Courts, entities with influence over substantive public and legal policy. Using a newly created database of all judges appointed to serve on Judicial Conference committees between 1986 and 2012, the results indicate that a judge’s partisan alignment with the chief justice matters, as do personal characteristics such as race, experience on the bench, and court level. **These results support claims that Judicial Conference committee selection, membership, and participation may present a vehicle for advancing the chief justice’s individual political and policy interests.**” [https://www.jstor.org/stable/10.1086/677172?seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/10.1086/677172?seq=1#page_scan_tab_contents)

<sup>29</sup>. “extreme vigilance against **treading on contested fact issues or mixed questions of law and fact—even arguable ones-reserving them for evidentiary hearings** . . . [u]nless the parties settled, disputes regarding intent, state-of-mind, and credibility were virtually always tried, often before a jury.”

Paul W. Mollica, *Federal Summary Judgment at High Tide*, 84 MARQ. L. REV. 141,147 (2000)

“A well-chronicled, decades-long effort ultimately led to the passage of the Rules Enabling Act of 1934 . . . The Federal Rules of Civil Procedure became law four years later . . . “the drafters of the Federal Rules wanted cases to be **resolved on the merits**” . . . those “core values of [federal] rules have **been eviscerated by judicial decisions, interred by antipa’hy, and eulogized** by none other than Wright and Miller” . . . “**Federal Rules were premised on the notion that, once the parties learned the relevant facts, cases would either settle or go to trial.**”

Stephen N. Subrin & Thomas D. Main, *The Fourth Era of American Civil Procedure*, 162 U. PA. L. REV. 1839 (2014)

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"In 1951, the median time from filing to disposition for tried cases was 12.2 months. In 1962, that number was sixteen months. Since 1990, the median time to disposition for all terminated cases is only seven to eight months. But as of 2012, the median time from filing to disposition remains twenty-three months in those cases where there is a trial, which, of course, these days are only one percent of all cases."

Harold Hongju Koh, *The Just, Speedy, and Inexpensive Determination of Every Action?* Yale Law School Faculty Scholarship (2014)

30. It was Sir John Emerich Edward Dalberg-Acton, (January 10, 1834–June 19, 1902), who in 1887 wrote that **"power corrupts, and absolute power corrupts absolutely."** He also wrote that "there is no worse heresy than that the office sanctifies the holder of it." He was referring to the medieval popes that instituted a special tribunal with special functionaries, elaborating special laws that were developed, applied, and protected by sanction, both spiritual and temporal. They used this system to inflict penalties of death and damnation on everybody who resisted.

It was in the "Letters to Bishop Mandell Creighton, the first Dixie Professorship of Ecclesiastical History of the University of Cambridge" where Sir Acton wrote about "the popes of the thirteenth and fourteenth centuries, from Innocent III down to the time of Hus. These men instituted a system of Persecution, with a special tribunal, special functionaries, special laws. They carefully elaborated, and developed, and applied it. They protected it with every sanction, spiritual and temporal. They inflicted, as far as they could, the penalties of death and damnation on everybody who resisted it. They constructed quite a new system of procedure, with unheard of cruelties, for its maintenance. They devoted to it a whole code of legislation, pursued for several generations."

In 1858, twenty-nine years before Sir Dalberg-Acton penned his most famous words, the US Supreme Court ruled that government must not "assume to regulate domestic relations of society." It spoke of this type of regulation as an "inquisitorial authority." The Court added that a state cannot give its judges any authority over its citizens' "morals and habits and affections or antipathies" without seeking the authority of the United States.

"Lord Acton was among the most illustrious historians of nineteenth-century England, a man of great learning with a deep devotion to individual liberty and a profound understanding of history."  
<https://www.libertyfund.org/people/acton-john-emerich-edward-dalberg>

**31. Title 28 Chapter 16 U.S. Code § 355. Action by Judicial Conference.**

**(a) In General.—**

Upon referral or certification of any matter under section 354(b), the Judicial Conference, after consideration of the prior proceedings and such additional investigation as it considers appropriate, shall by majority vote take such action, as described in section 354(a)(1)(C) and (2), as it considers appropriate.

**(b) If Impeachment Warranted.—**

**(1) In general.—**

If the Judicial Conference concurs in the determination of the judicial council, or makes its own determination, that consideration of impeachment may be warranted, it shall so certify and transmit the determination and the record of proceedings to the House of Representatives for whatever action the House of Representatives considers to be necessary. Upon receipt of the determination and record of proceedings in the House of Representatives, the Clerk of the House of Representatives shall make available to the public the determination and any reasons for the determination.

**(2) In case of felony conviction.—**

If a judge has been convicted of a felony under State or Federal law and has exhausted all means of obtaining direct review of the conviction, or the time for seeking further direct review of the conviction has passed and no such review

has been sought, the **Judicial Conference may**, by majority vote and without referral or certification under section 354(b), transmit to the House of Representatives a determination that consideration of impeachment may be warranted, together with appropriate court records, for whatever action the House of Representatives considers to be necessary.

#### **Title 28 Chapter 15 U.S. Code § 360. Disclosure of information**

- (a) **Confidentiality of Proceedings.**—Except as provided in section 355, all papers, documents, and records of proceedings related to investigations conducted under this chapter shall be confidential and shall not be disclosed by any person in any proceeding except to the extent that—

(1) the judicial council of the circuit in its discretion releases a copy of a report of a special committee under section 353(c) to the complainant whose complaint initiated the investigation by that special committee and to the judge whose conduct is the subject of the complaint;

(2) the judicial council of the circuit, the Judicial Conference of the United States, or the Senate or the House of Representatives by resolution, releases any such material which is believed necessary to an impeachment investigation or trial of a judge under article I of the Constitution; or

(3) such disclosure is authorized in writing by the judge who is the subject of the complaint and by the chief judge of the circuit, the Chief Justice, or the chairman of the standing committee established under section 331.

(b) **Public Availability of Written Orders.**—

Each written order to implement any action under section 354(a)(1)(C), which is issued by a judicial council, the Judicial Conference, or the standing committee established under section 331, shall be made available to the public through the appropriate clerk's office of the court of appeals for the circuit. Unless contrary to the interests of justice, each such order shall be accompanied by written reasons therefor.

#### **28 U.S. Code § 354. Action by judicial council**

(a) **Actions Upon Receipt of Report.**—

(1) **Actions.**—The judicial council of a circuit, upon receipt of a report filed under section 353(c)—

(C) if the complaint is not dismissed, shall take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit.

(2) **Description of possible actions if complaint not dismissed.**—

(A) In general.—Action by the judicial council under paragraph (1)(C) may include—

(i) ordering that, on a temporary basis for a time certain, no further cases be assigned to the judge whose conduct is the subject of a complaint;

(ii) censuring or reprimanding such judge by means of private communication; and

(iii) censuring or reprimanding such judge by means of public announcement.

(B) For article iii judges.—If the conduct of a judge appointed to hold office during good behavior is the subject of the complaint, action by the judicial council under paragraph (1)(C) may include—

(i) certifying disability of the judge pursuant to the procedures and standards provided under section 372(b); and

(ii) requesting that the judge voluntarily retire, with the provision that the length of service requirements under section 371 of this title shall not apply.

32. Judge Janet DiFiore is the Chief Judge of the State of New York. Judge DiFiore is also the Chair of the New York State's Administrative Board of the Courts (ABC) that controls New York State's court rule making, and along with Andrew M. Cuomo, Governor of the State of New York, her appointer, Judge DiFiore controls a majority of the commissioners of the New York State Commission on Judicial Conduct; Lawrence K. Marks, the Chief Deputy Administrator of the Unified Court System's (UCS) Office of Court Administration; Juanita Bing Newton, the Dean and Sharon S. Towasend, the Vice Dean of the UCS Judicial Institute Family and Matrimonial Law; Sherry Klein Heitler, the UCS Chief of Policy and Planning for the UCS Office of Policy and Planning; and the UCS Advisory Committee on Judicial Ethics.

Most notably, Chief Judge DiFiore also controls Michael Magliano, the Chief of the UCS's Department of Public Safety who has a material and extraordinarily powerful impact on justice in New York State's family courts. This power is important when the State deploys guns with no process at all to take property directly from parents in Family Court. These payouts are provided to the State's political operatives. This is done under the protection of Chief Justice Roberts's DRE rules.

See *Asensio, et al. v. DiFiore, et al.* complaint and its supporting affidavit Document Number 1 and Motion 1 in *Asensio, et al. v. DiFiore, et al.* at Document 12 and its supporting affidavits at Document Number 12-1.

33. New York Constitution Article 6 §28 grants the state's chief judge sole and individual power to devise and promulgate administrative rules and policies that govern the internal workings of its state justice department. This is an enormous responsibility in a system of justice, but it is unregulated and unsupervised by the state's elected official or any other state agency. New York Constitution Article 6 §28 requires that the chief judge consult the four members of the administrative board of the courts. These are the leaders of each one of its appellate divisions. The members are the four Appellate Division presiding judges. Then the Chief Judge is supposed to obtain the approval of the six other judges of the Court of Appeals. There are 7 judges on the Court of Appeals. The Chief Judge is one of them. The Chief Judge is supposed to obtain approval before promulgating rules throughout the UCS.<sup>18</sup> This type of organization exists in each state. This is how an incredibly small group of judges can delegate power to state bureaucrats that affect parents federally protected due process and parental rights and authority.  
<https://secureservercdn.net/198.12.145.239/u5t.2b0.myftpupload.com/wp-content/uploads/2018/09/TOPSY-TURVY-DRAW-THE-CURTAIN-THE-FRAUD-IS-OVER.pdf>

34. Acting as the Chair of the U.S. Judicial Conference Committee on the Judicial Branch, and on behalf of Chief Justice Roberts as a member of his Executive Committee of the U.S. Judicial Conference, and using the resources of the Administrative Office of the US Courts, the US Judicial Conference, and the Federal Judicial Center, Judge Katzmman and his deputies maintain relationships with legislatures and the Offices of the Legislative Counsel and Deputy Legislative Counsels for the US Senate and the US House of Representatives.

35. While holding high official chairmanships, committee membership and administrative positions the federal judiciary's so-called "policy making" machinery, in the US Courts, the US Judicial Conference and Judicial Council for the Second Circuit, Judge Katzmman is one of the nation's most outspoken critics of US immigration laws and is openly engaged in advocating in favor of illegal immigration.

In the area of political advocacy, Judge Katzmman organized an interdisciplinary Study Group on Immigrant Representation. This organization led to the creation of the New York Immigrant Family Unity Project, the first government funded program to provide legal counsel for detained, illegal immigrants. Judge Katzmman also founded the Immigrant Justice Corps, the country's first fellowship program for recent law school and college graduates dedicated to promoting illegal immigration into the US.

In the area of the federal judiciary's so-called "policy making" machinery, Judge Katzmman has overtly engaged political lobbying in Congress without notice or authority in favor of the reverse application of federalism (the highest purpose of the constitution, strict limitations on government) in family law and the enforcement of judicial conduct complaints.

In promoting Judge Katzmman as a nominee to the US Supreme Court, William Treanor, dean of Fordham Law School, wrote that Judge Katzmman does not "operate in an ivory tower." In fact, Judge Katzmman has only operated in an ivory tower. From 1984 to 1999, Judge Katzmman was the Walsh Professor of Government, Professor of Law and Professor of Public Policy at Georgetown University, a Fellow of the Governmental Studies Program of the Brookings Institution, and President of the Governance Institute. During this period, Judge Katzmman worked for Judge Frank M. Coffin while Judge Coffin was the Chair of the U.S. Judicial Conference Committee on the Judicial Branch. In the same interview, Dean Treanor openly commented on Judge Katzmman's use of his position to operate "an extraordinary effort that has engaged a broad spectrum of New York City's lawyers in voluntarily representing people in the immigration court system."

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36. The presiding judge of the US Judicial Conference has jurisdiction over the resolution or adjudication of federal judicial conduct complaints filed at the 13 Judicial Councils of the US Circuit courts and at the US Judicial Conference Committee of Judicial Conduct. However, Chief Justice Roberts is the subject of Petitioner's judicial conduct complaint for his misconduct in not restricting Judge Katzmann and McMahon as mandatorily required by the Judicial Council Reform and Judicial Conduct and Disability Act of 1980 (Act) (Title 28 of the US Code Chapter 16 §§ 351-364) and for approving the actions Judge Katzmann took to protect Judge Abrams from complying with her mandatory obligations under all applicable codes and laws, and advisory opinions, to recuse herself from the Petitioner's DRE case. A person does not have to testify at trial to commit perjury.

37. Judicial Improvements Act of 2002. Amends the Federal judicial code to establish a new chapter regarding complaints against judges and judicial discipline. Authorizes any person alleging that a judge has engaged in specified prejudicial conduct or is unable to discharge all the duties of office by reason of mental or physical disability, to file with the clerk of the court of appeals for the circuit a written complaint.

Directs the chief judge to expeditiously review complaints. Authorizes:

- (1) the chief judge to conduct a limited inquiry; and
- (2) a complainant or judge aggrieved by a final order of the chief judge to petition the judicial council of the circuit for review. Makes denial of a petition for review final.

Requires the chief judge, if not entering such an order, to form a special committee to investigate the allegations. Authorizes the judicial council, upon receipt of a report by the committee, to:

- (1) conduct any necessary additional investigation; and
- (2) dismiss the complaint. Directs the council, if the complaint is not dismissed, to take appropriate action to assure the effective and expeditious administration of the business of the courts within the circuit.

Delineates possible actions by the judicial council if the complaint is not dismissed, including:

- (1) ordering that, on a temporary basis for a time certain, no further cases be assigned to the judge whose conduct is the subject of a complaint; and
- (2) censuring or reprimanding the judge by means of private communication or public announcement.

Includes among possible actions with respect to:

- (1) Article III judges, certifying disability of the judge pursuant to specified procedures and standards, and requesting that the judge voluntarily retire, with the provision that length of service requirements not apply; and
- (2) magistrate judges, directing the chief judge of the district of the magistrate judge to take appropriate action. Sets forth limitations on judicial council removals.

Provides for referral of complaints to the Judicial Conference of the United States.

Directs the Judicial Conference, if it finds impeachment warranted, to certify and transmit the determination and record of proceedings to the House of Representatives.

Sets forth provisions regarding:

- (1) a judicial council's subpoena power;
- (2) judges' petitions for review of adverse orders and actions;
- (3) rules for the conduct of proceedings under this Act;
- (4) restrictions on individuals who are the subject of an investigation;

(5) confidentiality of proceedings; and

(6) the effect of a felony conviction on a judge's continued service and creditable service.

<https://www.Congress.gov/bill/107th-Congress/senate-bill/2713>

38. Judge Abrams and her husband, Greg Donald Andres who worked as an Assistant Special Counsel in the Robert Mueller investigation, share multiple close political and personal relationships with Judge DiFiore and Judge DiFiore's husband. Judge Abrams is a denizen of the Democratic party. She is Floyd Abrams' daughter, and Dan Abrams' sister. Judge McMahon and Judge DiFiore are widely known to be best friends.

"The most important letter that Judge Colleen McMahon, U.S. district judge of the Southern District of New York, ever received sits in a frame on her desk and has since 1991. The envelope is addressed "To Mom From Katie." Inside the envelope is a note that says: "Dear Mom, I wish you would help me but you wote help me. Love Katie." Judge McMahon keeps this letter on her desk to remind her of the importance." [http://www.fedbar.org/PDFs/Past-Judicial-Profiles/Second-Circuit\\_1/McMahon-Hon-Colleen.aspx](http://www.fedbar.org/PDFs/Past-Judicial-Profiles/Second-Circuit_1/McMahon-Hon-Colleen.aspx)

DiFiore went on to study sociology at Long Island University's C.W. Post College. Campus living lasted all but 24 hours for her. "I couldn't stand being away from home," she says. Unlike most freshmen, she didn't think she was missing out on college life. "I lived in a crazy house that my grandfather built. There was family everywhere," she says. "Every night was like a party."... Soon after, Davis Polk & Wardwell—the New York law firm where Glazer worked—wanted to relocate him to Paris. DiFiore wasn't swayed by the allure of a foreign assignment, so her response was quick and decisive: "Can my mother go?" she asked Glazer, knowing full well the answer."... With that, they stayed put, and DiFiore continued building her own career. "There's no way I would leave my family," she says.... It's clear that family is at the heart of DiFiore's life and has shaped every aspect of her career... DiFiore has learned to balance the rigors and stresses of her job ...all while prioritizing her family."

<http://www.westchestermagazine.com/Westchester-Magazine/October-2016/Top-Judge/>

DiFiore's husband, Dennis Glazer, is pushing their daughter for County Court judge in Westchester.. He's had meetings with Reggie LaFayette, the party chair, and has been calling local chairs telling them they should support the daughter, Alexandra DiFiore Glazer, for the spot, and if they don't, the governor will appoint her anyway... Some chairs have felt threatened by him. Folks are mad that Dennis is telling them what to do... It must certainly be unethical for the chief judge's husband to push her daughter.... Glazer has said the daughter doesn't have to be known, because either the party leaders give her the nomination, or Janet will get the governor to appoint her." <https://vonkerstimes.com/another-difiore-for-westchester-county-judge/>

"Dennis Glazer brought his daughter to a barbeque at Judge (Alan) Scheinkman's house on Sept. 16 and was introducing her to everyone. He's also making phone calls again to local party chair and is pressuring people. Surely there must be something improper about the chief judge's husband making phone calls to party chairs, twisting their arms to support his daughter for County Court judge...The rumors are that she is the only ADA in the Manhattan DA's office working part-time. The party folks are really upset at his heavy-handed manner...He (Glazer) wants one of the spots for her in 2019, and he is pressuring LaFayette (Westchester Democratic Chairman Reggie LaFayette) big time. The chief judge (Janet DiFiore) even went by his office to see him, claiming she stopped in for an absentee ballot. It's really outrageous...voters in the democratic party don't want anything to do with Dennis Glazer or Chief Judge DiFiore. Remember Janet was a republican for a long time before she switched parties...County Court hopefuls dare not say a word about the efforts of Glazer and DiFiore." <https://vonkerstimes.com/pressure-continues-on-dems-to-support-young-difiore-for-judge/>

"sources reported that Second Department Presiding Justice Alan D. Scheinkman has also met with Westchester Democratic leaders on [Chief Judge Janet DiFiore's daughter, Alexandra DiFiore] Murphy's behalf" <https://wiselawny.wordpress.com/2019/01/13/cj-difiores-daughter-an-interlopermanhattan-ada-seeks-westchester-seat/>

### 39. Title 28 of the US Code Chapter 16 § 359

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§ 359. Restrictions

- (a) **Restriction on Individuals Who Are Subject of Investigation.** No judge whose conduct is the subject of an investigation under this chapter shall serve upon a special committee appointed under section 353, upon a judicial council, upon the Judicial Conference, or upon the standing committee established under section 331, until all proceedings under this chapter relating to such investigation have been finally terminated.
- (b) **Amicus Curiae.** No person shall be granted the right to intervene or to appear as amicus curiae in any proceeding before a judicial council or the Judicial Conference under this chapter.

§ 353. Special committees

- (a) **Appointment.** If the chief judge does not enter an order under section 352(b), the chief judge shall promptly—
- (1) appoint himself or herself and equal numbers of circuit and district judges of the circuit to a special committee to investigate the facts and allegations contained in the complaint;
  - (2) certify the complaint and any other documents pertaining thereto to each member of such committee; and
  - (3) provide written notice to the complainant and the judge whose conduct is the subject of the complaint of the action taken under this subsection.
- (b) **Change in Status or Death of Judges.** (intentionally left blank)

**Investigation by Special Committee.** Each committee appointed under subsection (a) shall conduct an investigation as extensive as it considers necessary and shall expeditiously file a comprehensive written report thereon with the judicial council of the circuit. Such report shall present both the findings of the investigation and the committee's recommendations for necessary and appropriate action by the judicial council of the circuit.

40. The presiding judge of the US Judicial Conference has jurisdiction over the resolution or adjudication of federal judicial conduct complaints filed at the 13 Judicial Councils of the US Circuit courts and at the US Judicial Conference Committee of Judicial Conduct. Chief Justice Roberts is the subject of Petitioner's judicial conduct complaint for his misconduct in not restricting Judge Katzmann and McMahon as mandatorily required by the Judicial Council Reform and Judicial Conduct and Disability Act of 1980 (Act) (Title 28 of the US Code Chapter 16 §§ 351-364) and for approving the actions Judge Katzmann took to protect Judge Abrams from complying with her mandatory obligations under all applicable codes and laws, and advisory opinions, to recuse herself from the Petitioner's DRE case. A person does not have to testify at trial to commit perjury. The applicable laws are:

**Title 28 of the US Code Chapter 16 § 359. Restrictions**

- (c) **Restriction on Individuals Who Are Subject of Investigation.** No judge whose conduct is the subject of an investigation under this chapter shall serve upon a special committee appointed under section 353, upon a judicial council, upon the Judicial Conference, or upon the standing committee established under section 331, until all proceedings under this chapter relating to such investigation have been finally terminated.

Title 28 USC Section 455(b) (iii) states that a justice, judge or magistrate judge is required to recuse him/herself in circumstances when it is "known by the judge to have an interest that could be substantially affected by the outcome of the proceeding". As a defendant in the above captioned action Your Honor clearly has an interest that could be substantially affected by the outcome of the proceeding.

Canon 3(C) (1) (d) (i) and (iii) of the Code of Conduct for United States Judges as promulgated by the Judicial Conference of the United States' Advisory Committee on Codes of Conduct states that a judge should disqualify him/herself in instances in which the judge is a party to the proceeding or it is "known by the judge to have an interest that could be substantially affected by the outcome of the proceeding." Once again, as a defendant in the above

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captioned action Your Honor is both a party to the proceeding and clearly has an interest that could be substantially affected by the outcome of the proceeding.

Further, the Judicial Conference's Advisory Opinion No. 103 of the Judicial Conference's Committee on Codes of Conduct states that "a judge must recuse if he or she is named as a defendant in a proceeding that has been assigned to the judge. Canon 3C (1) (d) (i) provides that a judge shall recuse himself or herself when the judge ... is ... a party to the proceeding."

41. Federalist Society 2019. "I deeply admire the American Presidency as a political and constitutional institution. I believe it is, one of the great, and remarkable innovations in our Constitution, and has been one of the most successful features of the Constitution in protecting the liberties of the American people. More than any other branch, it has fulfilled the expectations of the Framers.

Unfortunately, over the past several decades, we have seen steady encroachment on Presidential authority by the other branches of government. This process I think has substantially weakened the functioning of the Executive Branch, to the detriment of the Nation . . .

The grammar school civics class version of our Revolution is that it was a rebellion against monarchical tyranny, and that, in framing our Constitution, one of the main preoccupations of the Founders was to keep the Executive weak. This is misguided. By the time of the Glorious Revolution of 1689, monarchical power was effectively neutered and had begun its steady decline. Parliamentary power was well on its way to supremacy and was effectively in the driver's seat. By the time of the American Revolution, the patriots well understood that their prime antagonist was an overweening Parliament. Indeed, British thinkers came to conceive of Parliament, rather than the people, as the seat of Sovereignty."

42. Federalist Society 2019. "Let me turn now to what I believe has been the prime source of the erosion of separation-of-power principles generally, and Executive Branch authority specifically. I am speaking of the Judicial Branch. . . . *the notion that politics in a free republic is all about the Legislative and Judicial branches protecting liberty by imposing restrictions on the Executive. The premise is that the greatest danger of government becoming oppressive arises from the prospect of Executive excess. So, there is a knee-jerk tendency to see the Legislative and Judicial branches as the good guys protecting society from a rapacious would-be autocrat. This prejudice is wrong-headed and atavistic.*"

43. The custody history of Eva Asensio, born October 14, 2014, exclusively involves a routine, minor post-divorce child custody enforcement petition dated July 5, 2013. The matter could have easily been resolved without delay or costly burdensome legal proceedings under an April 30, 2013 divorce settlement, which was incorporated into a Judgment of Divorce that was ratified by New York State's Supreme Court and Appellate Division (JOD). There are three dates of most import in the DRE case.

44. Neither Congress nor judges have the power to govern fundamental liberties simply because they cannot be prescribed by law, statute, rule, policies, codes or judged by neutral principles. "The neutrality principle" forbids courts to "**mak[e] law or policy out of whole cloth, [or] . . . to impose substantive judicial judgments on disputes not capable of resolution through the application of neutral principles to sharply defined sets of facts.**" Richard H. Fallon, Jr., *Reflections on the Hart and Wechsler Paradigm*, 47 Vand. L. Rev. 953, 976 (1994); neither judges nor Congress can govern, "**at all, no matter what process is provided**" (*Washington v. Glucksberg*, 521 U.S. 702, 719–21, 117 S. Ct. 2258, 2267–68, 138 L. Ed. 2d 772 [1997]); the very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections . . . Nor does our duty to apply the Bill of Rights to assertions of official authority depend

upon our possession of marked competence in the field where the invasion of rights occurs. True, the task of translating the majestic generalities of the Bill of Rights, conceived as part of the pattern of liberal government in the eighteenth century, into concrete restraints on officials dealing with the problems of the twentieth century, is one to disturb self-confidence. **These principles grew in soil which also produced a philosophy that the individual was the center of society, that his liberty was attainable through mere absence of governmental restraints, and that government should be entrusted with few controls and only the mildest supervision over men's affairs.** We must transplant these rights to a soil in which the laissez-faire concept or principle of non-interference has withered..." *W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637, 63 S.Ct. 1178, 1185, 87 L.Ed. 1628 (1943); **The identification and protection of fundamental rights is an enduring part of the judicial duty to interpret the Constitution.** See *Obergefell v. Hodges*, 135 S.Ct. 2584, 2597-98, 192 L.Ed. 2d 609 (2015).

45. Victims of domestic violence are more prone than other crime victims to recant or refuse to cooperate after initially providing information to the police. Recent evidence suggests that 80 to 85 percent of battered women will recant at some point. Tom Linger, *Prosecuting Batterers After Crawford*, 91 VA. L. REV. 747, 768 (2005)

Recantation and failure to appear is "an epidemic in domestic violence cases" Douglas E. Belooof & Joel Shapiro, *Let the Truth Be Told: Proposed Hearsay Exceptions to Admit Domestic Violence Victims' Out of Court Statements As Substantive Evidence*, 11 COLUM. J. GENDER & L. 1, 3(2002)

"[V]ictims of domestic violence are uncooperative in approximately eighty to ninety percent of cases." Lisa Marie De Sanctis, *Bridging the Gap Between the Rules of Evidence & Justice for Victims of Domestic Violence*, 8 Yale J. L. & Feminism, 359, 367-68 (1996)

"The actual behavior of many domestic violence victims, however, is quite different from the public's expectations. Specifically, victims often stay with their abusers, regularly minimize their abuse, recant, request the dismissal of charges against their batterers, refuse to testify for the prosecution, or testify on behalf of their batterers." Jennifer Gentile Long, *Explaining Counterintuitive Victim Behavior in Domestic Violence and Sexual Assault Cases*, 40 PROSECUTOR 12, 14 (Nov./Dec. 2006).

"Feminist legal scholars who argue for victim autonomy frequently ignore the empowerment that is experienced by a witness who testifies truthfully and knows she has the support of the system behind her . . . [t]here is . . . a consensus in the literature that recanting is a significant problem in domestic violence cases. Perjurious testimony poses one of the greatest threats to the judicial system. . . . The predominant response to false statements in domestic violence cases is to turn a blind eye. After all, few prosecutors' offices want to face the criticism generated from prosecuting a domestic violence victim . . . There seems to be a conflict in the law about how to handle the person who decides to lie in a domestic violence case. Prosecutors receive little guidance in handling this difficult scenario; consequently, the uncertainty of when and if a domestic violence victim should be charged leads to capricious consequences for victims who commit perjury . . . Although perjury charges would seem a logical and uncontroversial solution for addressing false statements, the issue becomes murky when false statements arise in domestic violence cases. Expressing frustration over domestic violence cases generally, Judge Atlas commented, "[i]t is simply unacceptable for our process to turn a blind eye to the dangers of such abuse by shrugging our shoulders and saying that nothing can be done within the framework of existing law." False statements in domestic violence cases are a significant problem and considered an epidemic with an estimated 40 to 90 percent of domestic violence victims recanting. Because recanting involves an attempt to withdraw a prior statement, it almost always involves falsity in either the original or latter statement. Turning a blind eye to perjury suggests that every domestic violence victim is incapable of obeying the law or facing the consequences of her decision. If domestic violence victims are treated differently, it should not be because of stereotypes and arbitrary decisions. Rather, legislation is necessary to set the proper parameters of when perjury should be excused. Providing guidance may also help prosecutors proceed with perjury and related charges when warranted. Hopefully, the proposed domestic violence defense to perjury will afford some protection to victims who retract their false statement. Instead of turning a blind eye, perjury in domestic violence cases must be dealt with head-on. Turning A Blind Eye: Perjury In Domestic Violence Cases Njeri Mathis Rutledge. The paper was discussed at the Southeastern and Mid-Atlantic People of Color Scholarship Conferences, and the Lutie A. Lytle Black Women.

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<sup>46</sup> "Across a wide range of jurisdictions, the estimates are that mothers receive primary custody 68-88% of the time, fathers receive primary custody 8-14%, and equal residential custody is awarded in only 2-6% of the cases . . . Are Custody Decisions Biased in Favor of Mothers? Robert Hughes, Jr. Professor of Human Development, University of Illinois at Urbana-Champaign June 9, 2011 Huffington Post. "Figures from the U.S. Census Bureau showed that in 1995, the latest year available, women had residential custody of children in 85 percent of cases and men in 15 percent." Who Gets Custody? Ross Werland, Chicago Tribune April 16, 2000 "One of every six custodial parents (17.5 percent) were fathers." US Census Bureau, Current Population Report, Timothy Grall January 2016.

47. In the US Supreme Court case titled *Olmstead v. United States*, Justice Brandeis wrote, "Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. *If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means -- to declare that the government may commit crimes in order to secure the conviction of a private criminal -- would bring terrible retribution. Against that pernicious doctrine this court should resolutely set its face.*" [Italics added by author.]

Manuel P. Asensio  
Institute of Judicial Conduct, Inc.  
641 Lexington Avenue, Suite 1533  
New York, NY 10022  
(212) 702-8806

OPR<sup>c</sup>

January 21, 2020

**PETITION FOR DISCLOSURE OF US ATTORNEY GENERAL'S POLICIES  
TOWARDS THE DRE<sup>1</sup> AND ORGANIZED FEDERAL JUDICIAL MISCONDUCT**

*The Hon. US Attorney General William P. Barr has identified federal judicial misconduct as a threat to America's constitutional democracy [Note 1]. However, he did not mention that the Hon. John G. Roberts, Jr. has strange [Note 2], wholly undemocratic [Note 3] and absolute control [Note 4] of the US Courts' policies, rules, and codes that govern federal judicial conduct, and their enforcement. This simple fact requires serious deliberation and consideration. It raises fundamental questions about Attorney General Barr's willingness to investigate Chief Justice Roberts's conduct in the coverup of the unauthorized fabrication and use of the so-called "domestic relations [and violence] exception ("DRE)" policy. This policy is an example of malicious "organized federal judicial misconduct."*

Dear Hon. Attorney General Barr:

1. The Hon. US Attorney General William P. Barr's policy towards deliberate federal misconduct has been to use free speech. But he has not deal with the source of the problem: lack of accountability and enforcement. Attorney General Barr did not mention the Hon. John G. Roberts, Jr. (or any other judge) in his speeches at the *Federalist Society* and at *Notre Dame University*. In the *Federalist Society* speech, Attorney General Barr lists 11 reasons that the 40 nationwide injunctions [Note 5] against presidential executive orders are acts of federal judicial misconduct. Yet Attorney General Barr has not filed a single judicial conduct complaint against any of the judges or against Chief Justice Roberts for failure to supervise judicial misconduct. Now Attorney General Barr has before him the verified petition calling on him to make an executive decision to investigate Chief Justice's misconduct in engaging in a coverup. This raises questions about Attorney General Barr's willingness to investigate Chief Justice Roberts's misconduct at the US Judicial Conference in family law and *organized federal judicial misconduct* in general.

2. The facts demonstrate that Chief Justice Roberts is engaging in a cover-up because he knows that the predication that the *domestic relations [and violence] exception [DRE] to federal subject matter jurisdiction is a judicial doctrine of deference to federalism in family law* is false. The facts could not be more plain, simple, or clear. The DRE lacks any foundation in the Constitution [Note 6] or law [Note 7]. The DRE is an unauthorized abrogation of access to justice and due process [Note 8]. It is by definition an act of federally organized deliberate and malicious federal judicial misconduct. The problem for Chief Justice Roberts could not be more politically

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1. The so-called "domestic relations [and violence] exception ("DRE") to federal subject matter jurisdiction."

serious. His support of this false predication is allowing all 50 states to assert jurisdiction over religious and political beliefs, and private noncommercial matters. The magnitude of Chief Justice Roberts's political problem is undeniable.

3. Chief Justice Roberts is allowing all 50 states to profit politically and financially from ruling over liberties that government cannot regulate "*at all, no matter what process is provided*" [Note 9]. These are liberties that have been ruled to be "*far more precious than property rights*" [Note 10]. These are liberties *with which neither public power nor majoritarian views can interfere*, and they are liberties that cannot be codified under neutral principles.<sup>2</sup> Thus, they cannot be governed [Note 11]. They are sacred privacies [Note 12] that are beyond the legitimate powers of government to regulate [Note 13].

4. Chief Justice Roberts's cover-up is a major case. The cover-up of a fabrication that is being used to *eliminate basic human rights* in America. These are rights dating back to the Assize of Clarendon Act of 1166 and the Magna Carta of 1215. The spirit of the Assize of Clarendon Act and the Magna Carta is incorporated into America's laws [Note 14]."

5. A problem of this magnitude, especially when Chief Justice Roberts is presiding over the impeachment, should be alarming to Attorney General Barr. The problem is that Attorney General Barr has not addressed how he plans to fight federal judicial misconduct or how it affects state judicial misconduct, such as in the DRE case. Below are five actions that Attorney General Barr could have done but did not:

- I. Attorney General Barr has declined to tell the president, Congress, and the nation about Chief Justice Roberts's responsibilities for this federal judicial misconduct and advise the president that he has the right to take action against Chief Justice Roberts in any of the 40 nationwide injunctions.
- II. Attorney General Barr declined to take any action against Chief Justice Roberts under the "Judicial Council Reform and Judicial Conduct and Disability Act" of 1980 (US Code, Title 28 Judiciary and Judicial Procedure, Part I: Organization of Courts, Chapter 16, titled "Complaints Against Judges and Judicial Discipline" [§§ 351–364]; hereafter **Conduct Act**) and the Conferences and Councils of Judges Law<sup>3</sup> (**Council Act**) with regard to any of the judicial misconduct listed herein below, as well as in Note 10.

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2. The neutrality principle "forbids courts to 'mak[e] law or policy out of whole cloth, [or] . . . to impose substantive judicial judgments on disputes not capable of resolution through the application of neutral principles to sharply defined sets of facts.'" Richard H. Fallon, Jr., *Reflections on the Hart and Wechsler Paradigm*, 47 V and. L. Rev. 953,976 (1994)

3. The "21st Century Department of Justice Appropriations Authorization Act" was enacted under Pub. L. 107-273 and incorporates the "Judicial Improvements Act of 2002," which enacts USC Title 28 Chapter 16 and amends §§ 331, 332, 372, 375, and 604. For the legislative history, see H.R. Rep. 107-459 (2002).

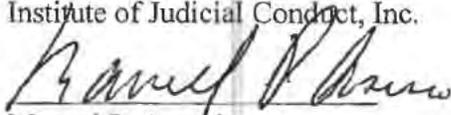
- III. Attorney General Barr has declined to tell the president, Congress, and the nation that, as the presiding judge of the US Judicial Conference, Chief Justice Roberts not only controls the Conduct and Council Acts but also controls the administration of the "Rules Enabling Act of 1934" (US Code [USC] Title 28 §§2071 to §2077) and the Federal Rules of Civil Procedure.
  - IV. Attorney General Barr has declined to tell the president, Congress, and the nation that, as presiding judge, Chief Justice Roberts not only has complete control over the federal judicial conduct apparatus at the US Judicial Conference but also is the chair of the Federal Judicial Center, where he is responsible for the education and training of federal judges and court staff.
  - V. Attorney General Barr has declined to tell the president, Congress, and the nation that, as presiding judge, Chief Justice Roberts controls the creation and enforcement of judicial conduct codes and conduct advisory notices as well as the self-enforcement machinery applicable to the lawbreaking federal judges and his own conduct. He has this control without supervision. This is an absolute truth—a fact that leaves the nation vulnerable to a presiding judge of the US Judicial Conference who is willing to use his control in bad faith.
6. Below are eight of Attorney General Barr's statements concerning federal judicial misconduct that suggest an investigation of Chief Justice Roberts's supervisory conduct is warranted:
- I. Attorney General Barr has remarked that federal judicial misconduct leads to government with "no liberty, just tyranny" [Note 15].
  - II. Attorney General Barr remarked on how federal judges he identified as "so-called progressives" treat politics as their religion—how they claim to be on a holy mission; how they use their political offices to coerce Americans to accept their political nonsense as if it were a legitimate authority over private liberties, morality, and codes of conduct; and how they have justified their official misconduct by believing they are "virtuous people pursuing a deific end" [Note 16].
  - III. Attorney General Barr remarked on how the federal judges do "not act as a co-equal" when they appoint themselves as the arbiters of disputes between Congress and the president. He noted that the framers gave Congress and the president the meanings and motives to fend for themselves, and how the federal judges have used these disagreements to usurp presidential authority. He remarked on how "running to the courts" was a "false promise" that would eliminate the "incentive to debate their differences" and force people to make compromises and political accommodations [Note 17].
  - IV. Attorney General Barr remarked on large city "District Attorneys that style

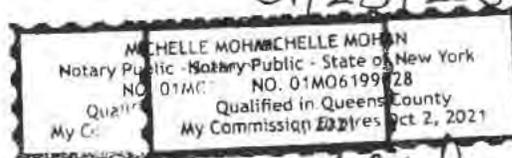
themselves as 'social justice' reformers, who spend their time undercutting the police, letting criminals off the hook, and refusing to enforce the law" [Note 18].

- V. Former Attorney General Jefferson B Sessions remarked that "Judicial activism is . . . a threat to our representative government and the liberty it secures." [Note 19]
- VI. Speaking at the *Wall Street Journal* Chief Executive Officer Council on December 10, 2019, Attorney General Barr remarked on the "use of the criminal law process as a political weapon." This problem is central in the DRE case.
- VII. Attorney General Barr remarked on federal judges who use the law as a "battering ram to break down traditional moral values and to establish moral relativism as a new orthodoxy" and who "take a delight in compelling people to violate their conscience" [Note 20]. Federal judges claim to be on a "holy mission" to excuse their deliberate lawbreaking by claiming to be "virtuous people pursuing a deific end" [Note 21].
- VIII. Attorney General Barr remarked that "restraints could not be handed down from above by philosopher kings. Instead, social order must flow up from the people themselves—freely obeying the dictates of inwardly possessed and commonly shared moral values. And to control willful human beings, with an infinite capacity to rationalize, those moral values must rest on authority independent of men's will—they must flow from a transcendent Supreme Being . . . free government was only suitable and sustainable for a religious people—a people who recognized that there was a transcendent moral order antecedent to both the state and man-made law and who had the discipline to control themselves according to those enduring principles" [Note 22].

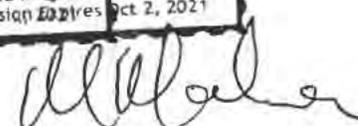
7. The matter of Chief Justice Roberts's conduct in the DRE matter and its cover-up is a major concern to all Americans. The petitioner eagerly anticipates the Attorney General's cultivated decision on his Petition to open an investigation as requested, and a clear policy disclosure on the DRE, and Chief Justice Roberts's conduct and coverup, and organized federal judicial misconduct.

Respectfully submitted,  
Institute of Judicial Conduct, Inc.

  
Manuel P. Asensio  
Founder and Director



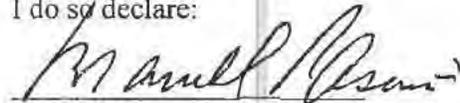
cc: The Hon. John G. Roberts, Jr.



I, Manuel P. Asensio, swear that I am the petitioner in the "*Petition To Investigate Chief Justice Roberts's "DRE" Cover-Up,*" the plaintiff in *Asensio et al. v. DiFiore et al.*, 18 CV-10933

(Abrams) and *Asensio et al. v. Roberts et al.*, 19 CV-03384 (Failla) and the Complainant in five the actions filed under the "Judicial Council Reform and Judicial Conduct and Disability Act of 1980" docketed at the Judicial Council for the Second Circuit and at the US Judicial Conference under numbers 02-19-90052-jm and 02-19-90053-jm. I also swear that the statements contained in this Petition are complete, correct and true to the best of my knowledge, and that any statements I make based upon information and belief are based upon due and fair consideration of all the facts, factors and circumstances that I know to be relevant.

I do so declare:

  
Manuel P. Asensio





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1. In late 2019, in two speeches, Attorney General Barr committed resources to keep an eye out for cases in two areas. One is to protect religious liberties. Two is to protect the Constitution and rule law from "leftist . . . militant secularists . . . so-called progressive" federal judicial that "seem to take a delight in compelling people to violate their conscience [or acquiesce] . . . [that] eliminate laws that reflect traditional moral norms.

One of the speeches was presented at University of Notre Dame Law School and its Nicola Center for Ethics and Culture. The other was presented in honor of 19th Annual Barbara K. Olson Memorial Lecture at the Federalist Society's 2019 National Lawyers Convention. The excerpts in endnotes from a transcript of Attorney General William P. Barr's "Notre Dame 2019" speech posted on the Department of Justice's website under the title of "Attorney General Barr Delivers Remarks to the Law School and the de Nicola Center for Ethics and Culture at the University of Notre Dame, South Bend, IN Friday, October 11, 2019" and from a transcript of Attorney General Barr's "Federalist Society 2019" speech posted on the Department of Justice's website under the title of "Attorney General William P. Barr Delivers the 19th Annual Barbara K. Olson Memorial Lecture at the Federalist Society's 2019 National Lawyers Convention Washington, DC Friday, November 15, 2019."

In the Notre Dame speech, "The Attorney General committed to "set up a task force within the Department with different components that have equities in these areas, including the Solicitor General's Office, the Civil Division, the Office of Legal Counsel, and other offices; be involved in regular meetings on these matters, to keep an eye out for cases or events around the country that discriminate against people of faith, or impinge upon the free exercise of religion, and to be vigilant to resist efforts by the forces of secularization to drive religious viewpoints from the public square and to impinge upon the free exercise of our faith." He gave an assurance you that "as long as he is Attorney General, the Department of Justice will be at the forefront of this effort, ready to fight for the most cherished liberties: the freedom to live according to our faith."

In a third speech at Heritage Foundation on October 2018, former Attorney General Jeff Sessions delivered "Remarks to the Heritage Foundation on Judicial Encroachment." He stated that "Ed Meese[s]. . . leadership in ignit[ed] the jurisprudence of originalism. And now, largely because of your work, for the first time in our lifetimes, we have a majority of justices who adhere to these principles." The former Attorney General remarked that "empathy" is "more akin to emotion, bias, and politics than law" and that "[j]udicial activism is therefore a threat to our representative government and the liberty it secures. We at the DOJ fight against this heresy relentlessly." The former Attorney General remarked, "In effect, activist advocates want judges who will do for them what they have been unable to achieve at the ballot box. It is fundamentally undemocratic. Too many judges believe it is their right, their duty, to act upon their sympathies and policy preferences."

Heritage Foundation 2018. <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-heritage-foundation-judicial-encroachment>

Notre Dame 2019. <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-remarks-law-school-and-de-nicola-center-ethics>

Federalist Society 2019. <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-19th-annual-barbara-k-olson-memorial-lecture>

2. See the *Petition to Investigate Chief Justice Roberts's "Dre" Cover-Up*.

"The U.S. Supreme Court agrees: "It would be very strange if our system of law permitted a judge to act as a grand jury and then try the very persons accused as a result of his investigations. . . . Having been a part of that process, a judge cannot be, in the very nature of things, wholly disinterested in the conviction or acquittal of those accused." In *re Murchison*, 349 US 133, 137 (1955), "A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But the United States system of law has always endeavored to prevent even the probability of unfairness" (*Id.* at 136, emphasis supplied). Thus, the DRE

and Chief Justice Roberts's absolute control of the Conduct, Council, and Rules Acts and the FRCP are a nationwide "very strange" system."

"Under *Murchison*, 349 US 133, 137 (1955), Chief Justice Roberts is the party responsible for the creation of a "very strange" family law scheme in New York State and nationwide. The petitioner's case is an uncomplicated and routine family matter. Only under the protection of the DRE could New York State convert liberties that government cannot regulate "at all, no matter what process is provided" and liberties with which neither public power nor majoritarian views can interfere into a cash cow for its political operatives."

3. See the *Petition to Investigate Chief Justice Roberts's "Dre" Cover-Up*.

"Charles Tilly [See Tilly, C. (2007), *Democracy*, Cambridge: Cambridge University Press] described a way to measure democracy. He gauged it by measuring the "political relations between the state and its citizens." He focused on features that determined if the relation between the state and its citizens was "broad, equal, [and] protected," and if it relied on "mutually binding consultations." By these measures, the position of the presiding judge at the US Judicial Conference held by the Hon. John G. Roberts, Jr. is by far the least democratic, and most dangerous, of any in the US government. Chief Justice Roberts is using this strange position to fabricate family law policies nationwide. He is also using this unknown position to engage in a coverup. Why the coverup? Chief Justice Roberts fabricated his family law policies without notice or authority. Also, his policies allow the use of federal judicial misconduct and usurp Americans' unassailable liberties and freedoms."

4. See the *Petition to Investigate Chief Justice Roberts's "Dre" Cover-Up*.

"By allowing states to interfere with unassailable liberties and freedoms, and denying Americans the right to access federal justice to defend themselves against the states and *any form of questioning or enquiry whatsoever*, Chief Justice Roberts is *eliminating basic human rights* in America. These are rights dating back to the Assize of Clarendon Act of 1166 and the Magna Carta of 1215. The spirit of the Assize of Clarendon Act and the Magna Carta is incorporated into America's laws. . . . We hold here that the right to a speedy trial is as fundamental as any of the rights secured by the Sixth Amendment. That right has its roots at the very foundation of our English law heritage. Its first articulation in modern jurisprudence appears to have been made in **Magna Carta** (1215), wherein it was written, 'We will sell to no man, we will not deny or defer to any man either justice or right'; but evidence of recognition of the right to speedy justice in even earlier times is found in the **Assize of Clarendon** (1166)." *Klopfer v. State of N.C.*, 386 U.S. 213, 223, 87 S.Ct. 988, 993, 18 L.Ed. 2d 1 (1967).

"As the presiding judge of the US Judicial Conference, Chief Justice Roberts not only controls the Conduct and Council Acts but also controls the administration of the "Rules Enabling Act of 1934" (US Code [USC] Title 28 §§2071 to §2077 [**Rules Act**]) and the Federal Rules of Civil Procedure (**FRCP**). This is how Chief Justice Roberts operates the enforcement machine in secret.

"The Conduct, Council, and Rules Acts and the FRCP are intended to be an effective safeguard preventing Chief Justice Roberts from affecting US rights without legal authority. However, legal experts have labeled this idea as "absurd" and as "political nonsense". The DRE is proof that Chief Justice Roberts is using supposedly innocuous "housekeeping" authority to eviscerate the rule of law through exercising "decisions, interred by antipathy" and through deliberately allowing federal judges to "tread on contested fact issues."

"It was Sir John Emerich Edward Dalberg-Alton, (January 10, 1834–June 19, 1902), who in 1887 wrote that "power corrupts, and absolute power corrupts absolutely." He also wrote that "there is no worse heresy than that the office sanctifies the holder of it." He was referring to the medieval popes that instituted a special tribunal with special functionaries, elaborating special laws that were developed, applied, and protected by sanction, both spiritual and temporal. They used this system to inflict penalties of death and damnation on everybody who resisted."

5. Federalist Society 2019. The impact of these judicial intrusions on Executive responsibility have been hugely magnified by another judicial innovation – the nationwide injunction. First used in 1963, and sparsely since

then until recently, these court orders enjoin enforcement of a policy not just against the parties to a case, but against everyone. Since President Trump took office, district courts have issued over 40 nationwide injunctions against the government. By comparison, during President Obama's first two years, district courts issued a total of two nationwide injunctions against the government. Both were vacated by the Ninth Circuit.

It is no exaggeration to say that virtually every major policy of the Trump Administration has been subjected to immediate freezing by the lower courts. No other President has been subjected to such sustained efforts to debilitate his policy agenda.

The legal flaws underlying nationwide injunctions are myriad. Just to summarize briefly, [1] nationwide injunctions have no foundation in courts' Article III jurisdiction or [2] traditional equitable powers; [3] they radically inflate the role of district judges, [4] allowing any one of more than 600 individuals to singlehandedly freeze a policy nationwide, [5] a power that no single appellate judge or Justice can accomplish; [6] they foreclose percolation and reasoned debate among lower courts, [7] often requiring the Supreme Court to decide complex legal issues in an emergency posture with limited briefing; [8] they enable transparent forum shopping, [9] which saps public confidence in the integrity of the judiciary; and [10] they displace the settled mechanisms for aggregate litigation of genuinely nationwide claims, such as Rule 23 class actions.

Of particular relevance to my topic tonight, [11] nationwide injunctions also disrupt the political process. There is no better example than the courts' handling of the rescission of DACA. As you recall, DACA was a discretionary policy of enforcement forbearance adopted by President Obama's administration. The Fifth Circuit concluded that the closely related DAPA policy (along with an expansion of DACA) was unlawful, and the Supreme Court affirmed that decision by an equally divided vote. Given that DACA was *discretionary* — and that four Justices apparently thought a legally indistinguishable policy was *unlawful* — President Trump's administration understandably decided to rescind DACA.

Importantly, however, the President coupled that rescission with negotiations over legislation that would create a lawful and better alternative as part of a broader immigration compromise. In the middle of those negotiations — indeed, on the same day the President invited cameras into the Cabinet Room to broadcast his negotiations with bipartisan leaders from both Houses of Congress — a district judge in the Northern District of California enjoined the rescission of DACA nationwide. Unsurprisingly, the negotiations over immigration legislation collapsed after one side achieved its preferred outcome through judicial means. A humanitarian crisis at the southern border ensued. And just this week, the Supreme Court finally heard argument on the legality of the DACA rescission. The Court will not likely decide the case until next summer, meaning that President Trump will have spent almost his entire first term enforcing President Obama's signature immigration policy, even though that policy is *discretionary* and half the Supreme Court concluded that a legally indistinguishable policy was *unlawful*. That is not how our democratic system is supposed to work.

6. "the domestic relations exception to federal jurisdiction [DRE] is an archaic, historical remnant that should be overruled by the U.S. Supreme Court, and thus, the Article III federal courts have jurisdiction to hear pure marital status cases despite their domestic nature. We call on the Supreme Court to eliminate the domestic relations exception as to all forms of federal jurisdiction.

Steven G. Calabresi & Genna L. Sinel The Same-Sex Marriage Cases and Federal Jurisdiction: On Third-Party Standing and Why the Domestic Relations Exception to Federal Jurisdiction Should Be Overruled

"The current formulation and application of the domestic relations exception [DRE] poses serious problems. From a practical perspective, the domestic relations exception jurisprudence features contradiction, confusion, and inconsistency. From a policy perspective, the domestic relations exception risks foreclosing the invaluable federal forum to family law issues—even fundamental constitutional issues, as in *Elk Grove*. From the statutory interpretation perspective, the only current, expressly-accepted foundation for the domestic relations exception articulated by the Supreme Court requires people to accept the counterintuitive notion that the unambiguous breadth of the statutory

phrase 'all civil actions' should be superseded by Congress's failure to explicitly reject dicta from an 1858 case that provided no reasoning or authority . . . ."

Family Law Is Not "Civil": The Faulty Foundation Of The Domestic Relations Exception To Federal Jurisdiction, Joseph Carroll, winner of the First Place, 2017 Howard C. Schwab Memorial Essay.

Applying the exception to bar federal courts [DRE] from jurisdiction over bona fide federal questions would violate Article III, which endows federal courts with jurisdiction over all federal-question case in law or equity. Additionally, the federal-question jurisdiction statute is best read as reflecting a Congressional intent that federal jurisdiction extends to domestic-relations matters that raise questions of federal law. Federal courts have the authority to resolve important and timely questions of federal law. The domestic-relations exception should not be misconstrued to stand in their way."

"Federal Questions and the Domestic-Relations Exception." The Yale Law Journal, Bradley G. Silverman

"Much domestic relations law fails to present a "controversy" within the meaning of Article III; the consensual nature of many status-altering acts (marriage, consensual divorce, adoption) forecloses a federal dispute-resolution role. But when federal courts hear "cases" arising under federal law, they have full power to exercise both contentious and (what Roman and civil lawyers refer to as) non-contentious jurisdiction. Our non-contentious account explains a range of puzzles, including why Article III courts can issue decrees at the core of the domestic relations exception [DRE] when the matter at hand implicates federal law."

A Non-Contentious Account Of Article III's Domestic Relations Exception James E. Pfander & Emily K. Damrau Notre Dame Law Review

One may question the continued vitality of the domestic relations exception [DRE] given the vast amount of federal court involvement in family law matters. For example, in the recent landmark case *Obergefell v. Hodges*, the Supreme Court held that same-sex individuals have a fundamental right to marry.<sup>11</sup> Moreover, under its Commerce, Full Faith and Credit, and Spending Clause powers, Congress has passed many laws in the area of domestic relations.<sup>12</sup> Of course, being that it is the federal judiciary's "province and duty" to say what the law is,<sup>13</sup> federal courts routinely review these laws. Yet despite the large quantity of family law activity in the federal sphere, the domestic relations exception survives, albeit inconsistently applied in federal courts across the country. . . . The diverse inter- and intra-circuit treatment of the domestic relations exception stems from the different weight courts place on the exception's underlying values: stare decisis, federalism, and access to courts. Some federal courts only apply the exception because it has long been a part of precedent; otherwise, they would overrule it. Other courts apply the exception rigorously, concluding that family law matters are properly left to state courts, elevating federalism ideas. Even still, there are courts that recognize and apply the exception, but believe federalism should always take a back seat to a litigant's right to access a federal forum.

Let's Not Throw Out The Baby With The Bathwater: A Uniform Approach To The Domestic Relations Exception Karla M. Doe, Emory Law Journal

"judicial review is necessary as a constitutional guard against state incursions on federal, constitutional rights. Even state regulation of traditionally state matters cannot run afoul of federal, constitutional limits, and this will at least sometimes require the presence of a federal forum to make such determinations. Thus, regardless of the extent of Congress's role in regulating and shaping American families, the federal judicial role in protecting them must remain intact . . . monolithic view of the family as an exclusively local subject is both misguided and unworkable [DRE]. Guarding personal autonomy against unwarranted intrusion by the state demands a federal forum to ensure that fundamental rights of the family remain secure. Supporting, empowering, and protecting contemporary families and family members is the joint work of local, state, and federal systems.

Is the Family a Federal Question? Meredith Johnson Harbach Washington and Lee Law Review

7. Chief Justice Roberts has fabricated a set of elaborate unethical DRE policies, decisions and rules without notice, an iota of authority, or legal foundation. These acts are a blatantly illegal abrogation of all the most important US citizens' constitutional and legal rights. In fact, Chief Justice Roberts's concealed DRE plans and standards are a violation of the first and most important law governing the chief justice's conduct: Title 28, Chapter 131, USC §2072(b) that specifically prohibits federal judges from creating or implementing policies or rules that "abridge, enlarge or modify any substantive right."

"[T]he domestic-relations exception [DRE] encompasses only cases involving the issuance of a divorce, alimony, or child custody decree.' *Ankenbrandt*, 504 U.S. at 704, 112 S.Ct. 2206 not federal civil rights claims under fundamental liberty, due process or the right to be free from judicial fraud and manufactured crimes. It is not 'compelled by the text of the Constitution or federal statute' but is rather a 'judicially created doctrine' . . . stemming in large measure from misty understandings of English legal history." *Marshall*, 547 U.S. at 299, 126 S.Ct. 1735. [Emphasis added by author]. *Chevalier v. Estate of Barnhart*, 803 F.3d 789, 794 (6th Cir. 2015).

In the 5-4 split opinion of *Barber v. Barber*, the dissent strongly contested, that "[i]t is not in accordance with the design and operation of a [state] Government . . . [to] assume to regulate the domestic relations of society . . . [to take an] inquisitorial authority, [to] enter the habitations and even into the chambers and nurseries of private families, and inquire into and pronounce upon the morals and habits and affections or antipathies of the members of every household. . . . [This is the case] whether [a statute] expressly conferred upon the State courts, or [is] tacitly assumed by them, [and] their example and practice cannot be recognized as sources of authority by the courts of the United States. The origin and the extent of their jurisdiction must be sought in the laws of the United States." See *Barber v. Barber*, 62 US 582 (1858).

In *Cohens v. Virginia*, Chief Justice Marshall famously cautioned: "It is most true that this Court will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction if it should... We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." 6 *Wheat* 264, 404, 5 L.Ed. 257 (1821). "Among longstanding limitations on federal jurisdiction [DRE] otherwise properly exercised are the so-called "domestic relations" and "probate" exceptions. Neither is compelled by the text of the Constitution or federal statute. Both are judicially created doctrines stemming in large measure from misty understandings of English legal history. See, e.g., *Atwood, Domestic Relations Case in Federal Court: Toward a Principled Exercise of Jurisdiction*, 35 *Hastings L.J.* 571, 584-588 (1984); *Spindel v. Spindel*, 283 F.Supp. 797, 802 (E.D.N.Y.1968) (collecting case and commentary revealing vulnerability of historical explanation for domestic relations exception); *Winkler, The Probate Jurisdiction of the Federal Courts*, 14 *Probate L.J.* 77, 125-126, and n. 256 (1997) (describing historical explanation for probate exception as 'an exercise in mythography'). "In the years following Marshall's 1821 pronouncement, courts have sometimes lost sight of his admonition and have rendered decisions expansively interpreting the two exceptions. In *Ankenbrandt v. Richards*, 504 U.S. 689, 112 S.Ct. 2206, 119 L.Ed 2d 468 (1992), this Court reined in the 'domestic relations exception.' Earlier, in *Markham v. Allen*, 326 U.S. 490, 66 S.Ct. 296, 90 L.Ed. 256 (1946), the Court endeavored similarly to curtail the 'probate exception.'" *Marshall v. Marshall*, 547 U.S. 293, 298-99, 126 S. Ct. 1735, 1741, 164 L. Ed. 2d 480 (2006).

8. The DRE violates Article III of the US Constitution established Americans' access to US judicial power; First Amendment's prohibition of laws on the exercise of religious beliefs and that protects freedom of speech and the right to petition the Government for a redress of grievances; the Due Process Clause of the Fifth Amendment, and the Equal Protection Clause of the Fourteenth Amendment, and the Tenth Amendment limits the federal government to powers granted in the US Constitution and reserves all other power to the States and the people.

<https://www.archives.gov/founding-docs/bill-of-rights-transcript#toc-amendment-i>

9. Neither Congress nor judges have the power to govern fundamental liberties simply because they cannot be prescribed by law, statute, rule, policies, codes or judged by neutral principles. "The neutrality principle" forbids courts to "mak[e] law or policy out of whole cloth, [or] . . . to impose substantive judicial judgments on disputes not capable of resolution through the application of neutral principles to sharply defined sets of facts." Richard H. Fallon, Jr., *Reflections on the Hart and Wechsler Paradigm*, 47 *Vand. L. Rev.* 953, 976 (1994).

"The identification and protection of fundamental rights" (see *Obergefell v. Hodges*, 135 S.Ct. 2584, 2597–98, 192 L.Ed. 2d 609 [2015]) and the duty to protect fundamental liberties "deeply rooted in this Nation's history and tradition" (*id.*, at 503, 97 S.Ct., at 1938 [plurality opinion] *Snyder v. Massachusetts*, 291 U.S. 97, 105, 54 S.Ct. 330, 332, 78 L.Ed. 674 [1934]) that are "so rooted in the traditions and conscience of our people as to be ranked as fundamental" and so "implicit in the concept of ordered liberty" that "neither liberty nor justice would exist if they were sacrificed" (*Palko v. Connecticut*, 302 U.S. 319, 325, 326, 58 S.Ct. 149, 152, 82 L.Ed. 288 [1937]) and that neither judges nor Congress can govern, "at all, no matter what process is provided" (*Washington v. Glucksberg*, 521 U.S. 702, 719–21, 117 S. Ct. 2258, 2267–68, 138 L. Ed. 2d 772 [1997]).

"The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures—Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes . . . The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections . . . Nor does our duty to apply the Bill of Rights to assertions of official authority depend upon our possession of marked competence in the field where the invasion of rights occurs. True, the task of translating the majestic generalities of the Bill of Rights, conceived as part of the pattern of liberal government in the eighteenth century, into concrete restraints on officials dealing with the problems of the twentieth century, is one to disturb self-confidence. **These principles grew in soil which also produced a philosophy that the individual was the center of society, that his liberty was attainable through mere absence of governmental restraints, and that government should be entrusted with few controls and only the mildest supervision over men's affairs.** We must transplant these rights to a soil in which the laissez-faire concept or principle of non-interference has withered. . . ." *W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637, 63 S.Ct. 1178, 1185, 87 L.Ed. 1628 (1943).

Under the Due Process Clause of the Fourteenth Amendment, no state shall "deprive any person of life, liberty, or property, without due process of law." The fundamental liberties protected by this clause include most of the rights enumerated in the Bill of Rights. See *Duncan v. Louisiana*, 391 U.S. 145, 147–149, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968). In addition, these liberties extend to certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs. See, e.g., *Eisenstadt v. Baird*, 405 U.S. 438, 453, 92 S.Ct. 1029, 31 L.Ed.2d 349 (1972) and *Griswold v. Connecticut*, 381 U.S. 479, 484–486, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965). **The identification and protection of fundamental rights is an enduring part of the judicial duty to interpret the Constitution.** See *Obergefell v. Hodges*, 135 S.Ct. 2584, 2597–98, 192 L.Ed. 2d 609 (2015).

10. "The Court has frequently emphasized the importance of the family. The rights to conceive and to raise one's children have been deemed 'essential,'<sup>1</sup> 'basic civil rights of man,'<sup>2</sup> and 'rights far more precious . . . than property rights.'<sup>3</sup> 'It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.'<sup>4</sup> The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, the Equal Protection Clause of the Fourteenth Amendment,<sup>5</sup> and the Ninth Amendment."<sup>5</sup> *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 1212–13, 31 L.Ed. 2d 551 (1972):

1 *Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S.Ct. 625, 626, 67 L.Ed. 1042 (1923)

2 *Skinner v. Oklahoma*, 316 U.S. 535, 541, 62 S.Ct. 1110, 1113, 86 L.Ed. 1655 (1942)

3 *May v. Anderson*, 345 U.S. 528, 533, 73 S.Ct. 840, 843, 97 L.Ed. 1221 (1953)

4 *Prince v. Massachusetts*, 321 U.S. 158, 166, 64 S.Ct. 438, 442, 88 L.Ed. 645 (1944)

5 *Griswold v. Connecticut*, 381 U.S. 479, 496, 85 S.Ct. 1678, 14 L.Ed. 2d 510 (1965)

6 *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 1212–13, 31 L.Ed. 2d 551 (1972)

"Neither decisional rule nor statute can displace a fit parent . . . the courts and the law would, under existing constitutional principles, be powerless to supplant parents except for grievous cause or necessity in which the principle is plainly stated and stressed as more significant than other essential constitutional rights . . . The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection. It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children come(s) to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements . . . It is firmly established . . . that . . . wherever possible, the best interests of a child lie in his being nurtured and guided by both of his natural parents . . . Interference with the relationship between the child and the non-custodial parent is 'an act so inconsistent with the best interest of the child that it raises a strong presumption that the offending parent is unfit to act as custodial parent . . . The custodial parent's anger, hostility and attitude toward the non-custodial parent can substantially interfere with her ability to place the needs of the children before her own in fostering a continued relationship with then on custodial parent . . . Furthermore, the custodial parent's conduct can be so egregious as to warrant a change of custody . . . The fostering of a relationship with the noncustodial parent is an important consideration in a custody determination."

*Bennett v. Jeffreys*, 40 N.Y.2d 543, 548, 356 N.E.2d 277, 282-83 (1976) *Daghir v. Daghir*, 92 A.D.2d 191,193,441 N.Y.S.2d 494 (2d Dept. 1981) *Prugh v. Prugh*, 298 A.D.2d 569 (2nd Dept. 2002) *Young v. Young*, 212 A.D.2d 114, 123 (2nd Dept. 1995) *Landau v. Landau*, 214 A.D.2d 541 (2nd Dept. 1995) *Matter of Esterle v. Dellay*, supra, 281 A.D.2d at 726.

"It is firmly established . . . that . . . wherever possible, the best interests of a child lie in his being nurtured and guided by both of his natural parents." *Daghir v. Daghir*, 92 A.D.2d 191,193,441 N.Y.S.2d 494 (2d Dept. 1981).

"Interference with the relationship between the child and the noncustodial parent is 'an act so inconsistent with the best interest of the child that it raises a strong presumption that the offending parent is unfit to act as custodial parent.'" *Prugh v. Prugh*, 298 A.D.2d 569 (2nd Dept. 2002).

"The fostering of a relationship with the noncustodial parent is an important consideration in a custody determination." *Matter of Esterle v. Dellay*, supra, 281 A.D.2d at 726.

"A parent's desire for and right to the companionship, care, custody, and management of his or her children is an important interest that undeniably warrants deference and, absent a powerful countervailing interest, protection. . . [P]arent's interest in accuracy and justice of decision to terminate parental status is an extremely important one." *Lassiter v. Department of Social Services of Durham County, N.C.*, 452 U.S. 18, 101 S.Ct. 2153, 68 L.Ed. 2d 640 (1981).

"The right to be heard is fundamental to our system of justice . . . [and p]arents have an equally fundamental interest in the liberty, care and control of their children." *In re Jung*, 11 N.Y.3d 365 (N.Y., 2008).

"The right of a parent to the custody and control of a minor child is one of our fundamental rights as United States citizens." *Mark N. v. Runaway Homeless Youth Shelter*, 189 Misc. 2d 245, 733 N.Y.S.2d 566 (Fam.Ct. 2001).

11. The due process, rule of law, or any other form of justice cannot exist without neutral principles. The neutrality principle "forbids courts to 'mak[e] law or policy out of whole cloth, [or] . . . to impose substantive judicial judgments on disputes not capable of resolution through the application of neutral principles to sharply defined sets of facts.'" Richard H. Fallon, Jr., *Reflections on the Hart and Wechsler Paradigm*, 47 *V and. L. Rev.* 953,976 (1994)

12. US Supreme Court Louis Dembitz Brandeis and his law partner, Samuel D. Warren, published an article in the *Harvard Law Review* in December 1890 titled "The Right to Privacy." In this article Justice Brandeis wrote that "to protect Americans in their beliefs, their thoughts, their emotions and their sensations . . . against the Government, the right to be let alone [is] the most comprehensive of rights and the right most valued by civilized men." The DRE is the most violent and intolerable offense on the right to "let alone."

13. "The legitimate powers of government extend to such acts only as are injurious to others. But it does me no injury for my neighbor to say there are twenty gods, or no god. It neither picks my pocket nor breaks my leg."

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Thomas Jefferson, *Notes on the State of Virginia, Query XVII*. Published in English in London in 1787. Published anonymously in Paris in 1785.

<sup>14</sup> “We hold here that the right to a speedy trial is as fundamental as any of the rights secured by the Sixth Amendment. That right has its roots at the very foundation of our English law heritage. Its first articulation in modern jurisprudence appears to have been made in **Magna Carta** (1215), wherein it was written, ‘We will sell to no man, we will not deny or defer to any man either justice or right’; but evidence of recognition of the right to speedy justice in even earlier times is found in the **Assize of Clarendon** (1166).” *Klopper v. State of N.C.*, 386 U.S. 213, 223, 87 S.Ct. 988, 993, 18 L.Ed. 2d 1 (1967).

(“And when a robber or murderer or thief or receiver of them has been arrested through the aforesaid oath, if the justices are not about to come speedily enough into the country where they have been taken, let the sheriffs send word to the nearest justice by some well-informed person that they have arrested such men, and the justices shall send back word to the sheriffs informing them where they desire the men to be brought before them; and let the sheriffs bring them before the justices.” English Historical Documents 408 [1953]).

15. Notre Dame 2019. “Men are subject to powerful passions and appetites, and, if unrestrained, are capable of ruthlessly riding roughshod over their neighbors and the community at large. No society can exist without some means for restraining individual rapacity. But, if you rely on the coercive power of government to impose restraints, this will inevitably lead to a government that is too controlling, and you will end up with no liberty, just tyranny. On the other hand, unless you have some effective restraint, you end up with something equally dangerous – licentiousness – the unbridled pursuit of personal appetites at the expense of the common good. This is just another form of tyranny – where the individual is enslaved by his appetites, and the possibility of any healthy community life crumbles. “In the words of Madison, “We have staked our future on the ability of each of us to govern ourselves...” This is really what was meant by “self-government.” It did not mean primarily the mechanics by which we select a representative legislative body. It referred to the capacity of each individual to restrain and govern themselves.”

The “force, fervor, and comprehensiveness of the assault on religion we are experiencing today. This is not decay; it is organized destruction. Secularists, and their allies among the “progressives,” have marshaled all the force of mass communications, popular culture, the entertainment industry, and academia in an unremitting assault on religion and traditional values. These instruments are used not only to affirmatively promote secular orthodoxy, but also drown out and silence opposing voices, and to attack viciously and hold up to ridicule any dissenters. One of the ironies, as some have observed, is that the secular project has itself become a religion, pursued with religious fervor. It is taking on all the trappings of a religion, including inquisitions and excommunication. Those who defy the creed risk a figurative burning at the stake – social, educational, and professional ostracism and exclusion waged through lawsuits and savage social media campaigns . . . today – in the face of all the increasing pathologies – instead of addressing the underlying cause, we have the State in the role of alleviator of bad consequences. We call on the State to mitigate the social costs of personal misconduct and irresponsibility. So[,] the reaction to growing illegitimacy is not sexual responsibility, but abortion. The reaction to drug addiction is safe injection sites. The solution to the breakdown of the family is for the State to set itself up as the ersatz husband for single mothers and the ersatz father to their children. The call comes for more and more social programs to deal with the wreckage. While we think we are solving problems, we are underwriting them. We start with an untrammled freedom and we end up as dependents of a coercive state on which we depend. Interestingly, this idea of the State as the alleviator of bad consequences has given rise to a new moral system that goes hand-in-hand with the secularization of society. It can be called the system of “macro-morality.” It is in some ways an inversion of Christian morality. Christianity teaches a micro-morality. We transform the world by focusing on our own personal morality and transformation. The new secular religion teaches macro-morality. One’s morality is not gauged by their private conduct, but rather on their commitment to political causes and collective action to address social problems.”

“It is hard to resist the constant seductions of our contemporary society. This is where we need grace, prayer, and the help of our church. Beyond this, we must place greater emphasis on the moral education of our children. Education is not vocational training. It is leading our children to the recognition that there is truth and helping them develop the faculties to discern and love the truth and the discipline to live by it. We cannot have a moral renaissance unless we succeed in passing to the next generation our faith and values in full vigor. The times are hostile to this.

Public agencies, including public schools, are becoming secularized and increasingly are actively promoting moral relativism. If ever there was a need for a resurgence of Catholic education – and more generally religiously-affiliated schools – it is today. I think we should do all we can to promote and support authentic Catholic education at all levels. Finally, as lawyers, we should be particularly active in the struggle that is being waged against religion on the legal plane. We must be vigilant to resist efforts by the forces of secularization to drive religious viewpoints from the public square and to impinge upon the free exercise of our faith. I can assure you that, as long as I am Attorney General, the Department of Justice will be at the forefront of this effort, ready to fight for the most cherished of our liberties: the freedom to live according to our faith.

16. Federalist Society 2019. “In any age, the so-called progressives treat politics as their religion. Their holy mission is to use the coercive power of the State to remake man and society in their own image, according to an abstract ideal of perfection. Whatever means they use are therefore justified because, by definition, they are a virtuous people pursuing a deific end. They are willing to use any means necessary to gain momentary advantage in achieving their end, regardless of collateral consequences and the systemic implications. They never ask whether the actions they take could be justified as a general rule of conduct, equally applicable to all sides.

Conservatives, on the other hand, do not seek an earthly paradise. We are interested in preserving over the long run the proper balance of freedom and order necessary for healthy development of natural civil society and individual human flourishing. This means that we naturally test the propriety and wisdom of action under a “rule of law” standard. The essence of this standard is to ask what the overall impact on society over the long run if the action we are taking, or principle we are applying, in a given circumstance was universalized – that is, would it be good for society over the long haul if this was done in all like circumstances?

For these reasons, conservatives tend to have more scruple over their political tactics and rarely feel that the ends justify the means. And this is as it should be, but there is no getting around the fact that this puts conservatives at a disadvantage when facing progressive holy war, especially when doing so under the weight of a hyper-partisan media.”

17. Federalist Society 2019. “I believe has been the prime source of the erosion of separation-of-power principles generally, and Executive Branch authority specifically. I am speaking of the Judicial Branch.

In recent years the Judiciary has been steadily encroaching on Executive responsibilities in a way that has substantially undercut the functioning of the Presidency. The Courts have done this in essentially two ways: First, the Judiciary has appointed itself the ultimate arbiter of separation of powers disputes between Congress and Executive, thus preempting the political process, which the Framers conceived as the primary check on interbranch rivalry. Second, the Judiciary has usurped Presidential authority for itself, either (a) by, under the rubric of “review,” substituting its judgment for the Executive’s in areas committed to the President’s discretion, or (b) by assuming direct control over realms of decision-making that heretofore have been considered at the core of Presidential power.

The Framers did not envision that the Courts would play the role of arbiter of turf disputes between the political branches. As Madison explained in Federalist 51, “the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others.” By giving each the Congress and the Presidency the tools to fend off the encroachments of the others, the Framers believed this would force compromise and political accommodation.

The “constitutional means” to “resist encroachment” that Madison described take various forms. As Justice Scalia observed, the Constitution gives Congress and the President many “clubs with which to beat” each other. Conspicuously absent from the list is running to the courts to resolve their disputes.

That omission makes sense. When the Judiciary purports to pronounce a conclusive resolution to constitutional disputes between the other two branches, it does not act as a co-equal. And, if the political branches believe the courts will resolve their constitutional disputes, they have no incentive to debate their differences through

the democratic process — with input from and accountability to the people. And they will not even try to make the hard choices needed to forge compromise. The long experience of our country is that the political branches can work out their constitutional differences without resort to the courts.

In any event, the prospect that courts can meaningfully resolve interbranch disputes about the meaning of the Constitution is mostly a false promise.”

18. On August 12, 2019, Attorney General remarked at the Grand Lodge Fraternal Order of Police's 64th National Biennial Conference on a “the emergence in some of our large cities of District Attorneys that style themselves as “social justice” reformers, who spend their time undercutting the police, letting criminals off the hook, and refusing to enforce the law. These anti-law enforcement DAs have tended to emerge in jurisdictions where the election is largely determined by the primary. Frequently, these candidates ambush an incumbent DA in the primary with misleading campaigns and large infusions of money from outside groups. Once in office, they have been announcing their refusal to enforce broad swathes of the criminal law.”

19. In a speech at **Heritage Foundation** on October 2018, former US Attorney General Jefferson B. Sessions delivered “Remarks to the Heritage Foundation on Judicial Encroachment.” He remarked that “empathy” is “more akin to emotion, bias, and politics than law” and that “Judicial activism is therefore a threat to our representative government and the liberty it secures. We at the DOJ fight against this heresy relentlessly.” The former Attorney General remarked, “In effect, activist advocates want judges who will do for them what they have been unable to achieve at the ballot box. It is fundamentally undemocratic. Too many judges believe it is their right, their duty, to act upon their sympathies and policy preferences.”

Heritage Foundation 2018. <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-heritage-foundation-judicial-encroachment>.

20. Notre Dame 2019. “A third phenomenon which makes it difficult for the pendulum to swing back is the way law is being used as a battering ram to break down traditional moral values and to establish moral relativism as a new orthodoxy. Law is being used as weapon in a couple of ways. First, either through legislation but more frequently through judicial interpretation, secularists have been continually seeking to eliminate laws that reflect traditional moral norms. At first, this involved rolling back laws that prohibited certain kinds of conduct. Thus, the watershed decision legalizing abortion. And since then, the legalization of euthanasia. The list goes on. More recently, we have seen the law used aggressively to force religious people and entities to subscribe to practices and policies that are antithetical to their faith. The problem is not that religion is being forced on others. The problem is that irreligion and secular values are being forced on people of faith. This reminds me of how some Roman emperors could not leave their loyal Christian subjects in peace but would mandate that they violate their conscience by offering religious sacrifice to the emperor as a god. Similarly, militant secularists today do not have a live and let live spirit - they are not content to leave religious people alone to practice their faith. Instead, they seem to take a delight in compelling people to violate their conscience.”

21. Federalist Society 2019. “In any age, the so-called progressives treat politics as their religion. Their holy mission is to use the coercive power of the State to remake man and society in their own image, according to an abstract ideal of perfection. Whatever means they use are therefore justified because, by definition, they are a virtuous people pursuing a deific end. They are willing to use any means necessary to gain momentary advantage in achieving their end, regardless of collateral consequences and the systemic implications. They never ask whether the actions they take could be justified as a general rule of conduct, equally applicable to all sides.”

22. But what was the source of this internal controlling power? In a free republic, those restraints could not be handed down from above by philosopher kings. Instead, social order must flow up from the people themselves — freely obeying the dictates of inwardly-possessed and commonly-shared moral values. And to control willful human beings, with an infinite capacity to rationalize, those moral values must rest on authority independent of men’s will — they must flow from a transcendent Supreme Being. In short, in the Framers’ view, free government was only suitable and sustainable for a religious people — a people who recognized that there was a transcendent moral order antecedent

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to both the state and man-made law and who had the discipline to control themselves according to those enduring principles. As John Adams put it, "We have no government armed with the power which is capable of contending with human passions unbridled by morality and religion. Our Constitution was made only for a moral and religious people. It is wholly inadequate for the government of any other." As Father John Courtney Murray observed, the American tenet was not that: "Free government is inevitable, only that it is possible, and that its possibility can be realized only when the people as a whole are inwardly governed by the recognized imperatives of the universal moral order."

Manuel P. Asensio  
Institute of Judicial Conduct, Inc.  
641 Lexington Avenue, Suite 1533  
New York, NY 10022  
(212) 708-8806

January 21, 2020

The Honorable William Pelham Barr  
Attorney General of the United States  
US Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

**PETITION TO INVESTIGATE  
CHIEF JUSTICE ROBERTS'S "DRE"<sup>1</sup> COVER-UP**

*The Hon. John G. Roberts, Jr., is engaged in a cover-up of federal judicial misconduct complaints filed in the petitioner's civil rights case against New York State. Chief Justice Roberts is attempting to cover up his leadership role in fabricating federal family law so called "policies" at the US Judicial Conference as its presiding judge. These nationwide "policies" are concealed and unauthorized. Chief Justice Roberts' "policies" are allowing New York State to assert authority over Americans' unassailable liberties and freedoms. Chief Justice Roberts's "policies" allow the state to use this unauthorized authority to execute coercive acts against political views and religious beliefs. US Attorney General Barr has announced his interest in this type of case.<sup>2</sup>*

Dear Hon. Attorney General Barr:

1. Charles Tilly described a way to measure democracy.<sup>3</sup> He gauged it by measuring the "political relations between the state and its citizens." He focused on features that determined if the relation was "broad, equal, [and] protected," and if it relied on "mutually binding consultations." By these measures, the position of the presiding judge at the US Judicial Conference held by the Hon. John G. Roberts, Jr. is by far the least democratic, and most dangerous, of any in the US government. Chief Justice Roberts is using this strange position to fabricate family law policies nationwide. He is also using this unknown position to engage in a coverup. Why the coverup? Chief Justice Roberts fabricated his family law policies without notice or authority. Also, his policies allow the use of federal judicial misconduct and usurp Americans' unassailable liberties and freedoms.

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1. The so-called "domestic relations [and violence] exception ("DRE") to federal subject matter jurisdiction."

2. In his speech at the University of Notre Dame Law School's Nicola Center for Ethics and Culture, US Attorney General Barr announced that he had established a task force within the Department of Justice to "keep an eye out for cases" involving freedom to live according to religious beliefs and to deploy the Department's resources to defend individuals that resist efforts by the forces of secularization to drive religious viewpoints from the public square.

3. Tilly, C. (2007), *Democracy*, Cambridge: Cambridge University Press

2. These unassailable liberties and freedoms are rights that government cannot legitimately regulate “at all, no matter what process is provided” [Note 1]. These are liberties that have been ruled to be “far more precious than property rights” [Note 2]. These are liberties with which neither public power nor majoritarian views can interfere—these are liberties that cannot be codified under neutral principles.<sup>4</sup> Thus, neither judges nor legitimate law can govern them [Note 3]. They are sacred private privileges [Note 4] that belong exclusively to individual Americans that are far beyond the legitimate powers of government to regulate [Note 5].

3. The Hon. US Attorney General William P. Barr [Note 6] has identified organized federal judicial misconduct the primary threat to Americans’ liberty and America’s constitutional democracy.<sup>5</sup> Former US Attorney General Jefferson B. Sessions remarked that “Judicial activism is . . . a threat to our representative government and the liberty it secures.” [Note 7]

4. Attorney General Barr has explicitly remarked that organized federal judicial misconduct leads to government with “no liberty, just tyranny,” [Note 8] and that “free government was only suitable and sustainable for a religious people—a people who recognized that there was a transcendent moral order antecedent to both the state and man-made law and who had the discipline to control themselves according to those enduring principles.” Attorney General Barr remarked on federal judges who use the law as a “battering ram to break down traditional moral values and to establish moral relativism as a new orthodoxy” and who “take a delight in compelling people to violate their conscience” [Note 9]. Federal judges claim to be on a “holy mission” to excuse their deliberate lawbreaking by claiming to be “virtuous people pursuing a deific end” [Note 10]. Attorney General Barr remarked on how federal judges he identified as “so-called progressives” treat politics as their religion—how they claim to be on a holy mission; how they use their political offices to coerce Americans to accept their political nonsense as if it were a legitimate authority over private liberties, morality, and codes of conduct; and how they have justified their official misconduct by believing they are “virtuous people pursuing a deific end” [Note 11].

5. In the Federalist Society speech, Attorney General Barr remarked on the 40 nationwide injunctions [Note 12] against the present administration’s presidential executive orders. He listed 11 so called “legal flaws” that are unmistakable evidence of deliberate and malicious federal judicial misconduct. A review of the issuance of an order to depose the US Secretary of Commerce in the *State of New York et al. v. United States Department of Commerce et al.* case also provides straightforward evidence of federal judicial misconduct. Yet Attorney General Barr has commented on Chief Justice Roberts’s responsibility, or filed, and perhaps not considered filing,

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<sup>4</sup>. The neutrality principle “forbids courts to ‘mak[e] law or policy out of whole cloth, [or] . . . to impose substantive judicial judgments on disputes not capable of resolution through the application of neutral principles to sharply defined sets of facts.’” Richard H. Fallon, Jr., *Reflections on the Hart and Wechsler Paradigm*, 47 *V and. L. Rev.* 953,976 (1994)

<sup>5</sup>. Most recently in Attorney General Barr’s 2019 speeches at the Federalist Society on deliberate and malicious judicial misconduct and at Notre Dame University on militant secularization and religious freedom, and at the *Wall Street Journal* CEO Council on December 10, 2019 on the Mueller investigation’s use of criminal law for political purposes.

judicial conduct complaints against any of the judges. In fact, Attorney General Barr did not mention Chief Justice Roberts at all. Chief Justice Roberts is responsible for regulating federal judicial misconduct and who has absolute control over US Court policies and the rules that govern federal judicial misconduct in his speeches.

6. The evidence shows Chief Justice Roberts has tampered with complaints, witnesses, and evidence and aided and abetted in a cover-up<sup>6</sup> of collusion between the Hon. Robert Allen Katzmann (Chief Judge of the US Court of Appeals for the Second Circuit and the Judicial Council for the Second Circuit), the Hon. Colleen McMahon (Chief Judge of the Southern District of New York), and the New York State defendants, as well as in the fabrication of fictitious official proceedings and documents in the DRE case. The evidence also concerns Chief Justice Roberts's use of the Hon. Anthony J. Scirica (Chair of the US Judicial Conduct Committee) and James C. Duff (Director of the Administrative Office of the US Courts) [**Note 13**] to execute his coverup.

7. This is a petition for Attorney General Barr to open an investigation into Chief Justice Roberts's deliberate misconduct in the petitioner's [**Note 14**] DRE civil rights and judicial conduct cases [**Note 15**]. The DRE case is a serious and genuine nationwide matter. Attorney General Barr is familiar and comfortable with the problem that underlies this petition, as he marked in the Federalist Society speech, "By and large, the Founding generation's view of human nature was drawn from the classical Christian tradition. These practical statesmen understood that individuals, while having the potential for great good, also had the capacity for great evil. Men are subject to powerful passions and appetites, and, if unrestrained, are capable of ruthlessly riding roughshod over their neighbors and the community at large. No society can exist without some means for restraining individual rapacity. But, if you rely on the coercive power of government to impose restraints, this will inevitably lead to a government that is too controlling, and you will end up with no liberty, just tyranny" [**Note 16**]. As Attorney General Barr knows, the only single US official "with unrestrained [capacity to] ruthlessly rid[e] roughshod over [his] neighbors and the community at large" is Chief Justice Roberts, not the president or Congress. It is the chief justice acting as the president judge of the US Judicial Conference.

8. The first step is to clarify Attorney General Barr's policy towards law enforcement towards deliberate and malicious federal judicial misconduct, and the use of the position of presiding judge of the US Judicial Conference as Chief Justice Roberts is using that position nationwide, and specifically in the DRE case, and Chief Justice Roberts's coverup.

#### **ATTORNEY GENERAL BARR'S POLICIES TOWARD ORGANIZED FEDERAL JUDICIAL MISCONDUCT**

9. This petition concerns Chief Justice Roberts's misconduct aimed at allowing New York federal judges in the Southern District of New York and the Second Circuit to protect New York State's policy of manufacturing so-called "domestic violence" crimes as a family law scheme. This policy allows the fabrication of so-called "interim" fees and parenting suspensions. The policy aims to coerce New Yorkers into accepting so-called "progressive" religious and political reforms.

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6. There are documents that prove Chief Justice Roberts deliberately violated Title 28 of the US Code Chapter 16 §§ 359 and 455(b) (iii) as part of his cover-up.

This multilayering of unauthorized policies creates income streams for the members of the New York City Bar Association. The policies also advance New York State's political interests. An example is the New York City Bar Association's militant campaign to impeach and investigate Attorney General Barr "for making conservative political statements" [Note 17]. Meanwhile, every member the NYC Bar Association that practices in family court uses and benefits from these concealed and unauthorized policies.

10. Speaking at the *Wall Street Journal* CEO Council on December 10, 2019, Attorney General Barr remarked on the "use of the criminal law process as a political weapon." In the speeches referenced above, Attorney General Barr remarked on large city "District Attorneys who style themselves as 'social justice' reformers." [Note 18] The manufacturing of criminal indictments as a "social justice" reform policy is the primary issue underlying this petition.

11. Point 9 of Attorney General Barr's 11 points in Note 4 remarks on the damage to "public confidence in the integrity of the judiciary" caused by evidence of federal judicial misconduct in the nationwide injunction matter.

12. Chief Justice Roberts is the presiding judge in the presidential impeachment trial. Chief Justice Roberts sits in that position comfortably understanding the seriousness of the DRE case and knowing that evidence exists showing he is leading a cover-up to protect himself from scandal in the nationwide DRE case.

13. Thus, in support of this petition, the petitioner is requesting that Attorney General Barr disclose his policy on enforcing the law in cases of deliberate and malicious federal judicial misconduct. The petitioner makes this request in a separate petition filed on this day, titled, "*US Attorney General's Policies toward the DRE and Organized Federal Judicial Misconduct*."

#### **CHIEF JUSTICE ROBERTS'S UNDENIABLE MOTIVE FOR ENGAGING IN A COVER-UP**

14. The petitioner's case is against Chief Justice Roberts's unauthorized use of the so-called "*domestic relations [and domestic violence] exception [DRE] to federal subject matter jurisdiction*" in US courts (the DRE case). The DRE lacks any foundation in the Constitution [Note 19] or law [Note 20]. Further, the DRE is an unauthorized denial of Americans' Article III constitutional rights to access US judicial power to protect their rights under the First, Fifth, and Tenth Amendments [Note 21].

15. Inexorable evidence proves that Chief Justice Roberts is promulgating the false predication that the DRE *is a legitimate judicial doctrine of deference to federalism in family law* as an excuse to deny all Americans access to federal justice. Furthermore, Chief Justice Roberts is purposefully doing this so that states can assert jurisdiction and govern religious and political beliefs, and unassailable liberties and freedoms.

16. As Thomas Jefferson wrote, it is only free enquiry that leads to the truth, and only error that needs the support of government [Note 22]. Chief Justice Roberts knows that an enquiry into his conduct will reveal the gravity of his misconduct. Thus, he has chosen to close off enquiry by

engaging in a cover-up of the judicial conduct complaints. Chief Justice Roberts's cover-up of evidence in judicial conduct proceedings is at war with justice and defeats the sole purpose of a trial court and is a perjurious violation of the oath of his office [Note 23].

17. By allowing states to interfere with unassailable liberties and freedoms, and denying Americans the right to access federal justice to defend themselves against the states and *any form of questioning or enquiry whatsoever*, Chief Justice Roberts is *eliminating basic human rights* in America. These are rights dating back to the Assize of Clarendon Act of 1166 and the Magna Carta of 1215. The spirit of the Assize of Clarendon Act and the Magna Carta is incorporated into America's laws [Note 24].

18. The evidence shows that Chief Justice Roberts has been sanctioning and protecting so-called "progressive" policies. In Attorney General Barr's own words, this suggests that Chief Justice Roberts is the leader of the "holy mission . . . to use the coercive power of the State to remake man and society." Chief Justice Roberts's family law policies justify federal judicial misconduct or "whatever means they . . . because, by definition, [Chief Justice Roberts and Judges Katzmann, McMahon, and Scirica] are a virtuous people pursuing a deific end."

19. Therefore, it is Chief Justice Roberts that is allowing New York State (and states nationwide) to use of the criminal law process as a political weapon in family court. The DRE case exposed these concealed and unauthorized. The policies are aimed at interfering with the unassailable liberties in pursuit of so-called "progressive" reforms in New York State. By definition, it is Chief Justice Roberts who sanctions the so-called "ends justify the means" federal judicial misconduct. This is cited in Attorney General Barr's Federalist Society speech [Note 25].

20. The evidence shows Chief Justice Roberts is using his control of the US Judicial Conference to allow New York's federal judges and state judges—county district attorneys who are self-styled "social justice" reformers—to fabricate illegal processes that include (a) the manufacturing of domestic relations violence charges that do not and cannot exist under New York State's Penal Code (b) using these charges in family courts to manufacture so-called "interim" parenting suspension and supervision orders without authority or stated cause because they cannot be codified under the neutrality principle, (c) manufacturing fee orders in favor of political appointees<sup>7</sup> that are summarily collected by unauthorized contempt orders, and (d) the manufacturing of so-called "interim" parenting suspension and supervision orders. In New York State, these so-called "interim" orders are made unreviewable under the law to further coerce Americans to surrender their liberties. This is all done without an iota of legitimate state purpose under the cover of Chief Justice Roberts's DRE policies.

#### **CHIEF JUSTICE ROBERTS'S IMPERMISSIBLE ABSOLUTE CONTROL OF ORGANIZED FEDERAL JUDICIAL MISCONDUCT**

21. The source of the problem is Chief Justice Roberts's absolute control over federal judicial

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7. These are private parties who are forced upon families without respecting the parents' cultural, religious, and political beliefs and without any representation or control. In New York State, particularly New York City, these are allies of the present city administration, which appoints all state judges in family court in the city's five counties.

misconduct. This includes absolute control over his own misconduct, which allows Chief Justice Roberts to privately fabricate DRE rules at the US Judicial Conference. These rules protect state defendants—such as New York State in the petitioner’s DRE case.

22. As shown in **Note 6**, the DRE case has two parts: (a) the US court cases and federal judicial conduct complaints that deal with Chief Justice Roberts’s tampering with witnesses and evidence and (b) the cover-up of these judicial conduct complaints and court cases.

23. The DRE complaints are filed under the “Judicial Council Reform and Judicial Conduct and Disability Act” of 1980 (US Code, Title 28 Judiciary and Judicial Procedure, Part I: Organization of Courts, Chapter 16, titled “Complaints against Judges and Judicial Discipline” [ §§ 351–364]; hereafter **Conduct Act**) [**Note 26**]. The Conduct Act states that any person may file a complaint alleging that a federal judge has engaged in conduct prejudicial to the effective and expeditious administration of justice.

24. The intent of Congress and President James E. Carter (in signing the Conduct Act) was for the American people to an absolute, simple and effective recourse against federal judicial misconduct [**Note 27**]. Further, the Conferences and Councils of Judges Law<sup>8</sup> (**Council Act**) establishes that the presiding judge of the US Judicial Conference is the Chief Justice of the US Supreme Court, Chief Justice Roberts, and grants him exclusive jurisdiction over the Conduct Act.

25. As the presiding judge of the US Judicial Conference, Chief Justice Roberts not only controls the Conduct and Council Acts but also controls the administration of the “Rules Enabling Act of 1934” (US Code [USC] Title 28 §§2071 to §2077 [**Rules Act**]) and the Federal Rules of Civil Procedure (**FRCP**). This is how Chief Justice Roberts operates the enforcement machine in secret.

26. The Conduct, Council, and Rules Acts and the FRCP are intended to be an effective safeguard preventing Chief Justice Roberts from affecting US rights without legal authority. However, legal experts have labeled this idea as “absurd” and as “political nonsense” [**Note 28**]. The DRE is proof that Chief Justice Roberts is using supposedly innocuous “housekeeping” authority to eviscerate the rule of law through exercising “decisions, interred by antipathy” and through deliberately allowing federal judges to “tread on contested fact issues” [**Note 29**].

27. Chief Justice Roberts has absolute control over federal judicial misconduct, including his own, as well as control of the Council and Rule Acts and the FRCP. Historically, this control is described as absolutely corrupt power [**Note 30**].

28. The U.S. Supreme Court agrees: *“It would be very strange if our system of law permitted a judge to act as a grand jury and then try the very persons accused as a result of his investigations. . . . Having been a part of that process, a judge cannot be, in the very nature of things, wholly disinterested in the conviction or acquittal of those accused.”* In *re Murchison*, 349 US 133, 137

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8. The “21st Century Department of Justice Appropriations Authorization Act” was enacted under Pub. L. 107-273 and incorporates the “Judicial Improvements Act of 2002,” which enacts USC Title 28 Chapter 16 and amends §§ 331, 332, 372, 375, and 604. For the legislative history, see H.R. Rep. 107-459 (2002).

(1955), “*A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But the United States system of law has always endeavored to prevent even the probability of unfairness*” (*Id.* at 136, emphasis supplied). Thus, the DRE and Chief Justice Roberts’s absolute control of the Conduct, Council, and Rules Acts and the FRCP are a nationwide “very strange” system.

29. As presiding judge, Chief Justice Roberts controls the creation and enforcement of judicial conduct codes and conduct advisory notices, as well as the machinery of self-enforcement applicable to lawbreaking federal judges and his own conduct [Note 31]. He has this control without supervision. This is an absolute truth—a fact that leaves the nation vulnerable to a presiding judge of the US Judicial Conference who is willing to use his control of the Conference Act, Conduct Act, Rules Act, and FRCP guidelines in bad faith.

30. Chief Justice Roberts not only has total control over the federal judicial conduct apparatus at the US Judicial Conference but also is the chair of the Federal Judicial Center, where he is responsible for the education and training of federal judges and court staff.

#### **CHIEF JUSTICE ROBERTS’S CONCERTED AND COORDINATED BAD FAITH ACTS WITH NEW YORK STATE’S CHIEF JUDGE**

31. New York State Chief Judge Janet Marie DiFiore controls New York State’s Unified Court System’s internal judicial conduct apparatus. Along with the state’s governor, Judge DiFiore controls the New York State Commission on Judicial Conduct. Furthermore, just as Chief Justice Roberts does at the Federal Judicial Center, Judge DiFiore controls the education and training of judges and court staff in New York State [Note 32]. She also controls both the state’s rulemaking and constitutional machinery. This gives Judge DiFiore the ability to close off all remedies available to the petitioner to protect himself and his family from unauthorized rulemaking [Note 33].

32. Thus, Chief Justice Roberts, acting as the presiding judge of the US Judicial Conference, and Judge DiFiore, acting as chair of New York State’s Administrative Board of the Courts, can fabricate and have fabricated absolute power for themselves without any controls, accountability, or supervision over policy, court rules, policing, and judicial misconduct in US and New York State courts applicable to the DRE.

33. Under the DRE, Chief Justice Roberts and Judge DiFiore are able to create interim suspensions, supervision and fee orders, and fictitious crimes that cannot and do not exist under law. They manufacture crimes against parents and take children out of healthy family units under unauthorized so-called “interim” suspensions that interfere with children’s religious and moral education. Together, Chief Justice Roberts and Judge DiFiore have fabricated a political system without a legal process that is entirely devoid of neutrality principles in New York family courts.

34. One of the central issues in the DRE in New York State is the relationship between Judge Katzmann and Chief Justice Roberts. Judge Katzmann is Chief Justice Roberts’s appointed member of his Executive and Judiciary Committees at the US Judicial Conference, and he acts as

Chief Justice Roberts's chief strategist and deputy in Congress [Note 34]. In his own words, Judge Katzmman proclaims he likes to "soak and poke" in Congress's legislative business. Furthermore, he declares he likes to "marinate" himself in what he calls the "inter-branch understanding." Judge Katzmman is not what Chief Justice Roberts has called an apolitical "neutral umpire." The evidence indicates that Chief Justice Roberts has allowed Judge Katzmman to use his judgeship to advance his insidious leftist political agenda [Note 35].

35. Judge Katzmman is a central figure in the DRE judicial conduct case; this case commenced as a conduct complaint against the Hon. Ronnie Abrams. The moment it became clear to the petitioner that Judge Katzmman had no interest in resolving the Abrams complaint or in fulfilling his legal obligation to review the judicial conduct complaint expeditiously in any way, the petitioner filed a complaint against Judge Katzmman [Note 36]. The petitioner immediately served notice on Chief Justice Roberts and requested for Chief Justice Roberts to assume control over the process of investigating and resolving the dispute [Note 37].

36. The petitioner has pleaded with Judge Abrams to recuse herself. The petitioner even pled with Judge Abrams based on the closeness of her own family's relationship as well as her brother's close relationship with Floyd Abrams, their father. Judges McMahon and DiFiore espouse great love for family—its importance in their daily lives—yet Judges McMahon, Abrams, and DiFiore united against the DRE case and ignored the unprecedented cruelties the DRE causes for millions of Americans every year [Note 38].

#### CHIEF JUSTICE ROBERTS'S COVER-UP

37. Two undeniable pieces of evidence prove Chief Justice Roberts's leadership role in directing the cover-up of the DRE case and DRE federal judicial conduct complaints. Alternatively, others are shielding Chief Justice Roberts and using his official positions under a blanket agreement to protect the DRE he himself put in place.

38. First, documents exist in the record<sup>9</sup> proving Chief Justice Roberts deliberately violated his mandatory obligation to restrict Judges Katzmman and McMahon from appearing at the US Judicial Conference and the US Judicial Council for the Second Circuit. Chief Justice Roberts's obligation is to comply with, and assure compliance with, Title 28 of the US Code Chapter 16 § 359 [Note 39], which requires Judges Katzmman and McMahon to be restricted from appearing at the US Judicial Conference and the US Judicial Council for the Second Circuit until the DRE case is resolved. The clear, simple, undeniable reason for US Code Chapter 16 § 359 is to protect evidence and documents in judicial conduct proceedings.

39. Second, documents exist in the record<sup>10</sup> proving Chief Justice Roberts sanctioned Judges Scirica and Katzmman for arranging for Judge Abrams's protection so she could violate Title 28

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9. *Asensio et al. v. DiFiore et al.* Case 1:18-cv-10933-RA Document 94 Filed 06/12/19 Page 1 of 2; and Document 94-1 Filed 06/12/19 Page 1 of 3. [Mandatory Restrictions]

10. *Asensio et al. v. DiFiore et al.* Case 1:18-cv-10933-RA Document 53 Filed 04/17/19 Page 1 of 3 [Mandatory Recusal]

USC Section 455(b) (iii); Canon 3(C) (1) (d) (i) and (iii) of the Code of Conduct for U.S. Judges; and the US Judicial Conference's Advisory Opinion No. 103, which mandates as a matter of black letter law that she recuse herself from the DRE case. Instead, Chief Justice Roberts and Judge Katzmann allowed Judge Abrams to violate these laws so she could continue to deliberately mishandle the DRE case [Note 40].

## CONCLUSION

40. Attorney General William Barr remarked on the constitutional importance of the executive branch to the success of the American Republic [Note 41]. If the Office of the American Presidency cannot defend its executive powers against Chief Justice Roberts's federal judicial misconduct policies [Note 42], how can any American family protect freedoms of religion, speech, political liberty, and family unity under Chief Justice Roberts's double cover-up of his concealed DRE lobbying and concealed DRE rules?

41. Chief Justice Roberts is the only individual in the US Courts, or at the US Judicial Conference, who can resolve the federal judicial conduct complaints in *Asensio et al. v. DiFiore et al.* and *Asensio et al. v. Roberts et al.* Only two docket numbers have been assigned to these cases: numbers 02-19-90052-jm and 02-19-90053-jm. Chief Justice Roberts and Judges Scirica and Katzmann have simply taken it upon themselves not to issue docket numbers for the other complaints in the file. Chief Justice Roberts's tampering with the docket of the petitioner's complaints must be resolved; it is patently unfair and an act of lawbreaking.

42. Under *Murchison*, 349 US 133, 137 (1955), Chief Justice Roberts is the party responsible for the creation of a "very strange" family law scheme in New York State and nationwide. The petitioner's case is an uncomplicated and routine family matter [None 43]. Only under the protection of the DRE could New York State convert liberties that government cannot regulate "at all, no matter what process is provided" and liberties with which neither public power nor majoritarian views can interfere [Note 44] into a cash cow for its political operatives.

43. Under the DRE, state judges wrongly "act as a grand jury and then try the very persons accused [without codified neutral principles or authorized charges] as a result of his investigations" and make themselves gatekeepers to keep out issues one party tries to raise, only to then decide in the other party's favor. They manufacture criminal charges [Note 45] to enforce a gender bias [Note 46] in determining child custody cases nationwide. However, the petitioner's DRE case is focused on Chief Justice Roberts's deliberate lawbreaking [Note 47] (which is clearly set forth herein), not only on gender bias.

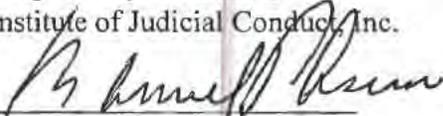
44. Chief Justice Roberts's DRE policies inflict unheard-of cruelties on Americans who have done no wrong, violated no law, nor imposed themselves on any other person's rights. This is precisely why Chief Justice Roberts is tampering with witnesses and evidence. This is Chief Justice Roberts's motive for engaging in a cover-up. This is the reason and the motive underlying Chief Justice Roberts's decision to violate Title 28 of the US Code Chapter 16 §§ 359 and 455(b) (iii) as well as tamper with evidence in, and interfere with, judicial conduct complaints as part of his cover-up.

45. Chief Justice Roberts is concealing the DRE matter from the American people, the president, and Congress. This is a nationwide cover-up of a matter that touches every American by the judge presiding over a presidential impeachment trial. Under these conditions, the petitioner respectfully request that Attorney General Barr give them notice. Otherwise, the Department of Justice should immediately and publicly notify the president and Congress.

46. According to Tilly, the goodness and fairness of government can be measured by the openness of the relationship between government officials and the people, and the degree of mutual binding consultations. Chief Justice Roberts erred terribly by allowing the federal judges to join with the state judges against the people's most cherished freedoms and liberties without an iota of democracy, authority, or consultation, or notice.

47. The petitioner eagerly anticipates the opportunity to discuss this matter further in person.

Respectfully submitted,  
Institute of Judicial Conduct, Inc.

  
Manuel P. Asensio  
Founder and Director

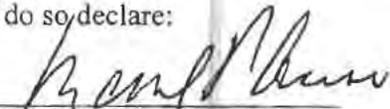
  
**SAMUEL T RICHMAN**  
Notary Public, State of New York  
No. 01RI6339167  
Qualified in Kings County  
Commission Expires March 28, 2020

cc: The Hon. John G. Roberts, Jr.

1/21/20

I, Manuel P. Asensio, swear that I am the petitioner in the "*Petition To Investigate Chief Justice Roberts's "DRE" Cover-Up,*" the plaintiff in *Asensio et al. v. DiFiore et al.*, 18 CV-10933 (Abrams) and *Asensio et al. v. Roberts et al.*, 19 CV-03384 (Failla) and the Complainant in five the actions filed under the "Judicial Council Reform and Judicial Conduct and Disability Act of 1980" docketed at the Judicial Council for the Second Circuit and at the US Judicial Conference under numbers 02-19-90052-jm and 02-19-90053-jm. I also swear that the statements contained in this Petition are complete, correct and true to the best of my knowledge, and that any statements I make based upon information and belief are based upon due and fair consideration of all the facts, factors and circumstances that I know to be relevant.

I do so declare:

  
Manuel P. Asensio

  
**SAMUEL T RICHMAN**  
Notary Public, State of New York  
No. 01RI6339167  
Qualified in Kings County  
Commission Expires March 28, 2020

January 21, 2020

1/21/20

1. Neither Congress nor judges have the power to govern fundamental liberties simply because they cannot be prescribed by law, statute, rule, policies, codes or judged by neutral principles. “The neutrality principle” forbids courts to “mak[e] law or policy out of whole cloth, [or] . . . to impose substantive judicial judgments on disputes not capable of resolution through the application of neutral principles to sharply defined sets of facts.” Richard H. Fallon, Jr., *Reflections on the Hart and Wechsler Paradigm*, 47 Vand. L. Rev. 953, 976 (1994).

“The identification and protection of fundamental rights” (see *Obergefell v. Hodges*, 135 S.Ct. 2584, 2597–98, 192 L.Ed. 2d 609 [2015]) and the duty to protect fundamental liberties “deeply rooted in this Nation’s history and tradition” (*id.*, at 503, 97 S.Ct., at 1938 [plurality opinion] *Snyder v. Massachusetts*, 291 U.S. 97, 105, 54 S.Ct. 330, 332, 78 L.Ed. 674 [1934]) that are “so rooted in the traditions and conscience of our people as to be ranked as fundamental” and so “implicit in the concept of ordered liberty” that “neither liberty nor justice would exist if they were sacrificed” (*Palko v. Connecticut*, 302 U.S. 319, 325, 326, 58 S.Ct. 149, 152, 82 L.Ed. 288 [1937]) and that neither judges nor Congress can govern, “at all, no matter what process is provided” (*Washington v. Glucksberg*, 521 U.S. 702, 719–21, 117 S. Ct. 2258, 2267–68, 138 L. Ed. 2d 772 [1997]).

“The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures—Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes . . . The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One’s right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections . . . Nor does our duty to apply the Bill of Rights to assertions of official authority depend upon our possession of marked competence in the field where the invasion of rights occurs. True, the task of translating the majestic generalities of the Bill of Rights, conceived as part of the pattern of liberal government in the eighteenth century, into concrete restraints on officials dealing with the problems of the twentieth century, is one to disturb self-confidence. **These principles grew in soil which also produced a philosophy that the individual was the center of society, that his liberty was attainable through mere absence of governmental restraints, and that government should be entrusted with few controls and only the mildest supervision over men’s affairs.** We must transplant these rights to a soil in which the laissez-faire concept or principle of non-interference has withered. . . .” *W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637, 63 S.Ct. 1178, 1185, 87 L.Ed. 1628 (1943).

Under the Due Process Clause of the Fourteenth Amendment, no state shall “deprive any person of life, liberty, or property, without due process of law.” The fundamental liberties protected by this clause include most of the rights enumerated in the Bill of Rights. See *Duncan v. Louisiana*, 391 U.S. 145, 147–149, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968). In addition, these liberties extend to certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs. See, e.g., *Eisenstadt v. Baird*, 405 U.S. 438, 453, 92 S.Ct. 1029, 31 L.Ed.2d 349 (1972) and *Griswold v. Connecticut*, 381 U.S. 479, 484–486, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965). **The identification and protection of fundamental rights is an enduring part of the judicial duty to interpret the Constitution.** See *Obergefell v. Hodges*, 135 S.Ct. 2584, 2597–98, 192 L.Ed. 2d 609 (2015).

2. “The Court has frequently emphasized the importance of the family. The rights to conceive and to raise one’s children have been deemed “essential,”<sup>1</sup> “basic civil rights of man,”<sup>2</sup> and “rights far more precious . . . than property rights.”<sup>3</sup> It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.<sup>4</sup> The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, the Equal Protection Clause of the Fourteenth Amendment,<sup>2</sup> and the Ninth Amendment.” 5 *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 1212–13, 31 L.Ed. 2d 551 (1972):

<sup>1</sup> *Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S.Ct. 625, 626, 67 L.Ed. 1042 (1923)

- 2 *Skinner v. Oklahoma*, 316 U.S. 535, 541, 62 S.Ct. 1110, 1113, 86 L.Ed. 1655 (1942)  
3 *May v. Anderson*, 345 U.S. 528, 533, 73 S.Ct. 840, 843, 97 L.Ed. 1221 (1953)  
4 *Prince v. Massachusetts*, 321 U.S. 158, 166, 64 S.Ct. 438, 442, 88 L.Ed. 645 (1944)  
5 *Griswold v. Connecticut*, 381 U.S. 479, 496, 85 S.Ct. 1678, 14 L.Ed. 2d 510 (1965)  
6 *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 1212-13, 31 L.Ed. 2d 551 (1972)

"Neither decisional rule nor statute can displace a fit parent . . . the courts and the law would, under existing constitutional principles, be powerless to supplant parents except for grievous cause or necessity in which the principle is plainly stated and stressed as more significant than other essential constitutional rights . . . The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection. It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children come(s) to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements . . . It is firmly established . . . that . . . wherever possible, the best interests of a child lie in his being nurtured and guided by both of his natural parents . . . Interference with the relationship between the child and the non-custodial parent is 'an act so inconsistent with the best interest of the child that it raises a strong presumption that the offending parent is unfit to act as custodial parent . . . The custodial parent's anger, hostility and attitude toward the non-custodial parent can substantially interfere with her ability to place the needs of the children before her own in fostering a continued relationship with then on custodial parent . . . Furthermore, the custodial parent's conduct can be so egregious as to warrant a change of custody . . . The fostering of a relationship with the noncustodial parent is an important consideration in a custody determination."

*Bennett v. Jeffreys*, 40 N.Y.2d 543, 548, 356 N.E.2d 277, 282-83 (1976) *Daghir v. Daghir*, 92 A.D.2d 191, 193, 441 N.Y.S.2d 494 (2d Dept. 1981) *Prugh v. Prugh*, 298 A.D.2d 569 (2nd Dept. 2002) *Young v. Young*, 212 A.D.2d 114, 123 (2nd Dept. 1995) *Landau v. Landau*, 214 A.D.2d 541 (2nd Dept. 1995) *Matter of Esterle v. Dellay*, supra, 281 A.D.2d at 726.

"It is firmly established . . . that . . . wherever possible, the best interests of a child lie in his being nurtured and guided by both of his natural parents." *Daghir v. Daghir*, 92 A.D.2d 191, 193, 441 N.Y.S.2d 494 (2d Dept. 1981).

"Interference with the relationship between the child and the noncustodial parent is 'an act so inconsistent with the best interest of the child that it raises a strong presumption that the offending parent is unfit to act as custodial parent.'" *Prugh v. Prugh*, 298 A.D.2d 569 (2nd Dept. 2002).

"The fostering of a relationship with the noncustodial parent is an important consideration in a custody determination." *Matter of Esterle v. Dellay*, supra, 281 A.D.2d at 726.

"A parent's desire for and right to the companionship, care, custody, and management of his or her children is an important interest that undeniably warrants deference and, absent a powerful countervailing interest, protection. . . [P]arent's interest in accuracy and justice of decision to terminate parental status is an extremely important one." *Lassiter v. Department of Social Services of Durham County, N.C.*, 452 U.S. 18, 101 S.Ct. 2153, 68 L.Ed. 2d 640 (1981).

"The right to be heard is fundamental to our system of justice . . . [and p]arents have an equally fundamental interest in the liberty, care and control of their children." *In re Jung*, 11 N.Y.3d 365 (N.Y., 2008).

"The right of a parent to the custody and control of a minor child is one of our fundamental rights as United States citizens." *Mark N. v. Runaway Homeless Youth Shelter*, 189 Misc. 2d 245, 733 N.Y.S.2d 566 (Fam.Ct. 2001).

3. The due process, rule of law, or any other form of justice cannot exist without neutral principles. The neutrality principle "forbids courts to 'mak[e] law or policy out of whole cloth, [or] . . . to impose substantive judicial judgments on disputes not capable of resolution through the application of neutral principles to sharply defined sets of facts.'" Richard H. Fallon, Jr., *Reflections on the Hart and Wechsler Paradigm*, 47 *V and L. Rev.* 953,976 (1994)

4. US Supreme Court Louis Dembitz Brandeis and his law partner, Samuel D. Warren, published an article in the *Harvard Law Review* in December 1890 titled "**The Right to Privacy**." In this article Justice Brandeis wrote

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that "to protect Americans in their beliefs, their thoughts, their emotions and their sensations . . . against the Government, the right to be let alone [is] the most comprehensive of rights and the right most valued by civilized men." The DRE is the most violent and intolerable offense on the right to "let alone."

5. "The legitimate powers of government extend to such acts only as are injurious to others, But it does me no injury for my neighbor to say there are twenty gods, or no god. It neither picks my pocket nor breaks my leg." Thomas Jefferson, *Notes on the State of Virginia. Query XVII*. Published in English in London in 1787. Published anonymously in Paris in 1785.

6. In late 2019, in two speeches, Attorney General Barr committed resources to keep an eye out for cases in two areas. One is to protect religious liberties. Two is to protect the Constitution and rule law from "leftist . . . militant secularists . . . so-called progressive" federal judicial that "seem to take a delight in compelling people to violate their conscience [or acquiesce] . . . [that] eliminate laws that reflect traditional moral norms.

One of the speeches was presented at University of Notre Dame Law School and its Nicola Center for Ethics and Culture. The other was presented in honor of 19th Annual Barbara K. Olson Memorial Lecture at the Federalist Society's 2019 National Lawyers Convention. The excerpts in endnotes from a transcript of Attorney General William P. Barr's "Notre Dame 2019" speech posted on the Department of Justice's website under the title of "Attorney General Barr Delivers Remarks to the Law School and the de Nicola Center for Ethics and Culture at the University of Notre Dame, South Bend, IN Friday, October 11, 2019" and from a transcript of Attorney General Barr's "Federalist Society 2019" speech posted on the Department of Justice's website under the title of "Attorney General William P. Barr Delivers the 19th Annual Barbara K. Olson Memorial Lecture at the Federalist Society's 2019 National Lawyers Convention Washington, DC Friday, November 15, 2019."

In the Notre Dame speech, "The Attorney General committed to "set up a task force within the Department with different components that have equities in these areas, including the Solicitor General's Office, the Civil Division, the Office of Legal Counsel, and other offices; be involved in regular meetings on these matters, to keep an eye out for cases or events around the country that discriminate against people of faith, or impinge upon the free exercise of religion, and to be vigilant to resist efforts by the forces of secularization to drive religious viewpoints from the public square and to impinge upon the free exercise of our faith." He gave an assurance you that "as long as he is Attorney General, the Department of Justice will be at the forefront of this effort, ready to fight for the most cherished liberties: the freedom to live according to our faith."

Notre Dame 2019. <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-remarks-law-school-and-de-nicola-center-ethics>

Federalist Society 2019. <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-19th-annual-barbara-k-olson-memorial-lecture>

7. In a speech at **Heritage Foundation** on October 2018, former US Attorney General Jefferson B. Sessions delivered "Remarks to the Heritage Foundation on Judicial Encroachment." He remarked that "empathy" is "more akin to emotion, bias, and politics than law" and that "Judicial activism is therefore a threat to our representative government and the liberty it secures. We at the DOJ fight against this heresy relentlessly." The former Attorney General remarked, "In effect, activist advocates want judges who will do for them what they have been unable to achieve at the ballot box. It is fundamentally undemocratic. Too many judges believe it is their right, their duty, to act upon their sympathies and policy preferences."

Heritage Foundation 2018. <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-heritage-foundation-judicial-encroachment>

8. Notre Dame 2019. "Men are subject to powerful passions and appetites, and, if unrestrained, are capable of ruthlessly riding roughshod over their neighbors and the community at large. No society can exist without some means for restraining individual rapacity. But, if you rely on the coercive power of government to impose restraints,

this will inevitably lead to a government that is too controlling, and you will end up with no liberty, just tyranny. On the other hand, unless you have some effective restraint, you end up with something equally dangerous – licentiousness – the unbridled pursuit of personal appetites at the expense of the common good. This is just another form of tyranny – where the individual is enslaved by his appetites, and the possibility of any healthy community life crumbles. “In the words of Madison, “We have staked our future on the ability of each of us to govern ourselves...” This is really what was meant by “self-government.” It did not mean primarily the mechanics by which we select a representative legislative body. It referred to the capacity of each individual to restrain and govern themselves.”

The “force, fervor, and comprehensiveness of the assault on religion we are experiencing today. This is not decay; it is organized destruction. Secularists, and their allies among the “progressives,” have marshaled all the force of mass communications, popular culture, the entertainment industry, and academia in an unremitting assault on religion and traditional values. These instruments are used not only to affirmatively promote secular orthodoxy, but also drown out and silence opposing voices, and to attack viciously and hold up to ridicule any dissenters. One of the ironies, as some have observed, is that the secular project has itself become a religion, pursued with religious fervor. It is taking on all the trappings of a religion, including inquisitions and excommunication. Those who defy the creed risk a figurative burning at the stake – social, educational, and professional ostracism and exclusion waged through lawsuits and savage social media campaigns . . . today – in the face of all the increasing pathologies – instead of addressing the underlying cause, we have the State in the role of alleviator of bad consequences. We call on the State to mitigate the social costs of personal misconduct and irresponsibility. So[,] the reaction to growing illegitimacy is not sexual responsibility, but abortion. The reaction to drug addiction is safe injection sites. The solution to the breakdown of the family is for the State to set itself up as the ersatz husband for single mothers and the ersatz father to their children. The call comes for more and more social programs to deal with the wreckage. While we think we are solving problems, we are underwriting them. We start with an untrammelled freedom and we end up as dependents of a coercive state on which we depend. Interestingly, this idea of the State as the alleviator of bad consequences has given rise to a new moral system that goes hand-in-hand with the secularization of society. It can be called the system of “macro-morality.” It is in some ways an inversion of Christian morality. Christianity teaches a micro-morality. We transform the world by focusing on our own personal morality and transformation. The new secular religion teaches macro-morality. One’s morality is not gauged by their private conduct, but rather on their commitment to political causes and collective action to address social problems.”

“It is hard to resist the constant seductions of our contemporary society. This is where we need grace, prayer, and the help of our church. Beyond this, we must place greater emphasis on the moral education of our children. Education is not vocational training. It is leading our children to the recognition that there is truth and helping them develop the faculties to discern and love the truth and the discipline to live by it. We cannot have a moral renaissance unless we succeed in passing to the next generation our faith and values in full vigor. The times are hostile to this. Public agencies, including public schools, are becoming secularized and increasingly are actively promoting moral relativism. If ever there was a need for a resurgence of Catholic education – and more generally religiously-affiliated schools – it is today. I think we should do all we can to promote and support authentic Catholic education at all levels. Finally, as lawyers, we should be particularly active in the struggle that is being waged against religion on the legal plane. We must be vigilant to resist efforts by the forces of secularization to drive religious viewpoints from the public square and to impinge upon the free exercise of our faith. I can assure you that, as long as I am Attorney General, the Department of Justice will be at the forefront of this effort, ready to fight for the most cherished of our liberties: the freedom to live according to our faith.”

9. Notre Dame 2019. “A third phenomenon which makes it difficult for the pendulum to swing back is the way law is being used as a battering ram to break down traditional moral values and to establish moral relativism as a new orthodoxy. Law is being used as weapon in a couple of ways. First, either through legislation but more frequently through judicial interpretation, secularists have been continually seeking to eliminate laws that reflect traditional moral norms. At first, this involved rolling back laws that prohibited certain kinds of conduct. Thus, the watershed decision legalizing abortion. And since then, the legalization of euthanasia. The list goes on. More recently, we have seen the law used aggressively to force religious people and entities to subscribe to practices and policies that are antithetical to their faith. The problem is not that religion is being forced on others. The problem is that irreligion and secular values are being forced on people of faith. This reminds me of how some Roman emperors could not leave their loyal Christian subjects in peace but would mandate that they violate their conscience by offering religious sacrifice to the

emperor as a god. Similarly, militant secularists today do not have a live and let live spirit - they are not content to leave religious people alone to practice their faith. Instead, they seem to take a delight in compelling people to violate their conscience."

10. Federalist Society 2019. "In any age, the so-called progressives treat politics as their religion. Their holy mission is to use the coercive power of the State to remake man and society in their own image, according to an abstract ideal of perfection. Whatever means they use are therefore justified because, by definition, they are a virtuous people pursuing a deific end. They are willing to use any means necessary to gain momentary advantage in achieving their end, regardless of collateral consequences and the systemic implications. They never ask whether the actions they take could be justified as a general rule of conduct, equally applicable to all sides."

11. Federalist Society 2019. "In any age, the so-called progressives treat politics as their religion. Their holy mission is to use the coercive power of the State to remake man and society in their own image, according to an abstract ideal of perfection. Whatever means they use are therefore justified because, by definition, they are a virtuous people pursuing a deific end. They are willing to use any means necessary to gain momentary advantage in achieving their end, regardless of collateral consequences and the systemic implications. They never ask whether the actions they take could be justified as a general rule of conduct, equally applicable to all sides.

Conservatives, on the other hand, do not seek an earthly paradise. We are interested in preserving over the long run the proper balance of freedom and order necessary for healthy development of natural civil society and individual human flourishing. This means that we naturally test the propriety and wisdom of action under a "rule of law" standard. The essence of this standard is to ask what the overall impact on society over the long run if the action we are taking, or principle we are applying, in a given circumstance was universalized – that is, would it be good for society over the long haul if this was done in all like circumstances?

For these reasons, conservatives tend to have more scruple over their political tactics and rarely feel that the ends justify the means. And this is as it should be, but there is no getting around the fact that this puts conservatives at a disadvantage when facing progressive holy war, especially when doing so under the weight of a hyper-partisan media."

12. Federalist Society 2019. The impact of these judicial intrusions on Executive responsibility have been hugely magnified by another judicial innovation – the nationwide injunction. First used in 1963, and sparsely since then until recently, these court orders enjoin enforcement of a policy not just against the parties to a case, but against everyone. Since President Trump took office, district courts have issued over 40 nationwide injunctions against the government. By comparison, during President Obama's first two years, district courts issued a total of two nationwide injunctions against the government. Both were vacated by the Ninth Circuit.

It is no exaggeration to say that virtually every major policy of the Trump Administration has been subjected to immediate freezing by the lower courts. No other President has been subjected to such sustained efforts to debilitate his policy agenda.

The legal flaws underlying nationwide injunctions are myriad. Just to summarize briefly, [1] nationwide injunctions have no foundation in courts' Article III jurisdiction or [2] traditional equitable powers; [3] they radically inflate the role of district judges, [4] allowing any one of more than 600 individuals to singlehandedly freeze a policy nationwide, [5] a power that no single appellate judge or Justice can accomplish; [6] they foreclose percolation and reasoned debate among lower courts, [7] often requiring the Supreme Court to decide complex legal issues in an emergency posture with limited briefing; [8] they enable transparent forum shopping, [9] which saps public confidence in the integrity of the judiciary; and [10] they displace the settled mechanisms for aggregate litigation of genuinely nationwide claims, such as Rule 23 class actions.

Of particular relevance to my topic tonight, [11] nationwide injunctions also disrupt the political process. There is no better example than the courts' handling of the rescission of DACA. As you recall, DACA was a discretionary policy of enforcement forbearance adopted by President Obama's administration. The Fifth Circuit

concluded that the closely related DAPA policy (along with an expansion of DACA) was unlawful, and the Supreme Court affirmed that decision by an equally divided vote. Given that DACA was *discretionary* — and that four Justices apparently thought a legally indistinguishable policy was *unlawful* — President Trump's administration understandably decided to rescind DACA.

Importantly, however, the President coupled that rescission with negotiations over legislation that would create a lawful and better alternative as part of a broader immigration compromise. In the middle of those negotiations — indeed, on the same day the President invited cameras into the Cabinet Room to broadcast his negotiations with bipartisan leaders from both Houses of Congress — a district judge in the Northern District of California enjoined the rescission of DACA nationwide. Unsurprisingly, the negotiations over immigration legislation collapsed after one side achieved its preferred outcome through judicial means. A humanitarian crisis at the southern border ensued. And just this week, the Supreme Court finally heard argument on the legality of the DACA rescission. The Court will not likely decide the case until next summer, meaning that President Trump will have spent *almost his entire first term* enforcing President Obama's signature immigration policy, even though that policy is *discretionary* and half the Supreme Court concluded that a legally indistinguishable policy was *unlawful*. That is not how our democratic system is supposed to work.

13. From 1996 to 2000, Mr. Duff was Chief Justice William Rehnquist's administrative assistant, now called "Counselor to the Chief Justice." As such, Duff served as former Chief Justice Rehnquist's liaison with both Congress and state judges. Even more, Mr. Duff served as the executive director of the Judicial Fellows Commission. From July 2006 to September 15, 2011, Duff served as the director of the Administrative Office of the United States Courts. Chief Justice Roberts was reappointed to the position on January 1, 2015. He also served as counselor to the chief justice as the presiding officer of the US Senate's 1999 presidential impeachment trial. In September 2005, Duff was a pallbearer at former Chief Justice Rehnquist's funeral, alongside seven of former Chief Justice Rehnquist's former law clerks. Duff authored a tribute to former Chief Justice Rehnquist in the November 2005 edition of the Harvard Law Review and spoke at the unveiling ceremony for the William H. Rehnquist bust in the Great Hall of the Supreme Court in December 2009. The position is authorized under 28 U.S.C.A Chapter 41. Administrative Office of United States Courts § 601. Creation; Director and Deputy Director: The Administrative Office of the United States Courts shall be maintained at the seat of government. It shall be supervised by a Director and a Deputy Director appointed and subject to removal by the Chief Justice of the United States, after consulting with the Judicial Conference. The Director and Deputy Director shall be deemed to be officers for purposes of title 5, United States Code."

14. On May 15, 2014, the petitioner, commenced an investigation into the administration of US laws that apply to domestic relations in New York State. This investigation, as the Hon. William P. Barr knows, leads to Chief Justice Roberts and his conduct as the presiding judge of the US Judicial Conference. The petitioner is the founder of the Institute of Judicial Conduct, Inc., the nation's only independent research organization dedicated to resolving federal judicial misconduct complaints. He has experience conducting this type of investigation. Following are excerpts for the petitioner's professional biography.

"Bringing short-selling into public dialogue and making short-focused research available to all investors have been core parts of asensio.com's mission since 1996 – the New York Times labeled asensio.com's work "something radical and remarkable" in 1998. This article was published at the birth of the Internet. It is difficult to imagine a time when stock news website did not exist, and the brokerage firms were not yet on the Internet. Investors access to new and reports on publicly traded company was restricted to sell-side analyst reports, company publications and most the Dow Jones newswire and the Wall Street Journal. This was the environment in 1996 when asensio.com issued its first report. Eighteen years later, in January 2014, the National Bureau of Economic Research, ["NBER"] published a research paper titled "...", the study found that the "pioneer is Manuel Asensio of Asensio & Co., which was founded in 1992 and started publishing reports on overvalued companies in 1994" and that "Asensio & Co.'s reports yield the highest returns' by the study's measure and during the study's timeframe." <https://asensio.com/category/pioneer-of-information-arbitrage/> "

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"A Cuban immigrant, Mr. Asensio completed an undergraduate degree at the Wharton School at the University of Pennsylvania and an MBA at Harvard Business School. In his post-MBA career, Mr. Asensio began working at Bear Stearns in mergers and acquisitions in 1986, after selling his first FINRA-member firm, which Mr. Asensio formed directly after graduating from Harvard. In 1993, Mr. Asensio founded Asensio & Company, Inc. (ACO), which became the first FINRA- and SEC-registered brokerage firm dedicated to short-focused research and trading. asensio.com was initially started in 1996 as a venue to release ACO's short-selling research to the public, making it the first website to be exclusively focused on distributing original short-selling ideas." <https://asensio.com/manuel-p-asensio-professional-biography/>

15. The Petitioner, Manuel P. Asensio, is the Plaintiff in the DRE federal court cases and Compliant in the federal judicial conduct complaints identified below.

The DRE case has two parts, the court cases and judicial conduct complaints. The courts cases are titled: *Asensio et al. v. DiFiore et al.*, 18 CV-10933 (Abrams) and *Asensio et al. v. Roberts et al.*, 19 CV-03384 (Failla). There are five separate actions filed under the "Judicial Council Reform and Judicial Conduct and Disability Act of 1980." These are docketed at the Judicial Council for the Second Circuit and at the US Judicial Conference. The parties in the DRE courts and conduct cases are:

Manuel P. Asensio, individually and as the parent of Eva Asensio, a minor child, Plaintiffs, against **the Hon. John G. Roberts, Jr.**, Chief Justice of the United States and Presiding Justice of the Judicial Conference of the United States, the Hon. Robert A. Katzmann; the Chief Judge of the United States Court of Appeals for the Second Circuit; and the Hon. Ronnie Abrams, a judge of the US District Court for the Southern District of New York, Defendants.

Manuel P. Asensio, individually and as the parent of Eva Asensio, a minor child, Plaintiffs, against **Janet DiFiore, Chief Judge of New York State**; Barbara Underwood, Attorney General of New York State Andrew M. Cuomo, Governor of New York State; Adetokunbo O. Fasanya, New York County Family Court Magistrate, and Emilie Marie Bosak, individually, Defendants.

16. Federalist Society 2019. "In the 20th century, our form of free society faced a severe test. There had always been the question whether a democracy so solicitous of individual freedom could stand up against a regimented totalitarian state.

That question was answered with a resounding "yes" as the United States stood up against and defeated, first fascism, and then communism.

But in the 21st century, we face an entirely different kind of challenge.

The challenge we face is precisely what the Founding Fathers foresaw would be our supreme test as a free society.

They never thought the main danger to the republic came from external foes. The central question was whether, over the long haul, we could handle freedom. The question was whether the citizens in such a free society could maintain the moral discipline and virtue necessary for the survival of free institutions.

By and large, the Founding generation's view of human nature was drawn from the classical Christian tradition.

These practical statesmen understood that individuals, while having the potential for great good, also had the capacity for great evil.

Men are subject to powerful passions and appetites, and, if unrestrained, are capable of ruthlessly riding roughshod over their neighbors and the community at large.

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No society can exist without some means for restraining individual rapacity.

But, if you rely on the coercive power of government to impose restraints, this will inevitably lead to a government that is too controlling, and you will end up with no liberty, just tyranny”

17. “The [New York City] legal bar is supposed to be a professional group that enforces standards for lawyers, yet it increasingly seems to be one more partisan political outfit. The latest example is the New York City Bar Association’s letter to Congress demanding it ‘investigate’ Attorney General Bill Barr for making conservative political statements.”

Among other things, the organization is incensed that Mr. Barr gave a speech at the University of Notre Dame praising “Judeo-Christian values.” They say he implicitly rejected other religions and therefore disregarded his obligation to appear unbiased. Apparently without realizing it, the bar is demonstrating the merit of Mr. Barr’s argument about the importance of religious liberty. His appreciation for religion’s role in society is being used by a professional group as a possible disqualification for public office.

The bar continues with a laundry-list of partisan complaints about Mr. Barr, including his vocal opposition to criminal-justice reform, his summary of the Mueller investigation and his interpretation of the Inspector General’s report on the FBI’s conduct in the 2016 election.”

<https://www.nycbar.org/media-listing/media/detail/the-trumped-up-case-of-bar-v-barr-wall-street-journal>  
*Wall Street Journal*, January 10, 2020 <https://www.wsj.com/articles/the-trumped-up-case-of-bar-v-barr-11578699265>

18. On August 12, 2019, Attorney General remarked at the Grand Lodge Fraternal Order of Police’s 64th National Biennial Conference on a “the emergence in some of our large cities of District Attorneys that style themselves as “social justice” reformers, who spend their time undercutting the police, letting criminals off the hook, and refusing to enforce the law. These anti-law enforcement DAs have tended to emerge in jurisdictions where the election is largely determined by the primary. Frequently, these candidates ambush an incumbent DA in the primary with misleading campaigns and large infusions of money from outside groups. Once in office, they have been announcing their refusal to enforce broad swathes of the criminal law.”

19. “the domestic relations exception to federal jurisdiction [DRE] is an archaic, historical remnant that should be overruled by the U.S. Supreme Court, and thus, the Article III federal courts have jurisdiction to hear pure marital status cases despite their domestic nature. We call on the Supreme Court to eliminate the domestic relations exception as to all forms of federal jurisdiction.

Steven G. Calabresi & Genna L. Sine| [The Same-Sex Marriage Cases and Federal Jurisdiction: On Third-Party Standing and Why the Domestic Relations Exception to Federal Jurisdiction Should Be Overruled](#)

“The current formulation and application of the domestic relations exception [DRE] poses serious problems. From a practical perspective, the domestic relations exception jurisprudence features contradiction, confusion, and inconsistency. From a policy perspective, the domestic relations exception risks foreclosing the invaluable federal forum to family law issues—even fundamental constitutional issues, as in *Elk Grove*. From the statutory interpretation perspective, the only current, expressly-accepted foundation for the domestic relations exception articulated by the Supreme Court requires people to accept the counterintuitive notion that the unambiguous breadth of the statutory phrase ‘all civil actions’ should be superseded by Congress’s failure to explicitly reject dicta from an 1858 case that provided no reasoning or authority . . . .”

[Family Law Is Not “Civil”: The Faulty Foundation Of The Domestic Relations Exception To Federal Jurisdiction](#), Joseph Carroll, winner of the First Place, 2017 Howard C. Schwab Memorial Essay.

Applying the exception to bar federal courts [DRE] from jurisdiction over bona fide federal questions would violate Article III, which endows federal courts with jurisdiction over all federal-question case in law or equity.

Additionally, the federal-question jurisdiction statute is best read as reflecting a Congressional intent that federal jurisdiction extends to domestic-relations matters that raise questions of federal law. Federal courts have the authority to resolve important and timely questions of federal law. The domestic-relations exception should not be misconstrued to stand in their way.”

“Federal Questions and the Domestic-Relations Exception.” The Yale Law Journal, Bradley G. Silverman

“Much domestic relations law fails to present a “controversy” within the meaning of Article III; the consensual nature of many status-altering acts (marriage, consensual divorce, adoption) forecloses a federal dispute-resolution role. But when federal courts hear “cases” arising under federal law, they have full power to exercise both contentious and (what Roman and civil lawyers refer to as) non-contentious jurisdiction. Our non-contentious account explains a range of puzzles, including why Article III courts can issue decrees at the core of the domestic relations exception [DRE] when the matter at hand implicates federal law.”

A Non-Contentious Account Of Article III’s Domestic Relations Exception James E. Pfander & Emily K. Damrau Notre Dame Law Review

One may question the continued vitality of the domestic relations exception [DRE] given the vast amount of federal court involvement in family law matters. For example, in the recent landmark case *Obergefell v. Hodges*, the Supreme Court held that same-sex individuals have a fundamental right to marry.<sup>11</sup> Moreover, under its Commerce, Full Faith and Credit, and Spending Clause powers, Congress has passed many laws in the area of domestic relations.<sup>12</sup> Of course, being that it is the federal judiciary’s “province and duty” to say what the law is,<sup>13</sup> federal courts routinely review these laws. Yet despite the large quantity of family law activity in the federal sphere, the domestic relations exception survives, albeit inconsistently applied in federal courts across the country. . . . The diverse inter- and intra-circuit treatment of the domestic relations exception stems from the different weight courts place on the exception’s underlying values: stare decisis, federalism, and access to courts. Some federal courts only apply the exception because it has long been a part of precedent; otherwise, they would overrule it. Other courts apply the exception rigorously, concluding that family law matters are properly left to state courts, elevating federalism ideas. Even still, there are courts that recognize and apply the exception, but believe federalism should always take a back seat to a litigant’s right to access a federal forum.

Let’s Not Throw Out The Baby With The Bathwater: A Uniform Approach To The Domestic Relations Exception Karla M. Doe, Emory Law Journal

“judicial review is necessary as a constitutional guard against state incursions on federal, constitutional rights. Even state regulation of traditionally state matters cannot run afoul of federal, constitutional limits, and this will at least sometimes require the presence of a federal forum to make such determinations. Thus, regardless of the extent of Congress’s role in regulating and shaping American families, the federal judicial role in protecting them must remain intact . . . monolithic view of the family as an exclusively local subject is both misguided and unworkable [DRE]. Guarding personal autonomy against unwarranted intrusion by the state demands a federal forum to ensure that fundamental rights of the family remain secure. Supporting, empowering, and protecting contemporary families and family members is the joint work of local, state, and federal systems.

Is the Family a Federal Question? Meredith Johnson Harbach Washington and Lee Law Review

20. Chief Justice Roberts has fabricated a set of elaborate unethical DRE policies, decisions and rules without notice, an iota of authority, or legal foundation. These acts are a blatantly illegal abrogation of all the most important US citizens’ constitutional and legal rights. In fact, Chief Justice Roberts’s concealed DRE plans and standards are a violation of the first and most important law governing the chief justice’s conduct: Title 28, Chapter 131, USC §2072(b) that specifically prohibits federal judges from creating or implementing policies or rules that “abridge, enlarge or modify any substantive right.”

“[T]he domestic-relations exception [DRE] encompasses only cases involving the issuance of a divorce, alimony, or child custody decree.” *Ankenbrandt*, 504 U.S. at 704, 112 S.Ct. 2206 not federal civil rights claims under

fundamental liberty, due process or the right to be free from judicial fraud and manufactured crimes. It is not 'compelled by the text of the Constitution or federal statute' but is rather a 'judicially created doctrine' . . . stemming in large measure from misty understandings of English legal history." *Marshall*, 547 U.S. at 299, 126 S.Ct. 1735. [Emphasis added by author]. *Chevalier v. Estate of Barnhart*, 803 F.3d 789, 794 (6th Cir. 2015).

In the 5-4 split opinion of *Barber v. Barber*, the dissent strongly contested, that "[i]t is not in accordance with the design and operation of a [state] Government . . . [to] assume to regulate the domestic relations of society . . . [to take an] inquisitorial authority, [to] enter the habitations and even into the chambers and nurseries of private families, and inquire into and pronounce upon the morals and habits and affections or antipathies of the members of every household. . . . [This is the case] whether [a statute] expressly conferred upon the State courts, or [is] tacitly assumed by them, [and] their example and practice cannot be recognized as sources of authority by the courts of the United States. The origin and the extent of their jurisdiction must be sought in the laws of the United States." See *Barber v. Barber*, 62 US 582 (1858).

In *Cohens v. Virginia*, Chief Justice Marshall famously cautioned: "It is most true that this Court will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction if it should... We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." 6 *Wheat* 264, 404, 5 L.Ed. 257 (1821). "Among longstanding limitations on federal jurisdiction [DRE] otherwise properly exercised are the so-called "domestic relations" and "probate" exceptions. Neither is compelled by the text of the Constitution or federal statute. Both are judicially created doctrines stemming in large measure from misty understandings of English legal history. See, e.g., *Atwood, Domestic Relations Case in Federal Court: Toward a Principled Exercise of Jurisdiction*, 35 *Hastings L.J.* 571, 584-588 (1984); *Spindel v. Spindel*, 283 F.Supp. 797, 802 (E.D.N.Y.1968) (collecting case and commentary revealing vulnerability of historical explanation for domestic relations exception); Winkler, *The Probate Jurisdiction of the Federal Courts*, 14 *Probate L.J.* 77, 125-126, and n. 256 (1997) (describing historical explanation for probate exception as 'an exercise in mythography'). "In the years following Marshall's 1821 pronouncement, courts have sometimes lost sight of his admonition and have rendered decisions expansively interpreting the two exceptions. In *Ankenbrandt v. Richards*, 504 U.S. 689, 112 S.Ct. 2206, 119 L.Ed.2d 468 (1992), this Court reined in the 'domestic relations exception.' Earlier, in *Markham v. Allen*, 326 U.S. 490, 66 S.Ct. 296, 90 L.Ed. 256 (1946), the Court endeavored similarly to curtail the 'probate exception.'" *Marshall v. Marshall*, 547 U.S. 293, 298-99, 126 S. Ct. 1735, 1741, 164 L. Ed. 2d 480 (2006).

21. The DRE violates Article III of the US Constitution established Americans' access to US judicial power; First Amendment's prohibition of laws on the exercise of religious beliefs and that protects freedom of speech and the right to petition the Government for a redress of grievances; the Due Process Clause of the Fifth Amendment, and the Equal Protection Clause of the Fourteenth Amendment, and the Tenth Amendment limits the federal government to powers granted in the US Constitution and reserves all other power to the States and the people.

<https://www.archives.gov/founding-docs/bill-of-rights-transcript#toc-amendment-i>

22. "Had not the Roman government permitted free enquiry; Christianity could never have been introduced. Had not free enquiry been indulged, at the area of the reformation, the corruptions of Christianity could not have been purged away. If it be restrained now, the present corruptions will be protected, and new ones encouraged. Galileo was sent to the inquisition for affirming that the earth was a sphere: the government had declared it to be as flat as a trencher, and Galileo was obliged to abjure his error. This error however at length prevailed, the earth became a globe, and Descartes declared it was whirled round its axis by a vortex. The government in which he lived was wise enough to see that this was no question of civil jurisdiction, or we should all have been involved by authority in vortices. In fact, the vortices have been exploded, and the Newtonian principle of gravitation is now more firmly established, on the basis of reason, than it would be were the government to step in, and to make it an article of necessary faith. Reason and experiment have been indulged, and error has fled before them. **It is error alone which needs the support of government. Truth can stand by itself. Subject opinion to coercion: whom will you make your inquisitors.**"

Thomas Jefferson, *Notes on the State of Virginia. Query XVII* Published in English in London in 1787. Published anonymously in Paris in 1785.

23. *In re Michael*, all "perjured relevant testimony is at war with justice, since it may produce a judgment not resting on truth. Therefore, it cannot be denied that it tends to defeat the sole ultimate objective of a trial." *re Michael*, 326 U.S. 224, 227 (1945). Perjury is defined as "deliberately making false or misleading statements while under oath." BLACK'S LAW DICTIONARY 1175 (8th ed. 2004).

24. "We hold here that the right to a speedy trial is as fundamental as any of the rights secured by the Sixth Amendment. That right has its roots at the very foundation of our English law heritage. Its first articulation in modern jurisprudence appears to have been made in *Magna Carta* (1215), wherein it was written, 'We will sell to no man, we will not deny or defer to any man either justice or right'; but evidence of recognition of the right to speedy justice in even earlier times is found in the *Assize of Clarendon* (1166)." *Klopfert v. State of N.C.*, 386 U.S. 213, 223, 87 S.Ct. 988, 993, 18 L.Ed. 2d 1 (1967).

("And when a robber or murderer or thief or receiver of them has been arrested through the aforesaid oath, if the justices are not about to come speedily enough into the country where they have been taken, let the sheriffs send word to the nearest justice by some well-informed person that they have arrested such men, and the justices shall send back word to the sheriffs informing them where they desire the men to be brought before them; and let the sheriffs bring them before the justices." English Historical Documents 408 [1953]).

25. Federalist Society 2019. "In any age, the so-called progressives treat politics as their religion. Their holy mission is to use the coercive power of the State to remake man and society in their own image, according to an abstract ideal of perfection. Whatever means they use are therefore justified because, by definition, they are a virtuous people pursuing a deific end. They are willing to use any means necessary to gain momentary advantage in achieving their end, regardless of collateral consequences and the systemic implications. They never ask whether the actions they take could be justified as a general rule of conduct, equally applicable to all sides.

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For these reasons, conservatives tend to have more scruple over their political tactics and rarely feel that the ends justify the means. And this is as it should be, but there is no getting around the fact that this puts conservatives at a disadvantage when facing progressive holy war, especially when doing so under the weight of a hyper-partisan media."

26. Under the Judicial Council Reform and Judicial Conduct and Disability Act of 1980 (Act) (Title 28 of the US Code Chapter 16 §§ 351-364) the chief justice acting as the presiding judge of the US Judicial Conference controls the nation's policing, prosecution and punishment of criminal, fraudulent, malicious and unethical judicial conduct in federal court. The follow are the sections in the Act that govern the adjudication of complaints.

#### **U.S. Code CHAPTER 16 (§§ 351-364)—COMPLAINTS AGAINST JUDGES AND JUDICIAL DISCIPLINE**

##### **§ 351.Complaints; judge defined**

- (a) **Filing of Complaint by Any Person.**—Any person alleging that a judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such judge is unable to discharge all the duties of office by reason of mental or physical disability, may file with the clerk of the court of appeals for the circuit a written complaint containing a brief statement of the facts constituting such conduct.

§ 352. Review of complaint by chief judge

- (a) (intentionally left blank)
- (b) (intentionally left blank)
- (c) **Review of Orders of Chief Judge.** A complainant or judge aggrieved by a final order of the chief judge under this section may petition the judicial council of the circuit for review thereof. The denial of a petition for review of the chief judge's order shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

§ 357. Review of orders and actions

- (a) **Review of Action of Judicial Council.** A complainant or judge aggrieved by an action of the judicial council under section 354 may petition the Judicial Conference of the United States for review thereof.
- (b) **Action of Judicial Conference.** The Judicial Conference, or the standing committee established under section 331 [of USC, Title 28, Chapter 15, "Conferences and Councils of Judges," §§331-335] may grant a petition filed by a complainant or judge under subsection (a).
- (c) **No Judicial Review.** Except as expressly provided in this section and section 352(c), all orders and determinations, including denials of petitions for review, shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise

27. As President James Carter wrote in his 1980 signing statement that enacted the Conduct Act: "*Judges are human and experience has shown that if only the massive machinery of impeachment is available, some valid complaints will not be remedied*" and that the American people must be assured that a complaint filed under the Conduct Act's "*system will receive fair and serious attention throughout the process.*" Notably, the federal judges took 28 years (until 2008) to finally create the system.

Weekly Compilation of Presidential Documents, vol. 16, no. 42, Oct. 15, 1980, pp. 2239–2240.

28. "[T]he notion that by confining the Rules to matters of 'procedure,' as the Rules Enabling Act of 1934 directed, one could somehow prevent them from having important and controversial socio-economic and political consequences outside the courtroom is **absurd** . . . it is perhaps unreasonable anachronistically to superimpose on the Congressional drafters a sophisticated understanding of how procedural choices may impact substantive policies." [Emphasis added by author.] See 356 U.S. 525, 549 (1958) (Whittaker, J., concurring in part and dissenting in part.) ("The words 'substantive' and 'procedural' are mere conceptual labels and in no sense talismanic.") and 304 U.S. 64, 91–92 (1938) (Reed, J., concurring) ("The line between procedural and substantive law is hazy . . .").

The Rules Enabling Act is intended to preserve Congress' legislative power. In *The Supreme Court, The Rules Enabling Act, and the Politicization of the Federal Rules: Constitutional and Statutory Implications*, 90 MINN. L. REV. 1303, 1307–08, 1326 (2006), author Martin H. Redish wrote: "The reasoning appears to have been that where the Court merely promulgates rules of 'procedure,' it is not overstepping its constitutionally limited bounds because procedure is, by definition, internal to the operation of the judiciary; it has no impact outside the four walls of the courthouse. We now know—and probably should have known at the time of the Act's passage—that this is **political nonsense**. In numerous instances, procedural choices inevitably—and often **intentionally—impact the scope of substantive political choices**. This recognition should logically raise a concern that the Act unconstitutionally vests in the Supreme Court power that is reserved, in a constitutional democracy, for those who are representative of and accountable to the electorate."

Karen Nelson Moore, *The Supreme Court's Role in Interpreting the Federal Rules of Civil Procedure*, 44 HASTINGS L.J. 1039, 1043 (1993) (“[C]ommentators have placed recent emphasis on the relationship between Congress and the Court in the rulemaking process as the source of the restriction against affecting substantive rights.”); Martin H. Redish, *The Supreme Court, The Rules Enabling Act, and the Politicization of the Federal Rules: Constitutional and Statutory Implications*, 90 MINN. L. REV. 1303, 1307–08, 1326 (2006) (“**arguing that current rulemaking oversteps constitutional bounds because the committee produces substantive rules and proposing that rules falling into a ‘non-housekeeping’ category of procedural rules or that ‘are found to implicate significant economic, social, or political dispute(s)’ should require Congressional and presidential approval**”); Stephen B. Burbank, *Ignorance and Procedural Law Reform: A Call for a Moratorium*, 59 BROOK. L. REV. 841, 841–42 (1993) (“arguing that the rulemaking process should rely more heavily on empiricism and called for a moratorium on rulemaking pending further study”); Linda S. Mullenix, *Hope Over Experience: Mandatory Informal Discovery and the Politics of Rulemaking*, 69 N.C. L. REV. 795 (1991) (“arguing that the discovery proposals lacked empirical foundation and calling for reform of the rulemaking process”); Laurens Walker, *A Comprehensive Reform for Federal Civil Rulemaking*, 61 GEO. WASH. L. REV. 455, 481 (1993) (“arguing for a limit on the Committee’s discretion to be accomplished through a set of administrative agency-like guidelines”); Marc S. Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. EMPIRICAL LEGAL STUD. 459, 491 (2004); Professor Richard L. Marcus has noted, we have a “litigation machine that often seems indifferent to the merits.” Richard L. Marcus, *Of Babies and Bathwater: The Prospects for Procedural Progress*, 59 BROOK. L. REV. 761, 766 (1993).

Sarah Staszak, “The Administrative Role of the Chief Justice: Law, Politics, and Procedure in the Roberts Court Era.” *Laws* (ISSN 2075-471X), a peer-reviewed journal of legal systems, theory, and institutions, published quarterly online by MDPI: “The Chief Justice of the Supreme Court plays a critical role in shaping national politics and public policy. While political scientists tend to focus on the ways in which the chief affects the Court’s jurisprudence, **relatively little attention has been devoted to the unique administrative aspects of the position that allow for strategic influence over political and legal outcomes**. This article examines the role of the chief justice as the head of the Judicial Conference, which is the primary policy making body for federal courts in the United States.” <https://www.mdpi.com/2075-471X/7/2/15/htm>

Dawn M. Chutkow, “The Chief Justice as Executive: Judicial Conference Committee Appointments,” *Journal of Law and Courts* 2, no. 2 (2014): 301–25. doi:10.1086/677172: “This article is the first comprehensive empirical study of chief justice appointments to the Judicial Conference committees of the US Courts, entities with influence over substantive public and legal policy. Using a newly created database of all judges appointed to serve on Judicial Conference committees between 1986 and 2012, the results indicate that a judge’s partisan alignment with the chief justice matters, as do personal characteristics such as race, experience on the bench, and court level. **These results support claims that Judicial Conference committee selection, membership, and participation may present a vehicle for advancing the chief justice’s individual political and policy interests.**” [https://www.jstor.org/stable/10.1086/677172?seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/10.1086/677172?seq=1#page_scan_tab_contents)

<sup>29</sup>. “extreme vigilance against **treading on contested fact issues or mixed questions of law and fact—even arguable ones-reserving them for evidentiary hearings** . . . [u]nless the parties settled, disputes regarding intent, state-of-mind, and credibility were virtually always tried, often before a jury.”

Paul W. Mollica, Federal Summary Judgment at High Tide, 84 MARQ. L. REV. 141,147 (2000)

“A well-chronicled, decades-long effort ultimately led to the passage of the Rules Enabling Act of 1934 . . . The Federal Rules of Civil Procedure became law four years later . . . “the drafters of the Federal Rules wanted cases to be **resolved on the merits**” . . . those “core values of [federal] rules have **been eviscerated by judicial decisions, interred by antipathy, and eulogized** by none other than Wright and Miller” . . . **“Federal Rules were premised on the notion that, once the parties learned the relevant facts, cases would either settle or go to trial.”**”

Stephen N. Subrin & Thomas O. Main, The Fourth Era of American Civil Procedure, 162 U. PA. L. REV. 1839 (2014)

“In 1951, the median time from filing to disposition for tried cases was 12.2 months. In 1962, that number was sixteen months. Since 1990, the median time to disposition for all terminated cases is only seven to eight months.

But as of 2012, the median time from filing to disposition remains twenty-three months in those cases where there is a trial, which, of course, these days are only one percent of all cases.”

Harold Hongju Koh, *The Just, Speedy, and Inexpensive Determination of Every Action?* Yale Law School Faculty Scholarship (2014)

30. It was Sir John Emerich Edward Dalberg-Acton, (January 10, 1834–June 19, 1902), who in 1887 wrote that **“power corrupts, and absolute power corrupts absolutely.”** He also wrote that “there is no worse heresy than that the office sanctifies the holder of it.” He was referring to the medieval popes that instituted a special tribunal with special functionaries, elaborating special laws that were developed, applied, and protected by sanction, both spiritual and temporal. They used this system to inflict penalties of death and damnation on everybody who resisted.

It was in the “Letters to Bishop Mandell Creighton, the first Dixie Professorship of Ecclesiastical History of the University of Cambridge” where Sir Acton wrote about “the popes of the thirteenth and fourteenth centuries, from Innocent III down to the time of Hus. These men instituted a system of Persecution, with a special tribunal, special functionaries, special laws. They carefully elaborated, and developed, and applied it. They protected it with every sanction, spiritual and temporal. They inflicted, as far as they could, the penalties of death and damnation on everybody who resisted it. They constructed quite a new system of procedure, with unheard of cruelties, for its maintenance. They devoted to it a whole code of legislation, pursued for several generations.”

In 1858, twenty-nine years before Sir Dalberg-Acton penned his most famous words, the US Supreme Court ruled that government must not “assume to regulate domestic relations of society.” It spoke of this type of regulation as an “inquisitorial authority.” The Court added that a state cannot give its judges any authority over its citizens’ “morals and habits and affections or antipathies” without seeking the authority of the United States.

“Lord Acton was among the most illustrious historians of nineteenth-century England, a man of great learning with a deep devotion to individual liberty and a profound understanding of history.”  
<https://www.libertyfund.org/people/acton-john-emerich-edward-dalberg>

**31. Title 28 Chapter 16 U.S. Code § 355. Action by Judicial Conference.**

**(a) In General.**

Upon referral or certification of any matter under section 354(b), the Judicial Conference, after consideration of the prior proceedings and such additional investigation as it considers appropriate, shall by majority vote take such action, as described in section 354(a)(1)(C) and (2), as it considers appropriate.

**(b) If Impeachment Warranted.**

**(1) In general.**

If the Judicial Conference concurs in the determination of the judicial council, or makes its own determination, that consideration of impeachment may be warranted, it shall so certify and transmit the determination and the record of proceedings to the House of Representatives for whatever action the House of Representatives considers to be necessary. Upon receipt of the determination and record of proceedings in the House of Representatives, the Clerk of the House of Representatives shall make available to the public the determination and any reasons for the determination.

**(2) In case of felony conviction.**

If a judge has been convicted of a felony under State or Federal law and has exhausted all means of obtaining direct review of the conviction, or the time for seeking further direct review of the conviction has passed and no such review has been sought, the **Judicial Conference may**, by majority vote and without referral or certification under section

THE LAW OFFICES OF  
**JOSEPH A. BONDY**

*Handwritten initials and a checkmark*

JOSEPH A. BONDY  
STEPHANIE SCHUMAN  
(OF COUNSEL)

1776 BROADWAY  
SUITE 2000  
NEW YORK NY 10019  
TEL 212.219.3572  
FAX 212.219.8456

JOSEPHBONDY@MAC.COM

January 20, 2020

(By Fax: (202) 307-6777 and Mail)

William P. Barr  
Attorney General  
United States Department of Justice  
950 Pennsylvania Ave NW  
Washington, DC 20530

Re: Request for Recusal, Lev Parnas

Dear Attorney General Barr,

We are counsel to Lev Parnas regarding the Federal Election Act charges for which he is under indictment in the Southern District of New York and the investigation of his alleged involvement in the subject matter of the Presidential impeachment. As explained below, due to the conflict of interest of your being involved in these matters as Attorney General, and in an effort to preserve the public trust in the rule of law, we request that you recuse yourself and allow the appointment of a special prosecutor from outside the Department of Justice to handle this case.

The public record is replete with requests for your recusal, the reasons for that request, and public outcry that you have not. Federal ethics guidelines bar federal employees from participating in matters in which their impartiality could be questioned, including matters in which they were personally involved or about which they have personal knowledge. 5 C.F.R. § 2635.502; Justice Manual § 1-4.020.

The July 25, 2019 transcript of President Trump's call with Ukrainian President Volodymyr Zelensky contains multiple references to you, alone and in conjunction with the President's attorney, Rudolf Giuliani, as being the point person for the Zelensky administration to work with in commencing an investigation into the President's chief political rival, Joe Biden. (Exhibit A).

In the August 12, 2019, whistleblower complaint, you were personally named as a participant in the President's abuse of the power of his office to solicit interference with the government of Ukraine in connection with the 2020 election, including pressuring Ukraine to investigate one of the President's political opponents, Joe Biden. (Exhibit B).

On October 23, 2019, the New York City Bar Association called upon you to recuse yourself from all Department of Justice matters relating to the allegations that the President abused the power of his office to solicit political interference on his behalf by the government of Ukraine. (Exhibit C).

On October 24, 2019, the United States Senate Judiciary Committee Democrats urged you to recuse yourself from investigation into Trump-Ukrainian matters involving Lev Parnas, his current co-defendant Igor Fruman, and the President's personal attorney, Rudy Giuliani. (Exhibit D).

On January 9, 2020, The New York City Bar Association, having received no reply to its earlier call for recusal, asked Congress to investigate you for acting as a "political partisan...willing to use the levers of government to empower certain groups over others." (Exhibit E).

In recent days, evidence has been brought to light linking you further to your long-time colleagues Victoria Toensing and Joseph diGenova, as well as Mr. Giuliani, which undoubtedly creates at least the public appearance of a conflict of interest.

In addition to harmful perceptions, this conflict of interest appears to have caused actual harm to Mr. Parnas who, given delays in the production of discovery in his federal case, was rendered unable to comply with a duly-issued congressional subpoena in time for congressional investigators to make complete use of his materials or properly assess Mr. Parnas as a potential witness. Furthermore, prosecutors have, thus far, refused to meet with Mr. Parnas and to receive his information regarding the President, Mssrs. Giuliani, Toensing, diGenova and others—all of which would potentially benefit Mr. Parnas if he were ever to be convicted and sentenced in his criminal case.

The criteria informing whether an Attorney General should recuse him or herself from a matter and allow the appointment of a special prosecutor is whether a prosecution or investigation of a "matter" or of a person may raise a conflict of interest for the Department of Justice, or whether there exists, "other extraordinary circumstances," and when, in light of these conflicts or circumstances, the Attorney General finds it is in the "public interest" to appoint such counsel. 28 C.F.R. §§ 600.1-2 (1999).<sup>1</sup> If the Attorney General is recused from a matter, then the Acting Attorney General will appoint a special prosecutor when deemed warranted. Here, the issues involved concern the apparent conflict of interest in your being tasked with investigating the President, certain members of his administration, and your long-term colleagues and friends, and the appearance of such conduct as undermining the public's interest in due administration and trust in the rule of law.

The 1999 recusal regulations promulgated by Attorney General Reno also provide that, if appointed, an outside special counsel "shall be a lawyer with reputation for integrity and impartial decision-making, and with appropriate experience to ensure both that the investigation will be conducted ably, expeditiously and thoroughly and that investigative and prosecutorial decisions will be supported by

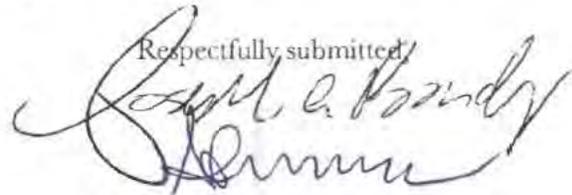
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<sup>1</sup> See Justice Manual at § 3-1.140, United States Attorney Recusals ("When United States Attorneys, or their offices, become aware of an issue that could require a recusal in a criminal or civil matter or case as a result of an actual or apparent conflict of interest, they must contact EOUSA's General Counsel's Office (GCO)...They must be recused by the designated Associate Deputy Attorney General. The requirement of recusal does not arise in every instance, but only where a conflict of interest exists or there is an appearance of a loss of impartiality. A United States Attorney who becomes aware of circumstances that might necessitate his or her recusal or that of the entire office should promptly notify GCO to discuss whether a recusal is required. If recusal is appropriate, GCO will coordinate the recusal action, obtain necessary approvals for the recusal, and arrange for a transfer of responsibility to another office.").

an informed understanding of the criminal law and Department of Justice policies." (28 C.F.R. §§ 600.1-10; 64 Fed. Reg. 37,038-44 (July 9, 1999)). In Mr. Parnas's case, it is in the public interest to remove this matter entirely from the Department of Justice, both to ensure that the matter is handled properly and that the public had confidence in the way in which it was handled.

Given the totality of the circumstances, we believe it is appropriate for you to recuse yourself from the ongoing investigation and pending prosecution of Mr. Parnas, and to allow the then-Acting Attorney General to appoint a special prosecutor from outside the Department of Justice, so as to avoid the appearance of a conflict of interest and to preserve the public trust in the rule of law.

Thank you for your consideration of this request.

Respectfully submitted,  


Joseph A. Bondy  
Stephanie R. Schuman  
*Counsel to Lev Parnas*

c: Hon. J. Paul Oetken  
AUSAs Nicolas Roos, Douglas Zolkind  
and Rebekah Donaleski  
All Defense Counsel

# Exhibit A

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[PkgNumberShort]

Declassified by order of the President

September 24, 2019

~~EYES-ONLY~~  
~~DO NOT COPY~~

MEMORANDUM OF TELEPHONE CONVERSATION

SUBJECT: ~~(C)~~ Telephone Conversation with President Zelenskyy of Ukraine

PARTICIPANTS: President Zelenskyy of Ukraine

Notetakers: The White House Situation Room

DATE, TIME July 25, 2019, 9:03 - 9:33 a.m. EDT  
AND PLACE: Residence

~~(S//NF)~~ The President: Congratulations on a great victory. We all watched from the United States and you did a terrific job. The way you came from behind, somebody who wasn't given much of a chance, and you ended up winning easily. It's a fantastic achievement. Congratulations.

~~(S//NF)~~ President Zelenskyy: You are absolutely right Mr. President. We did win big and we worked hard for this. We worked a lot but I would like to confess to you that I had an opportunity to learn from you. We used quite a few of your skills and knowledge and were able to use it as an example for our elections and yes it is true that these were unique elections. We were in a unique situation that we were able to

CAUTION: A Memorandum of a Telephone Conversation (TELCON) is not a verbatim transcript of a discussion. The text in this document records the notes and recollections of Situation Room Duty Officers and NSC policy staff assigned to listen and memorialize the conversation in written form as the conversation takes place. A number of factors can affect the accuracy of the record, including poor telecommunications connections and variations in accent and/or interpretation. The word "inaudible" is used to indicate portions of a conversation that the notetaker was unable to hear.

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Derived From: NSC SCG  
Declassify On: 20441231

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achieve a unique success. I'm able to tell you the following; the first time, you called me to congratulate me when I won my presidential election, and the second time you are now calling me when my party won the parliamentary election. I think I should run more often so you can call me more often and we can talk over the phone more often.

~~(S/NF)~~ The President: [laughter] That's a very good idea. I think your country is very happy about that.

~~(S/NF)~~ President Zelenskyy: Well yes, to tell you the truth, we are trying to work hard because we wanted to drain the swamp here in our country. We brought in many many new people. Not the old politicians, not the typical politicians, because we want to have a new format and a new type of government. You are a great teacher for us and in that.

~~(S/NF)~~ The President: Well it's very nice of you to say that. I will say that we do a lot for Ukraine. We spend a lot of effort and a lot of time. Much more than the European countries are doing and they should be helping you more than they are. Germany does almost nothing for you. All they do is talk and I think it's something that you should really ask them about. When I was speaking to Angela Merkel she talks Ukraine, but she doesn't do anything. A lot of the European countries are the same way so I think it's something you want to look at but the United States has been very very good to Ukraine. I wouldn't say that it's reciprocal necessarily because things are happening that are not good but the United States has been very very good to Ukraine.

~~(S/NF)~~ President Zelenskyy: Yes you are absolutely right. Not only 100%, but actually 1000% and I can tell you the following; I did talk to Angela Merkel and I did meet with her. I also met and talked with Macron and I told them that they are not doing quite as much as they need to be doing on the issues with the sanctions. They are not enforcing the sanctions. They are not working as much as they should work for Ukraine. It turns out that even though logically, the European Union should be our biggest partner but technically the United States is a much bigger partner than the European Union and I'm very grateful to you for that because the United States is doing quite a lot for Ukraine. Much more than the European Union especially when we are talking about sanctions against the Russian Federation. I would also like to thank you for your great support in the area of defense. We are ready to continue to cooperate for the next steps specifically we are almost ready to buy more Javelins from the United States for defense purposes.

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~~(S//NF)~~ The President: I would like you to do us a favor though because our country has been through a lot and Ukraine knows a lot about it. I would like you to find out what happened with this whole situation with Ukraine, they say CrowdStrike... I guess you have one of your wealthy people... The server, they say Ukraine has it. There are a lot of things that went on, the whole situation. I think you're surrounding yourself with some of the same people. I would like to have the Attorney General call you or your people and I would like you to get to the bottom of it. As you saw yesterday, that whole nonsense ended with a very poor performance by a man named Robert Mueller, an incompetent performance, but they say a lot of it started with Ukraine. Whatever you can do, it's very important that you do it if that's possible.

~~(S//NF)~~ President Zelenskyy: Yes it is very important for me and everything that you just mentioned earlier. For me as a President, it is very important and we are open for any future cooperation. We are ready to open a new page on cooperation in relations between the United States and Ukraine. For that purpose, I just recalled our ambassador from United States and he will be replaced by a very competent and very experienced ambassador who will work hard on making sure that our two nations are getting closer. I would also like and hope to see him having your trust and your confidence and have personal relations with you so we can cooperate even more so. I will personally tell you that one of my assistants spoke with Mr. Giuliani just recently and we are hoping very much that Mr. Giuliani will be able to travel to Ukraine and we will meet once he comes to Ukraine. I just wanted to assure you once again that you have nobody but friends around us. I will make sure that I surround myself with the best and most experienced people. I also wanted to tell you that we are friends. We are great friends and you Mr. President have friends in our country so we can continue our strategic partnership. I also plan to surround myself with great people and in addition to that investigation, I guarantee as the President of Ukraine that all the investigations will be done openly and candidly. That I can assure you.

~~(S//NF)~~ The President: Good because I heard you had a prosecutor who was very good and he was shut down and that's really unfair. A lot of people are talking about that, the way they shut your very good prosecutor down and you had some very bad people involved. Mr. Giuliani is a highly respected man. He was the mayor of New York City, a great mayor, and I would like him to

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call you. I will ask him to call you along with the Attorney General. Rudy very much knows what's happening and he is a very capable guy. If you could speak to him that would be great. The former ambassador from the United States, the woman, was bad news and the people she was dealing with in the Ukraine were bad news so I just want to let you know that. The other thing, There's a lot of talk about Biden's son, that Biden stopped the prosecution and a lot of people want to find out about that so whatever you can do with the Attorney General would be great. Biden went around bragging that he stopped the prosecution so if you can look into it... It sounds horrible to me.

~~(S/NF)~~ President Zelenskyy: I wanted to tell you about the prosecutor. First of all I understand and I'm knowledgeable about the situation. Since we have won the absolute majority in our Parliament, the next prosecutor general will be 100% my person, my candidate, who will be approved by the parliament and will start as a new prosecutor in September. He or she will look into the situation, specifically to the company that you mentioned in this issue. The issue of the investigation of the case is actually the issue of making sure to restore the honesty so we will take care of that and will work on the investigation of the case. On top of that, I would kindly ask you if you have any additional information that you can provide to us, it would be very helpful for the investigation to make sure that we administer justice in our country with regard to the Ambassador to the United States from Ukraine as far as I recall her name was Ivanovich. It was great that you were the first one who told me that she was a bad ambassador because I agree with you 100%. Her attitude towards me was far from the best as she admired the previous President and she was on his side. She would not accept me as a new President well enough.

~~(S/NF)~~ The President: Well, she's going to go through some things. I will have Mr. Giuliani give you a call and I am also going to have Attorney General Barr call and we will get to the bottom of it. I'm sure you will figure it out. I heard the prosecutor was treated very badly and he was a very fair prosecutor so good luck with everything. Your economy is going to get better and better I predict. You have a lot of assets. It's a great country. I have many Ukrainian friends, their incredible people.

~~(S/NF)~~ President Zelenskyy: I would like to tell you that I also have quite a few Ukrainian friends that live in the United States. Actually last time I traveled to the United States, I stayed in New York near Central Park and I stayed at the Trump

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5 **UNCLASSIFIED**

Tower. I will talk to them and I hope to see them again in the future. I also wanted to thank you for your invitation to visit the United States, specifically Washington DC. On the other hand, I also want to ensure you that we will be very serious about the case and will work on the investigation. As to the economy, there is much potential for our two countries and one of the issues that is very important for Ukraine is energy independence. I believe we can be very successful and cooperating on energy independence with United States. We are already working on cooperation. We are buying American oil but I am very hopeful for a future meeting. We will have more time and more opportunities to discuss these opportunities and get to know each other better. I would like to thank you very much for your support

~~(S/NF)~~ The President: Good. Well, thank you very much and I appreciate that. I will tell Rudy and Attorney General Barr to call. Thank you. Whenever you would like to come to the White House, feel free to call. Give us a date and we'll work that out. I look forward to seeing you.

~~(S/NF)~~ President Zelenskyy: Thank you very much. I would be very happy to come and would be happy to meet with you personally and get to know you better. I am looking forward to our meeting and I also would like to invite you to visit Ukraine and come to the city of Kyiv which is a beautiful city. We have a beautiful country which would welcome you. On the other hand, I believe that on September 1 we will be in Poland and we can meet in Poland hopefully. After that, it might be a very good idea for you to travel to Ukraine. We can either take my plane and go to Ukraine or we can take your plane, which is probably much better than mine.

~~(S/NF)~~ The President: Okay, we can work that out. I look forward to seeing you in Washington and maybe in Poland because I think we are going to be there at that time.

~~(S/NF)~~ President Zelenskyy: Thank you very much Mr. President.

~~(S/NF)~~ The President: Congratulations on a fantastic job you've done. The whole world was watching. I'm not sure it was so much of an upset but congratulations.

~~(S/NF)~~ President Zelenskyy: Thank you Mr. President bye-bye.

-- End of Conversation --

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# Exhibit B

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August 12, 2019

The Honorable Richard Burr  
Chairman  
Select Committee on Intelligence  
United States Senate

The Honorable Adam Schiff  
Chairman  
Permanent Select Committee on Intelligence  
United States House of Representatives

Dear Chairman Burr and Chairman Schiff:

I am reporting an "urgent concern" in accordance with the procedures outlined in 50 U.S.C. §3033(k)(5)(A). This letter is UNCLASSIFIED when separated from the attachment.

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

- Over the past four months, more than half a dozen U.S. officials have informed me of various facts related to this effort. The information provided herein was relayed to me in the course of official interagency business. It is routine for U.S. officials with responsibility for a particular regional or functional portfolio to share such information with one another in order to inform policymaking and analysis.
- I was not a direct witness to most of the events described. However, I found my colleagues' accounts of these events to be credible because, in almost all cases, multiple officials recounted fact patterns that were consistent with one another. In addition, a variety of information consistent with these private accounts has been reported publicly.

I am deeply concerned that the actions described below constitute "a serious or flagrant problem, abuse, or violation of law or Executive Order" that "does not include differences of opinions concerning public policy matters," consistent with the definition of an "urgent concern" in 50 U.S.C. §3033(x)(5)(G). I am therefore fulfilling my duty to report this information, through proper legal channels, to the relevant authorities.

- I am also concerned that these actions pose risks to U.S. national security and undermine the U.S. Government's efforts to deter and counter foreign interference in U.S. elections.

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To the best of my knowledge, the entirety of this statement is unclassified when separated from the classified enclosure. I have endeavored to apply the classification standards outlined in Executive Order (EO) 13526 and to separate out information that I know or have reason to believe is classified for national security purposes.<sup>1</sup>

- If a classification marking is applied retroactively, I believe it is incumbent upon the classifying authority to explain why such a marking was applied, and to which specific information it pertains.

#### I. The 25 July Presidential phone call

Early in the morning of 25 July, the President spoke by telephone with Ukrainian President Volodymyr Zelenskyy. I do not know which side initiated the call. This was the first publicly acknowledged call between the two leaders since a brief congratulatory call after Mr. Zelenskyy won the presidency on 21 April.

Multiple White House officials with direct knowledge of the call informed me that, after an initial exchange of pleasantries, the President used the remainder of the call to advance his personal interests. Namely, he sought to pressure the Ukrainian leader to take actions to help the President's 2020 reelection bid. According to the White House officials who had direct knowledge of the call, the President pressured Mr. Zelenskyy to, inter alia:

- initiate or continue an investigation<sup>2</sup> into the activities of former Vice President Joseph Biden and his son, Hunter Biden;
- assist in purportedly uncovering that allegations of Russian interference in the 2016 U.S. presidential election originated in Ukraine, with a specific request that the Ukrainian leader locate and turn over servers used by the Democratic National Committee (DNC) and examined by the U.S. cyber security firm CrowdStrike,<sup>3</sup> which initially reported that Russian hackers had penetrated the DNC's networks in 2016; and
- meet or speak with two people the President named explicitly as his personal envoys on these matters, Mr. Giuliani and Attorney General Barr, to whom the President referred multiple times in tandem.

<sup>1</sup> Apart from the information in the Enclosure, it is my belief that none of the information contained herein meets the definition of "classified information" outlined in EO 13526, Part 1, Section 1.1. There is ample open-source information about the efforts I describe below, including statements by the President and Mr. Giuliani. In addition, based on my personal observations, there is discretion with respect to the classification of private comments by or instructions from the President, including his communications with foreign leaders; information that is not related to U.S. foreign policy or national security—such as the information contained in this document, when separated from the Enclosure—is generally treated as unclassified. I also believe that applying a classification marking to this information would violate EO 13526, Part 1, Section 1.7, which states: "In no case shall information be classified, continue to be maintained as classified, or fail to be declassified in order to: (1) conceal violations of law, inefficiency, or administrative error; [or] (2) prevent embarrassment to a person, organization, or agency."

<sup>2</sup> It is unclear whether such a Ukrainian investigation exists. See Footnote #7 for additional information.

<sup>3</sup> I do not know why the President associates these servers with Ukraine. (See, for example, his comments to *Fox News* on 20 July: "And Ukraine. Take a look at Ukraine. How come the FBI didn't take this server? Podesta told them to get out. He said, get out. So, how come the FBI didn't take the server from the DNC?")

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The President also praised Ukraine's Prosecutor General, Mr. Yuriy Lutsenko, and suggested that Mr. Zelenskyy might want to keep him in his position. (Note: Starting in March 2019, Mr. Lutsenko made a series of public allegations—many of which he later walked back—about the Biden family's activities in Ukraine, Ukrainian officials' purported involvement in the 2016 U.S. election, and the activities of the U.S. Embassy in Kyiv. See Part IV for additional context.)

The White House officials who told me this information were deeply disturbed by what had transpired in the phone call. They told me that there was already a "discussion ongoing" with White House lawyers about how to treat the call because of the likelihood, in the officials' retelling, that they had witnessed the President abuse his office for personal gain.

The Ukrainian side was the first to publicly acknowledge the phone call. On the evening of 25 July, a readout was posted on the website of the Ukrainian President that contained the following line (translation from original Russian-language readout):

- "Donald Trump expressed his conviction that the new Ukrainian government will be able to quickly improve Ukraine's image and complete the investigation of corruption cases that have held back cooperation between Ukraine and the United States."

Aside from the above-mentioned "cases" purportedly dealing with the Biden family and the 2016 U.S. election, I was told by White House officials that no other "cases" were discussed.

Based on my understanding, there were approximately a dozen White House officials who listened to the call—a mixture of policy officials and duty officers in the White House Situation Room, as is customary. The officials I spoke with told me that participation in the call had not been restricted in advance because everyone expected it would be a "routine" call with a foreign leader. I do not know whether anyone was physically present with the President during the call.

- In addition to White House personnel, I was told that a State Department official, Mr. T. Ulrich Brechbuhl, also listened in on the call.
- I was not the only non-White House official to receive a readout of the call. Based on my understanding, multiple State Department and Intelligence Community officials were also briefed on the contents of the call as outlined above.

## II. Efforts to restrict access to records related to the call

In the days following the phone call, I learned from multiple U.S. officials that senior White House officials had intervened to "lock down" all records of the phone call, especially the official word-for-word transcript of the call that was produced—as is customary—by the White House Situation Room. This set of actions underscored to me that White House officials understood the gravity of what had transpired in the call.

- White House officials told me that they were "directed" by White House lawyers to remove the electronic transcript from the computer system in which such transcripts are typically stored for coordination, finalization, and distribution to Cabinet-level officials.

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- Instead, the transcript was loaded into a separate electronic system that is otherwise used to store and handle classified information of an especially sensitive nature. One White House official described this act as an abuse of this electronic system because the call did not contain anything remotely sensitive from a national security perspective.

I do not know whether similar measures were taken to restrict access to other records of the call, such as contemporaneous handwritten notes taken by those who listened in.

### III. Ongoing concerns

On 26 July, a day after the call, U.S. Special Representative for Ukraine Negotiations Kurt Volker visited Kyiv and met with President Zelenskyy and a variety of Ukrainian political figures. Ambassador Volker was accompanied in his meetings by U.S. Ambassador to the European Union Gordon Sondland. Based on multiple readouts of these meetings recounted to me by various U.S. officials, Ambassadors Volker and Sondland reportedly provided advice to the Ukrainian leadership about how to “navigate” the demands that the President had made of Mr. Zelenskyy.

I also learned from multiple U.S. officials that, on or about 2 August, Mr. Giuliani reportedly traveled to Madrid to meet with one of President Zelenskyy’s advisers, Andriy Yermak. The U.S. officials characterized this meeting, which was not reported publicly at the time, as a “direct follow-up” to the President’s call with Mr. Zelenskyy about the “cases” they had discussed.

- Separately, multiple U.S. officials told me that Mr. Giuliani had reportedly privately reached out to a variety of other Zelenskyy advisers, including Chief of Staff Andriy Bohdan and Acting Chairman of the Security Service of Ukraine Ivan Bakanov.<sup>4</sup>
- I do not know whether those officials met or spoke with Mr. Giuliani, but I was told separately by multiple U.S. officials that Mr. Yermak and Mr. Bakanov intended to travel to Washington in mid-August.

On 9 August, the President told reporters: “I think [President Zelenskyy] is going to make a deal with President Putin, and he will be invited to the White House. And we look forward to seeing him. He’s already been invited to the White House, and he wants to come. And I think he will. He’s a very reasonable guy. He wants to see peace in Ukraine, and I think he will be coming very soon, actually.”

### IV. Circumstances leading up to the 25 July Presidential phone call

Beginning in late March 2019, a series of articles appeared in an online publication called *The Hill*. In these articles, several Ukrainian officials—most notably, Prosecutor General Yuriy Lutsenko—made a series of allegations against other Ukrainian officials and current and former U.S. officials. Mr. Lutsenko and his colleagues alleged, inter alia:

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<sup>4</sup> In a report published by the Organized Crime and Corruption Reporting Project (OCCRP) on 22 July, two associates of Mr. Giuliani reportedly traveled to Kyiv in May 2019 and met with Mr. Bakanov and another close Zelenskyy adviser, Mr. Serhiy Shefir.

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- that they possessed evidence that Ukrainian officials—namely, Head of the National Anticorruption Bureau of Ukraine Artem Sytnyk and Member of Parliament Serhiy Leshchenko—had “interfered” in the 2016 U.S. presidential election, allegedly in collaboration with the DNC and the U.S. Embassy in Kyiv;<sup>5</sup>
- that the U.S. Embassy in Kyiv—specifically, U.S. Ambassador Marie Yovanovitch, who had criticized Mr. Lutsenko’s organization for its poor record on fighting corruption—had allegedly obstructed Ukrainian law enforcement agencies’ pursuit of corruption cases, including by providing a “do not prosecute” list, and had blocked Ukrainian prosecutors from traveling to the United States expressly to prevent them from delivering their “evidence” about the 2016 U.S. election;<sup>6</sup> and
- that former Vice President Biden had pressured former Ukrainian President Petro Poroshenko in 2016 to fire then Ukrainian Prosecutor General Viktor Shokin in order to quash a purported criminal probe into Burisma Holdings, a Ukrainian energy company on whose board the former Vice President’s son, Hunter, sat.<sup>7</sup>

In several public comments,<sup>8</sup> Mr. Lutsenko also stated that he wished to communicate directly with Attorney General Barr on these matters.<sup>9</sup>

The allegations by Mr. Lutsenko came on the eve of the first round of Ukraine’s presidential election on 31 March. By that time, Mr. Lutsenko’s political patron, President Poroshenko, was trailing Mr. Zelenskyy in the polls and appeared likely to be defeated. Mr. Zelenskyy had made known his desire to replace Mr. Lutsenko as Prosecutor General. On 21 April, Mr. Poroshenko lost the runoff to Mr. Zelenskyy by a landslide. See Enclosure for additional information.

<sup>5</sup> Mr. Sytnyk and Mr. Leshchenko are two of Mr. Lutsenko’s main domestic rivals. Mr. Lutsenko has no legal training and has been widely criticized in Ukraine for politicizing criminal probes and using his tenure as Prosecutor General to protect corrupt Ukrainian officials. He has publicly feuded with Mr. Sytnyk, who heads Ukraine’s only competent anticorruption body, and with Mr. Leshchenko, a former investigative journalist who has repeatedly criticized Mr. Lutsenko’s record. In December 2018, a Ukrainian court upheld a complaint by a Member of Parliament, Mr. Boryslav Rozenblat, who alleged that Mr. Sytnyk and Mr. Leshchenko had “interfered” in the 2016 U.S. election by publicizing a document detailing corrupt payments made by former Ukrainian President Viktor Yanukovich before his ouster in 2014. Mr. Rozenblat had originally filed the motion in late 2017 after attempting to flee Ukraine amid an investigation into his taking of a large bribe. On 16 July 2019, Mr. Leshchenko publicly stated that a Ukrainian court had overturned the lower court’s decision.

<sup>6</sup> Mr. Lutsenko later told Ukrainian news outlet *The Babel* on 17 April that Ambassador Yovanovitch had never provided such a list, and that he was, in fact, the one who requested such a list.

<sup>7</sup> Mr. Lutsenko later told *Bloomberg* on 16 May that former Vice President Biden and his son were not subject to any current Ukrainian investigations, and that he had no evidence against them. Other senior Ukrainian officials also contested his original allegations; one former senior Ukrainian prosecutor told *Bloomberg* on 7 May that Mr. Shokin in fact was not investigating Burisma at the time of his removal in 2016.

<sup>8</sup> See, for example, Mr. Lutsenko’s comments to *The Hill* on 1 and 7 April and his interview with *The Babel* on 17 April, in which he stated that he had spoken with Mr. Giuliani about arranging contact with Attorney General Barr.

<sup>9</sup> In May, Attorney General Barr announced that he was initiating a probe into the “origins” of the Russia investigation. According to the above-referenced OCCRP report (22 July), two associates of Mr. Giuliani claimed to be working with Ukrainian officials to uncover information that would become part of this inquiry. In an interview with *Fox News* on 8 August, Mr. Giuliani claimed that Mr. John Durham, whom Attorney General Barr designated to lead this probe, was “spending a lot of time in Europe” because he was “investigating Ukraine.” I do not know the extent to which, if at all, Mr. Giuliani is directly coordinating his efforts on Ukraine with Attorney General Barr or Mr. Durham.

UNCLASSIFIED

- It was also publicly reported that Mr. Giuliani had met on at least two occasions with Mr. Lutsenko: once in New York in late January and again in Warsaw in mid-February. In addition, it was publicly reported that Mr. Giuliani had spoken in late 2018 to former Prosecutor General Shokin, in a Skype call arranged by two associates of Mr. Giuliani.<sup>10</sup>
- On 25 April in an interview with *Fox News*, the President called Mr. Lutsenko's claims "big" and "incredible" and stated that the Attorney General "would want to see this."

On or about 29 April, I learned from U.S. officials with direct knowledge of the situation that Ambassador Yovanovitch had been suddenly recalled to Washington by senior State Department officials for "consultations" and would most likely be removed from her position.

- Around the same time, I also learned from a U.S. official that "associates" of Mr. Giuliani were trying to make contact with the incoming Zelenskyy team.<sup>11</sup>
- On 6 May, the State Department announced that Ambassador Yovanovitch would be ending her assignment in Kyiv "as planned."
- However, several U.S. officials told me that, in fact, her tour was curtailed because of pressure stemming from Mr. Lutsenko's allegations. Mr. Giuliani subsequently stated in an interview with a Ukrainian journalist published on 14 May that Ambassador Yovanovitch was "removed...because she was part of the efforts against the President."

On 9 May, *The New York Times* reported that Mr. Giuliani planned to travel to Ukraine to press the Ukrainian government to pursue investigations that would help the President in his 2020 reelection bid.

- In his multitude of public statements leading up to and in the wake of the publication of this article, Mr. Giuliani confirmed that he was focused on encouraging Ukrainian authorities to pursue investigations into alleged Ukrainian interference in the 2016 U.S. election and alleged wrongdoing by the Biden family.<sup>12</sup>
- On the afternoon of 10 May, the President stated in an interview with *Politico* that he planned to speak with Mr. Giuliani about the trip.
- A few hours later, Mr. Giuliani publicly canceled his trip, claiming that Mr. Zelenskyy was "surrounded by enemies of the [U.S.] President...and of the United States."

On 11 May, Mr. Lutsenko met for two hours with President-elect Zelenskyy, according to a public account given several days later by Mr. Lutsenko. Mr. Lutsenko publicly stated that he had told Mr. Zelenskyy that he wished to remain as Prosecutor General.

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<sup>10</sup> See, for example, the above-referenced articles in *Blomberg* (16 May) and OCCRP (22 July).

<sup>11</sup> I do not know whether these associates of Mr. Giuliani were the same individuals named in the 22 July report by OCCRP, referenced above.

<sup>12</sup> See, for example, Mr. Giuliani's appearance on *Fox News* on 6 April and his tweets on 23 April and 10 May. In his interview with *The New York Times*, Mr. Giuliani stated that the President "basically knows what I'm doing, sure, as his lawyer." Mr. Giuliani also stated: "We're not meddling in an election, we're meddling in an investigation, which we have a right to do... There's nothing illegal about it... Somebody could say it's improper. And this isn't foreign policy - I'm asking them to do an investigation that they're doing already and that other people are telling them to stop. And I'm going to give them reasons why they shouldn't stop it because that information will be very, very helpful to my client, and may turn out to be helpful to my government."

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Starting in mid-May, I heard from multiple U.S. officials that they were deeply concerned by what they viewed as Mr. Giuliani's circumvention of national security decisionmaking processes to engage with Ukrainian officials and relay messages back and forth between Kyiv and the President. These officials also told me:

- that State Department officials, including Ambassadors Volker and Sondland, had spoken with Mr. Giuliani in an attempt to "contain the damage" to U.S. national security; and
- that Ambassadors Volker and Sondland during this time period met with members of the new Ukrainian administration and, in addition to discussing policy matters, sought to help Ukrainian leaders understand and respond to the differing messages they were receiving from official U.S. channels on the one hand, and from Mr. Giuliani on the other.

During this same timeframe, multiple U.S. officials told me that the Ukrainian leadership was led to believe that a meeting or phone call between the President and President Zelenskyy would depend on whether Zelenskyy showed willingness to "play ball" on the issues that had been publicly aired by Mr. Lutsenko and Mr. Giuliani. (Note: This was the general understanding of the state of affairs as conveyed to me by U.S. officials from late May into early July. I do not know who delivered this message to the Ukrainian leadership, or when.) See Enclosure for additional information.

Shortly after President Zelenskyy's inauguration, it was publicly reported that Mr. Giuliani met with two other Ukrainian officials: Ukraine's Special Anticorruption Prosecutor, Mr. Nazar Kholodnytsky, and a former Ukrainian diplomat named Andriy Telizhenko. Both Mr. Kholodnytsky and Mr. Telizhenko are allies of Mr. Lutsenko and made similar allegations in the above-mentioned series of articles in *The Hill*.

On 13 June, the President told ABC's George Stephanopoulos that he would accept damaging information on his political rivals from a foreign government.

On 21 June, Mr. Giuliani tweeted: "New Pres of Ukraine still silent on investigation of Ukrainian interference in 2016 and alleged Biden bribery of Poroshenko. Time for leadership and investigate both if you want to purge how Ukraine was abused by Hillary and Clinton people."

In mid-July, I learned of a sudden change of policy with respect to U.S. assistance for Ukraine. See Enclosure for additional information.

ENCLOSURE: Classified appendix

August 12, 2019

(U) CLASSIFIED APPENDIX

(U) Supplementary classified information is provided as follows:

(U) **Additional information related to Section II**

(TS) [REDACTED] According to multiple White House officials I spoke with, the transcript of the President's call with President Zelenskyy was placed into a computer system managed directly by the National Security Council (NSC) Directorate for Intelligence Programs. This is a standalone computer system reserved for codeword-level intelligence information, such as covert action. According to information I received from White House officials, some officials voiced concerns internally that this would be an abuse of the system and was not consistent with the responsibilities of the Directorate for Intelligence Programs. According to White House officials I spoke with, this was "not the first time" under this Administration that a Presidential transcript was placed into this codeword-level system solely for the purpose of protecting politically sensitive—rather than national security sensitive—information.

(U) **Additional information related to Section IV**

[REDACTED]

(S) [REDACTED] I would like to expand upon two issues mentioned in Section IV that might have a connection with the overall effort to pressure the Ukrainian leadership. As I do not know definitively whether the below-mentioned decisions are connected to the broader efforts I describe, I have chosen to include them in the classified annex. If they indeed represent genuine policy deliberations and decisions formulated to advance U.S. foreign policy and national security, one might be able to make a reasonable case that the facts are classified.

- (S) [REDACTED] I learned from U.S. officials that, on or around 14 May, the President instructed Vice President Pence to cancel his planned travel to Ukraine to attend President

[REDACTED]

Zelenskyy's inauguration on 20 May; Secretary of Energy Rick Perry led the delegation instead. According to these officials, it was also "made clear" to them that the President did not want to meet with Mr. Zelenskyy until he saw how Zelenskyy "chose to act" in office. I do not know how this guidance was communicated, or by whom. I also do not know whether this action was connected with the broader understanding, described in the unclassified letter, that a meeting or phone call between the President and President Zelenskyy would depend on whether Zelenskyy showed willingness to "play ball" on the issues that had been publicly aired by Mr. Lutsenko and Mr. Giuliani.

- (S/[REDACTED]) On 18 July, an Office of Management and Budget (OMB) official informed Departments and Agencies that the President "earlier that month" had issued instructions to suspend all U.S. security assistance to Ukraine. Neither OMB nor the NSC staff knew why this instruction had been issued. During interagency meetings on 23 July and 26 July, OMB officials again stated explicitly that the instruction to suspend this assistance had come directly from the President, but they still were unaware of a policy rationale. As of early August, I heard from U.S. officials that some Ukrainian officials were aware that U.S. aid might be in jeopardy, but I do not know how or when they learned of it.

# Exhibit C

**MEDIA CONTACTS****Eric Friedman**

Director of  
Communications  
212-382-6754  
Email

**Eli Cohen**

Communications  
Associate  
212-382-6656  
Email

Subscribe

# Attorney General Barr Should Recuse Himself from Department of Justice Review of Ukraine Matter

October 23, 2019

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## Statement of the New York City Bar Association October 23, 2019

### Attorney General Barr Should Recuse Himself from Department of Justice Review of Ukraine Matter

#### Summary

The United States Department of Justice (DOJ) has a unique role in safeguarding the rule of law under the Constitution. By failing to recuse himself from DOJ's review of the Ukraine Matter, Attorney General William P. Barr has undermined that role. To help remedy that failure, the New York City Bar Association urges that Mr. Barr recuse himself from any ongoing or future review by DOJ of Ukraine-related issues in which Mr. Barr is allegedly involved. If he fails to do so, he should resign or, failing that, be subject to sanctions, including possible removal, by Congress.

#### The Office of the Attorney General

Since our democracy's inception in 1789, its foundation has been the rule of law. Our leaders are selected and exercise their powers under law, beginning with our Constitution. Although our courts have primary responsibility for interpreting and applying our laws, both the Congress and the Executive - including the President - are subject to, and

accountable under, the Constitution and the laws enacted thereunder. Because respect for law is central to our nation's governance, the Attorney General of the United States bears a special responsibility to see that our laws are justly administered for the benefit of the American people. The Attorney General is, and must be seen as, the representative of the nation in advising the President and other federal officers and must demonstrate an unquestioned commitment to compliance with law by all who exercise the powers of government.

The modern DOJ was established by Congress in the Judiciary Act of 1870. Even before that, however, the office of the Attorney General was seen as having a uniquely important role in our federal system. As Attorney General Cushing observed in an 1854 opinion, the Attorney General is not simply "a counsel giving advice to the Government as his client, but a public officer, acting judicially, under all the solemn responsibilities of conscience and of legal obligation."<sup>[1]</sup> For the same reason that the Attorney General's obligations are not owed solely to "the Government as his client," they are not owed to the President in his individual capacity.

As noted by William Barr at the time of his nomination as Attorney General in 1991, the Attorney General "holds in trust the fair and impartial administration of justice. It is the attorney general's responsibility to enforce the law evenhandedly and with integrity. The attorney general must ensure that the administration of justice, the enforcement of the law is above and away from politics. Nothing could be more destructive of our system of government, of the rule of law or the Department of Justice as an institution than any toleration of political interference with the enforcement of the law."<sup>[2]</sup>

Mr. Barr repeated these words at the time of his 2019 nomination for his current position as Attorney General and added that "the American people have to know that there are places in the government where the rule of law, not

are places in the government where the rule of law, not politics, holds sway and where they will be treated fairly based solely on the facts and the evenhanded application of the law. The Department of Justice must be that place.”[3]

### **Mr. Barr’s Performance**

Despite this commitment to the role of the Attorney General, Mr. Barr’s actions in office have failed in precisely the role that he described with eloquence when nominated. That failure has jeopardized the confidence that the public can reasonably have in the DOJ as the place “where the rule of law, not politics, holds sway.” His actions during his brief tenure in office have demonstrated to us that, contrary to the responsibilities of his office, he appears to view his primary obligation as loyalty to the President individually rather than to the nation. In serving the President, he has been willing to take or countenance actions that are contrary to the professional standards of the DOJ, his oath of office and his own obligations as an attorney.

Our concern has been brought to a head by Mr. Barr’s failure to recuse himself from the DOJ’s review—itsself of uncertain propriety—of the ongoing “whistleblower” complaint with respect to the President’s efforts during his July 25, 2019 telephone call to request the Republic of Ukraine to investigate Mr. Trump’s allegations of Ukrainian interference in the 2016 U.S. elections and former Vice-President Biden and his son (the “Ukraine Matter”). As White House records made clear[4], the President told his Ukrainian counterpart, Volodymyr Zelensky, that Mr. Barr “would be in touch with him” to follow up on the President’s requests. The whistleblower found this telephone call to be of “urgent concern” because of the President’s apparent intermingling of U.S. foreign policy interests with his personal political interests in apparent violation of U.S. law.[5]

Our focus here is not on the legality of the President’s actions or even on the merits of the whistleblower’s complaint which the Intelligence Community’s Inspector

General found to be "credible." Nor do we take a position at this time on whether DOJ's review of this action was justified.

We do, however, believe it was, and is, incumbent on the Attorney General to recuse himself from any participation, direct or indirect, in DOJ's review of the whistleblower complaint. Regardless of whether Mr. Barr was in fact aware of or part of the President's plans, either before, at the time of, or after the July 25, 2019 telephone call, it is clear that Mr. Barr was obligated to recuse himself from any involvement in DOJ's review of either the whistleblower complaint or the substance of the President's actions once the President offered Mr. Barr's services to President Zelensky.

Federal regulations (28 CFR 45.2) for DOJ prosecutors require recusal whenever a lawyer "has a personal or political relationship with any person . . . substantially included in the conduct that is the subject of the investigation." The DOJ Manual for U.S. Attorneys requires (section 3-2.170, 2.220) recusal of U.S. Attorneys and Assistant U.S. Attorneys where "a conflict of interest exists or there is an appearance of a conflict of interest or loss of impartiality." Executive Branch ethics rules also provide (5 C.F.R. 2635.502) that recusal is appropriate if "a reasonable person with knowledge of the relevant facts would be likely to question the employee's impartiality in the matter."

Mr. Barr also was specifically mentioned by the President as a participant in the activity under investigation. Moreover, he appears to have participated in the DOJ review of the whistleblower's complaint and its decision not to forward that complaint to Congress. That he failed to recuse himself from that review, and still has not yet (to our knowledge) recused himself from any ongoing DOJ review of other aspects of the Ukraine Matter, is a serious violation of his obligation to protect the DOJ from reasonable questions as to its impartiality in the investigation of the Ukraine Matter.

[6]

Recusal by the Attorney General is by no means rare. There have been at least 16 such recusals since 1989, including two previous recusals by Mr. Barr himself (one in 1993 during his first term as Attorney General and one in 2019 in connection with the Jeffrey Epstein review) and the 2017 recusal by Attorney General Sessions because of his potential role as a witness to Russian interference in the 2016 election. In addition, six other Attorneys General recused themselves during this period.<sup>[7]</sup> The whistleblower complaint against the President and others (potentially involving Mr. Barr either as a witness or, conceivably, an accomplice) clearly rose to the levels that required recusal in these earlier investigations and should have led Mr. Barr to similar action in this instance.

### **Conclusion**

A nation founded on a commitment to the rule of law cannot have an Attorney General who by his actions appears to undermine the bedrock principle on which our nation relies—that all federal officials, including the President, are subject to the rule of law. Mr. Barr's failure to recuse himself from any involvement in the DOJ's review of the whistleblower complaint and its disclosure to Congress undermined that principle. In order to limit the impact of his earlier failure to recuse, we call upon Mr. Barr to immediately recuse himself from all further DOJ investigations of Ukraine-related issues in which he is or was allegedly involved, including any continuing or future investigations into alleged Ukrainian involvement in the 2016 election, allegations relating to Mr. Biden or his family members or the President's efforts to pursue those allegations in connection with U.S. assistance to Ukraine or to other nations.

We hope that Mr. Barr will act promptly to remedy, at least in part, his prior failure to recuse himself from the Ukraine Matter. If, however, he chooses not to do so, we believe he must resign his position as Attorney General. If he fails

either to recuse himself or to resign, Mr. Barr should be subject to appropriate Congressional sanctions, including possible removal from office, in order to restore the Office of the Attorney General and the DOJ to their historic roles as defender of the law on behalf of the American people.

October 23, 2019

Roger Juan Maldonado  
President  
New York City Bar Association

Stephen L. Kass  
Chair, Task Force on the Rule of Law  
New York City Bar Association

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[1] Department of Justice as an Independent Establishment, *The*, 29 Rec. Ass'n B. City N.Y. 486, 490 (1974).

[2] Confirmation Hearing of William P. Barr, 15. Hrg. 102-505, Pt. 2 (Nov. 12 & 13, 1991), *available at* [civilrightsdocs.info/pdf/ag-vacancy/1991-AG-Nomination-Hearing-Transcript.pdf](http://civilrightsdocs.info/pdf/ag-vacancy/1991-AG-Nomination-Hearing-Transcript.pdf) (All websites last visited October 21, 2019.)

[3] Reproduced in *The Washington Post*, January 14, 2019.

[4] The White House summary of the July 25 phone call is available [here:](https://www.washingtonpost.com/context/official-readout-president-trump-s-july-25-phone-call-with-ukraine-s-volodymyr-zelensky/4b228f51-17e7-45bc-b16c-3b2643f3fbe0/)

<https://www.washingtonpost.com/context/official-readout-president-trump-s-july-25-phone-call-with-ukraine-s-volodymyr-zelensky/4b228f51-17e7-45bc-b16c-3b2643f3fbe0/>.

[5] The whistleblower's complaint included the following at page 1: "In the course of my official duties, I have received information from multiple U.S. Government officials that the President of the United States is using the power of his office to solicit interference from a foreign country in the 2020 election. This interference includes, among other things, pressuring a foreign country to investigate one of the President's main political rivals. The President's personal

lawyer, Mr. Rudolph Giuliani, is a central figure in this effort. Attorney General Barr appears to be involved as well." The whistleblower complaint is available here: [https://intelligence.house.gov/uploadedfiles/20190812\\_-\\_whistleblower\\_complaint\\_unclass.pdf](https://intelligence.house.gov/uploadedfiles/20190812_-_whistleblower_complaint_unclass.pdf).

[6] By identifying this one issue relating to his recusal, we do not mean to endorse Mr. Barr's decisions on other matters.

[7] These examples of prior recusal by the Attorney General include the following: Richard Thornburgh (drug use by public officials); Janet Reno (tax evasion by a former subordinate and FBI conduct at Waco); John Ashcroft (campaign finance by Ashcroft political opponent, Enron misconduct, and disclosure of Valerie Plame's CIA identity); Alberto Gonzales (Valerie Plame investigation, simultaneous termination of nine U.S. Attorneys); Michael Mukasey (Madoff investigation); Eric Holder (UBS investigation, Roger Clemens investigation, ATT and T-Mobile merger, and FBI press leak). Congressional Research Service, *A Brief History of Attorney General Recusal* (Mar. 8, 2017), <https://fas.org/sgp/crs/misc/recusal.pdf>.

Issue(s): Governmental Affairs | International Affairs

Committee(s): Rule of Law, Task Force on the

Subject Area(s): Rule of Law | Recusal

# Exhibit D

# United States Senate

WASHINGTON, DC 20510

October 24, 2019

The Honorable William P. Barr  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Ave. NW  
Washington, D.C. 20530

Dear Attorney General Barr:

We urge you to recuse yourself from investigations into the Trump Ukraine matters, including any investigations involving Rudy Giuliani, Lev Parnas, or Igor Fruman, as well as investigations into the origins of the Russia investigation.

Federal ethics guidelines prohibit federal employees from participating in any matter in which their impartiality could be questioned, including matters in which they were personally involved or about which they have personal knowledge. [5 C.F.R. § 2635.502; Justice Manual § 1-4.020]. Previous Attorneys General have sought the counsel of the relevant senior career Department officials to determine whether they should recuse themselves from matters where their impartiality might reasonably be questioned.

The White House's memorandum of President Trump's July 25 phone call with Ukraine President Zelensky suggests that you may have personal knowledge or involvement in President Trump's requests that Ukraine pursue investigations to serve the President's personal political interests. During that phone call, President Trump referenced you by name or title at least five times, including mentioning you in tandem with Rudy Giuliani three times. [Call Summary at 3-5].

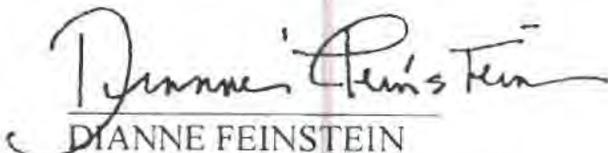
This raises legitimate questions about your knowledge of the activities of Mr. Giuliani and others, as well as the actions that you have taken and your discussions with the President and White House about these investigations. For example, after receiving the preliminary Justice Department Inspector General report on the Russia investigation's origins last month, you reportedly traveled to Italy to conduct your own fact-finding along with U.S. Attorney John Durham. [Washington Post, Oct. 10, 2019]. You did so after President Trump told President Zelensky that he would "like to have the Attorney General call" to discuss an

investigation meant to discredit Special Counsel Mueller's findings regarding Russian election interference.

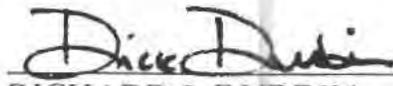
Impartial enforcement of the law is essential to give the American public confidence in the Justice Department's work. Your personal connection to these matters creates the appearance of a conflict of interest and gives rise to questions about whether the Department is being used to advance the President's personal interests.

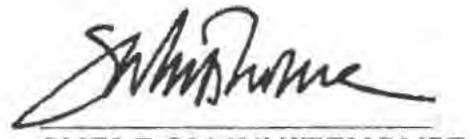
Accordingly, we request that you recuse yourself and identify the appropriate official who will be responsible for these matters. We also request that you confirm whether you consulted Department ethics officials regarding recusal and provide copies of any ethics guidance that Justice Department officials have provided in connection with these matters.

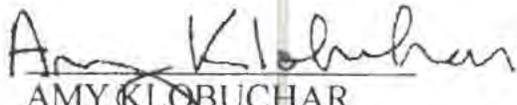
Sincerely,

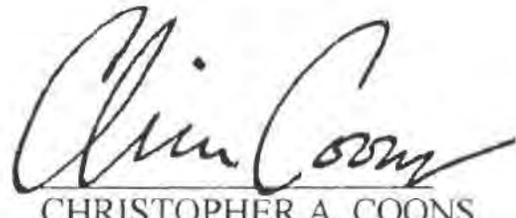
  
DIANNE FEINSTEIN  
Ranking Member

  
PATRICK LEAHY  
United States Senator

  
RICHARD J. DURBIN  
United States Senator

  
SHELDON WHITEHOUSE  
United States Senator

  
AMY KLOBUCHAR  
United States Senator

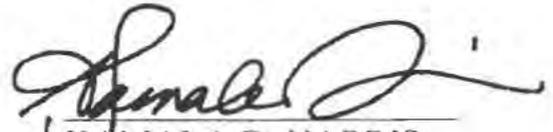
  
CHRISTOPHER A. COONS  
United States Senator

  
RICHARD BLUMENTHAL  
United States Senator

  
MAZIE K. HIRONO  
United States Senator



CORY A. BOOKER  
United States Senator



KAMALA D. HARRIS  
United States Senator

cc: The Honorable Lindsey O. Graham  
Chairman, Senate Committee on the Judiciary

# Exhibit E

# NEW YORK CITY BAR

ROGER JUAN MALDONADO

PRESIDENT

Phone: (212) 382-6700

[rmaldonado@nycbar.org](mailto:rmaldonado@nycbar.org)

STEPHEN L. KASS

CHAIR

TASK FORCE ON THE RULE OF LAW

*Sent via Facsimile & Regular Mail*

January 8, 2020

Hon. Nancy Pelosi  
Speaker  
U.S. House of Representatives  
H-232, The Capitol  
Washington, DC 20515

Hon. Kevin McCarthy  
Minority Leader  
U.S. House of Representatives  
H-204, The Capitol  
Washington, DC 20515

Hon. Mitch McConnell  
Majority Leader  
U.S. Senate  
S-230, The Capitol  
Washington, DC 20515

Hon. Charles Schumer  
Minority Leader  
U.S. Senate  
S-221, The Capitol  
Washington, DC 20515

Dear Speaker Pelosi, Minority Leader McCarthy, Majority Leader McConnell, and Minority Leader Schumer:

We write on behalf of the New York City Bar Association (the "City Bar") to urge Congress to commence formal inquiries into a pattern of conduct by Attorney General William P. Barr that threatens public confidence in the fair and impartial administration of justice. We make this request based upon our belief, as similarly recognized by Mr. Barr during his Senate confirmation hearings, that the Attorney General occupies a unique position with special obligations as the nation's top law enforcement officer. We also make this request in keeping with the City Bar's mission to embrace advancement of the rule of law and the fair administration of justice, especially by those who are entrusted with important public responsibilities.<sup>1</sup>

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<sup>1</sup> In October 2019, the City Bar called on Mr. Barr to recuse himself from all Department of Justice matters relating to allegations that President Donald J. Trump abused the power of his office to solicit political interference on his behalf by the government of Ukraine. Mr. Barr was personally named in the whistleblower complaint first raising those allegations and is reported to have been involved personally in some of the matters subject to review. To date, Mr. Barr has failed to recuse himself. See 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->

As further described below, Mr. Barr's recent actions and statements position the Attorney General and, by extension, the United States Department of Justice (DOJ) as political partisans willing to use the levers of government to empower certain groups over others. These statements are the latest examples of a broader pattern of conduct that is inconsistent with the role of the Attorney General in our legal and constitutional system and with the norms and standards that govern the fair administration of justice. We urge Congress to exercise its constitutional authority to investigate this troubling pattern of conduct, in order to assess Mr. Barr's actions as Attorney General and to consider any legislative and oversight responses and remedies that may be necessary.

The duties to act impartially, to avoid even the appearance of partiality and impropriety, and to avoid manifesting bias, prejudice, or partisanship in the exercise of official responsibilities are bedrock obligations for government lawyers. In the context of pending investigations, government lawyers also are obliged to be circumspect in their public statements and to avoid prejudging the outcomes of those investigations.

Mr. Barr has disregarded these fundamental obligations in several extended public statements during the past few months:

- On October 11, 2019, in an invitation-only speech at the University of Notre Dame, Mr. Barr launched a partisan attack against "so called 'progressives'" for supposedly waging a "campaign to destroy the traditional moral order." He charged that "secularists" and "their allies among progressives" were "marshal[ing] all the force of mass communication, popular culture, the entertainment industry, and academia in an unremitting assault on religion and traditional values," with the ultimate goal of achieving the "organized destruction" of religion. In his speech, which is now published on the DOJ website, Mr. Barr stated that "the Founding generation . . . believed that the Judeo-Christian moral system corresponds to the true nature of man" and that "Judeo-Christian moral standards are the ultimate utilitarian rules for human conduct." According to the Attorney General, "they are like God's instruction manual for the best running of man and society." Expressing his view that "Judeo-Christian values . . . have made this country great"—while simultaneously rejecting the moral basis of secularism and, by implication, other religions (and atheism) as "an inversion of Christian morality," Mr. Barr vowed to place the Department of Justice "at the forefront" of efforts to resist "forces of secularization."<sup>2</sup>

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matter (hereinafter New York City Bar Association, *Barr Should Recuse Himself*, Oct. 23, 2019). (All links cited in this letter were last checked on January 7, 2020).

<sup>2</sup> William P. Barr, Attorney General of the United States, *Remarks to de Nicola Center for Ethics and Culture, University of Notre Dame School of Law*, Oct. 11, 2019, <https://www.justice.gov/opa/speech-attorney-general-william-p-barr-delivers-remarks-law-school-and-de-nicola-center-ethics> (as prepared for delivery); see Michael Sean Winters, *Notre Dame Had a Right to Host Barr—But His Talk Was Ridiculously Stupid*, NAT'L CATHOLIC REPORTER, Oct. 18, 2019, <https://www.ncreonline.org/news/opinion/distinctly-catholic-notre-dame-had-right-host-barr-his-talk-was-ridiculously-stupid>.

- On November 15, 2019, in a speech at the Federalist Society’s National Lawyers Convention, Mr. Barr again vilified “progressives” and “the Left” (characterizing as “the other side” those who “oppose this President”) in highly partisan terms. Attacking “so-called progressives” for supposedly “treating politics as their religion,” and for allegedly attempting, by “any means necessary,” to “use the coercive power of the State to remake man and society in their image,” Mr. Barr charged that opponents of the Trump presidency’s policies have been “engaged in the systematic shredding of norms and the undermining of the rule of law.” By contrast, Mr. Barr proclaimed, conservatives “tend to have more scruple over their political tactics” and are more genuinely committed to the rule of law.<sup>3</sup> The Attorney General referred to something he called a “progressive holy war,” characterized, he says, by the use of “any means necessary to gain momentary advantage.”
- On December 3, 2019 – drawing from earlier remarks at a Fraternal Order of Police gathering in New Orleans in which he lambasted District Attorneys from “large cities” who “style themselves as ‘social justice’ reformers, who spend their time undercutting the police, letting criminals off the hook, and refusing to enforce the law,” and “an increasingly vocal minority” that “regularly attacks the police and advances a narrative that it is the police that are the bad guys” and “automatically start[s] screaming for the officers’ scalps, regardless of the facts” following “a confrontation involving the use of force by police”<sup>4</sup> – Mr. Barr warned at a DOJ awards ceremony that “the American people have to . . . start showing, more than they do, the respect and support that law enforcement deserves,” and “if communities don’t give that support and respect, they might find themselves without the police protection they need.”<sup>5</sup> Although Mr. Barr did not specify which District Attorneys he had in mind, he did say that “[t]hese anti-law enforcement DAs have tended to emerge in jurisdictions where the election is largely determined by the primary” and cited to “large cities” as the culprit jurisdictions which, in his view, were headed towards “[m]ore crime; more victims” as a result.<sup>6</sup> In similar fashion, Mr. Barr did not specify which “communities” were at risk of seeing

<sup>3</sup> William P. Barr, Attorney General of the United States, *19th Annual Barbara K. Olson Memorial Lecture, National Lawyers Convention, Federalist Society*, Nov. 15, 2019, <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-19th-annual-barbara-k-olson-memorial-lecture> (as prepared for delivery); see Ruth Marcus, *The Most Alarming Part of Barr’s Speech Was Its Angrily Partisan Tone*, WASH. POST, Nov. 18, 2019, [https://www.washingtonpost.com/opinions/william-barrs-language-is-that-of-an-ideological-warrior-not-an-attorney-general/2019/11/18/27f26c64-0a42-11ea-bd9d-c628fd48b3a0\\_story.html](https://www.washingtonpost.com/opinions/william-barrs-language-is-that-of-an-ideological-warrior-not-an-attorney-general/2019/11/18/27f26c64-0a42-11ea-bd9d-c628fd48b3a0_story.html).

<sup>4</sup> William P. Barr, Attorney General of the United States, *Attorney General William P. Barr Delivers Remarks at the Grand Lodge Fraternal Order of Police’s 64th National Biennial Conference*, August 12, 2019, <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-remarks-grand-lodge-fraternal-order-polices-64th> (as prepared for delivery) (hereinafter “FOP Speech”).

<sup>5</sup> William P. Barr, Attorney General of the United States, *Third Annual Attorney General’s Award for Distinguished Service in Policing*, Dec. 3, 2019, <https://www.justice.gov/opa/video/third-annual-attorney-general-s-award-distinguished-service-policing>.

<sup>6</sup> In response to the FOP Speech, 67 prosecutors issued a statement calling Barr’s speech “deeply concerning” and cautioning “It is not the time for a return to fear-driven narratives that find no foundation in fact.” *Statement in Response to Attorney General Barr’s Remarks to The Fraternal Order of Police*, August 16, 2019, <https://fairandjustprosecution.org/wp-content/uploads/2019/08/Barr-Remarks-Sign-On-Statement.pdf>.

decreased police protection because they lack respect for law enforcement, but his comment was understood by some observers, not unreasonably, as being directed toward members of communities of color protesting excessive use of force by police.<sup>7</sup>

- On December 10, 2019, in a television interview soon after DOJ's Inspector General released a report finding no improper political motivation in the FBI's commencement of a counterintelligence investigation into alleged ties between the Trump-Pence campaign and Russian officials in 2016, Mr. Barr publicly rejected the Inspector General's findings, asserting instead that a separate ongoing investigation into the FBI's actions that he personally had directed would likely reach a different conclusion. Although that second investigation (which is being supervised by a different DOJ official) is not yet complete, Mr. Barr nevertheless openly discussed his opinions about the likely outcome of that investigation. In a separate statement the previous day, Mr. Barr asserted that the FBI's factual predicate was "insufficient to justify" its investigation and that the FBI may have acted in "bad faith" in commencing that investigation.<sup>8</sup>

These comments follow and are reminiscent of Mr. Barr's earlier mischaracterizations of the Mueller Report, prior to his release of a redacted version of it, in which Mr. Barr claimed the special counsel had found insufficient evidence of any obstruction of justice by President Trump—

<sup>7</sup> In a television interview with Fete Williams of NBC News on December 10, 2019, Mr. Barr denied that he had suggested that people should not criticize police officers and said he was referring to the high rates of job vacancies in police agencies throughout the country. See *Full Interview: Barr Criticizes Inspector General Report on the Russia Investigation*, NBC NEWS, Dec. 10, 2019, <https://www.nbcnews.com/video/full-interview-barr-criticizes-inspector-general-report-on-the-russia-investigation-74851909911>. There has been extensive reporting over many years on police shortages and the innovative recruitment efforts being made by police departments, but the causes of the hiring challenges are myriad and complex. According to experts in the field, contributing factors include relatively low starting pay; a changing workforce with expectations and objectives that differ from past generations; a weakening pipeline from family members and the military; continuing challenges associated with recruitment of non-traditional candidates, including women and people of color; disqualifying past behaviors by applicants; the stress of increasingly being called upon to deal with the social ills of homelessness, substance abuse and mental illness; news stories highlighting the challenges of serving as a police officer; and misaligned job expectations. See, e.g., Laurie Mack, *Shortage Of Officers Fuels Police Recruiting Crisis*, Dec. NPR NEWS, Dec. 11, 2018, <https://www.npr.org/2018/12/11/675505052-shortage-of-officers-fuels-police-recruiting-crisis>; Timothy Roufa, *Why Police Departments Are Facing Recruitment Problems*, THE BALANCE CAREERS/CRIMINOLOGY CAREERS, Nov. 5, 2018, <https://www.thebalancecareers.com/why-police-departments-are-facing-recruitment-problems-974771>; Sid Smith, MPA, Chief of Police (former), *A Crisis Facing Law Enforcement: Recruiting in the 21st Century*, POLICE CHIEF MAGAZINE, June 2016, <https://www.policechiefmagazine.org/a-crisis-facing-law-enforcement-recruiting-in-the-21st-century/>; Ben Langham, Lieutenant, Kenai, Alaska, Police Department, *Millennials and Improving Recruitment in Law Enforcement*, POLICE CHIEF MAGAZINE, May 24, 2017, <https://www.policechiefmagazine.org/millennials-and-improving-recruitment/>; Lt. Ryan Harmon, *A New Approach In Recruiting & Retaining Qualified Officers At The Bella Vista [Arkansas] Police Department*, March 2011, <https://www.cji.edu/wp-content/uploads/2019/04/new-approach-in-recruiting-retaining-qualified-officers.pdf>; POLICE EXECUTIVE RESEARCH FORUM, *The Workforce Crisis, And What Police Agencies Are Doing About It*, September 2019, <https://www.policeforum.org/assets/WorkforceCrisis.pdf>.

<sup>8</sup> *Full Interview: Barr Criticizes Inspector General Report*, supra note 7; Mikhaila Fogel, *Notable Statements on Inspector General's Report*, LAWFARE, Dec. 9, 2019, <https://www.lawfareblog.com/notable-statements-inspector-generals-report>; William Webster, *The Rule of Law Still Matters*, NY Times, Dec. 17, 2019, at A27, <https://www.nytimes.com/2019/12/16/opinion/FBI-Trump-russia-investigation.html>.

a material mischaracterization of the Mueller Report and a proposition rejected by more than 1,000 former federal prosecutors based on the facts set forth in the Mueller Report.<sup>9</sup>

These public statements by Mr. Barr also contravene the norms applicable to his office and warrant further investigation by Congress as part of an inquiry into Mr. Barr's conduct as Attorney General more generally. They may even implicate ethical considerations, insofar as prosecutors must generally avoid public comments on ongoing investigations and must not manifest any bias or prejudice based on race, religion, sexual orientation or partisan political considerations in exercising their prosecutorial discretion.<sup>10</sup> Although we do not in this letter take any position on whether or not Mr. Barr has violated any Rules of Professional Conduct, at least one leading legal ethics authority has suggested that government lawyers have special obligations to be factually accurate in their public statements, and should be bound by the Rules of Professional Conduct, even if they do not represent clients in the traditional sense.<sup>11</sup> Indeed, Mr. Barr's conduct appears to run afoul of the "very special obligations" that he himself professed to recognize during his 1991 and 2019 Senate confirmation hearings.<sup>12</sup> During the 1991 hearing, Mr. Barr recognized that the Attorney General "holds in trust the fair and impartial administration of justice" and bears responsibility "to enforce the law evenhandedly and with integrity." He also noted that the Attorney General "must ensure that the administration of justice . . . is above and away from politics," and that "[n]othing could be more destructive of our system of government, of the rule of law, or the Department of Justice as an institution, than any toleration of political interference with the enforcement of the law." In 2019, Mr. Barr further explained that the Department of Justice must be a "place[] in the government where the rule of law—not politics—holds sway, and where they [the American people] will be treated fairly based solely on the facts and an evenhanded application of the law."<sup>13</sup>

Mr. Barr's recent actions and statements are in sharp and diametric contrast to the principles he cited in his confirmation hearings. In addition, they reinforce a broader pattern of conduct during his tenure in which he has created, at a minimum, an appearance of partiality in

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<sup>9</sup> *Statement by Former Federal Prosecutors*, May 6, 2019, <https://medium.com/@dojajummi-statement-by-former-federal-prosecutors-8ab7691c2aa1>. Mr. Mueller expressed a similar point of view in a letter to the Attorney General, in which he stated that "The summary letter the Department sent to Congress and released to the public late in the afternoon of March 24 did not fully capture the context, nature, and substance of this Office's work and conclusions." *Letter from Special Counsel Robert S. Muller, III to The Honorable William P. Barr*, March 27, 2019, [https://int.nyt.com/data/documenthelper/796-mueller-letter-to-barr/02499959cbfa313c36d4\\_optimized\\_full.pdf](https://int.nyt.com/data/documenthelper/796-mueller-letter-to-barr/02499959cbfa313c36d4_optimized_full.pdf).

<sup>10</sup> CRIMINAL JUSTICE STANDARDS FOR THE PROSECUTION FUNCTION §§ 3-1.3, 3-1.4, 3-1.6 & 3-1.10 (Am. Bar Ass'n, 4th ed. 2017), [https://www.americanbar.org/groups/criminal\\_justice/standards/ProsecutionFunctionFourthEdition](https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition).

<sup>11</sup> See Ellen Yaroshefsky, *Regulation of Lawyers in Government Beyond the Client Representation Role*, 33 NOTRE DAME J.L. ETHICS & PUB. POL'Y 151 (2019), [https://am.bals.org/wp-content/uploads/sites/4/2018/12/AM19SYaroshefsky\\_RegulationofLawyers.pdf](https://am.bals.org/wp-content/uploads/sites/4/2018/12/AM19SYaroshefsky_RegulationofLawyers.pdf).

<sup>12</sup> New York City Bar Association, *Barr Should Recuse Himself*, Oct. 23, 2019, *supra* note 1; see also *infra* note 13.

<sup>13</sup> Confirmation Hearing of William P. Barr, 15 Hrg. 102-505, Pt. 2 (Nov. 12 & 13, 1991), at 16, [http://civilrightsdocs.info/pdf/ag-vacancy\\_1991-AG-Nomination-Hearing-Transcript.pdf](http://civilrightsdocs.info/pdf/ag-vacancy_1991-AG-Nomination-Hearing-Transcript.pdf). Written Testimony of William P. Barr, Hearing on the Nomination of the Hon. William Pelham Barr to Be Attorney General of the United States, Committee on the Judiciary, U.S. Senate, Jan. 15, 2019, at 1, <https://www.judiciary.senate.gov/download/barr-testimony>.

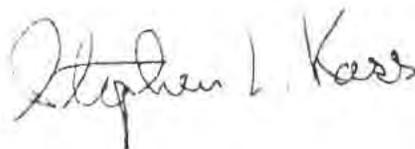
how he understands and carries out his role as Attorney General. In a troubling number of instances, Mr. Barr has spoken and acted in a manner communicating an impression that he views himself as serving as the Attorney General not for the entire nation, but more narrowly for certain segments of society—whether defined in terms of religion, ideology (his own “side,” to borrow the language of Mr. Barr’s Federalist Society speech) or party affiliation.

For the reasons stated above, we have significant concerns about the propriety of Mr. Barr’s recent actions and statements. We urge Congress to exercise its constitutional obligations by expeditiously commencing formal inquiries into Mr. Barr’s conduct.

Respectfully,



Roger Juan Maldonado  
President  
New York City Bar Association



Stephen L. Kass  
Chair, Task Force on the Rule of Law  
New York City Bar Association

cc: Hon. William P. Barr  
Attorney General of the United States  
U.S. Department of Justice  
*(Sent via Express and Regular Mail)*

Hon. Jerrold Nadler  
Chair, Committee on the Judiciary  
U.S. House of Representatives

Hon. Doug Collins  
Ranking Member, Committee on the Judiciary  
U.S. House of Representatives

Hon. Lindsey Graham  
Chair, Committee on the Judiciary  
U.S. Senate

Hon. Dianne Feinstein  
Ranking Member, Committee on the Judiciary  
U.S. Senate

TO: United States Department of Justice  
United States Attorney General  
William Barr  
1600 Pennsylvania  
Washington, DC 20530

FROM: Attorney of Attorney  
ID Number: (b) (6)  
(b) (6)

DATE: JANUARY 9, 2020

RE: SOCIAL SECURITY FRAUD AND AN APPEAL OF FORM SSA-561 AND A  
"REQUEST FOR RECONSIDERATION," DUE TO IDENTITY THEFT (b) (6)

C  
CRM

Dear Honorable Attorney William Barr:

I am following up with you on Identity Theft Police Report (b) (6). I suspect that (b) (6) is involved with identity theft under my name in connection with (b) (6) and with Social Security Administration Office in (b) (6).

I truly believe that she is also connected in a conspiracy with my (b) (6), I would like for you to cancel him as a Representative Payee with Social Security Administration. I believe that they are conspiring to take (b) (6) Social Security Check from him, to cause damages in connection with trying to impeach President Trump. I suspect that they are linked with the Impeachment Inquiry. That conspiracy does not connect with (b) (6). Please cancel any and all Payee Representative associated with (b) (6) Social Security Administration Account, except for him. On about January 3, 2020; (b) (6) applied with social security to be his own Representative Payee for his bank account at (b) (6); he was ignored. I am alleging that this is a conspiracy, social security fraud and Identity theft. Please investigate.

It connects with the Social Security Office in (b) (6). (b) (6) has given me permission to be his Power of Attorney. (b) (6) have been protesting this by picketing to boycott the Principle's Power of Attorney and/or the Power of Attorney for other illegal strikes, to freeze his bank account. On or about January 8, 2020; I suspect that (b) (6) conspired with the (b) (6) to steal my coat from (b) (6) home. I would like for you to keep me and President Trump in the clear.

Please cancel with the Social Security Office the Representative Payee as (b) (6) and (b) (6), it is conflicting interest and will cause damages to the Principle's Power of Attorney and the Power of Attorney. (b) (6) does not have identification due to a violation of the Protection Racket and would like to continue receiving his social security check at (b) (6).

Enclosed, please fine a report of crime on this with Social Security Administration Office in (b) (6). If I may be of further assistant please contact me at your earliest conveniences.

Thank you for your time and consideration. Your service is very much appreciated.

Enclosures.  
C/c Director Christopher A. Wray  
Federal Bureau of Investigation

Sincerely,

(b) (6)



**U.S. Department of Justice**

Executive Office for United States Attorneys

Office of the Director

Room 2261, RFK Main Justice Building  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

(202) 252-1000

MEMORANDUM FOR THE ATTORNEY GENERAL

JAN 23 2020

THROUGH:

THE DEPUTY ATTORNEY GENERAL

*Corey F. Ellis*

*JEF*  
1-28-20

FROM:

Corey F. Ellis  
Acting Director  
Executive Office for United States Attorneys

SUBJECT:

United States Attorney Position for the  
District of Columbia

PURPOSE:

Jessie K. Liu, the Presidentially-appointed United States Attorney for the District of Columbia, will resign on February 1, 2020. We request that Timothy J. Shea be appointed as the interim United States Attorney for the District of Columbia pursuant to 28 U.S.C. § 546. A proposed interim appointment order for Mr. Shea is attached for your consideration.

RECOMMENDATION:

We recommend you sign the attached order.

Attachment



U.S. Department of Justice

Office of Legal Counsel

Office of the Assistant Attorney General

Washington, D.C. 20530

January 24, 2020

MEMORANDUM FOR WILLIAM P. BARR  
Attorney General

*Re: Proposed Attorney General Order Designating and  
Appointing Timothy J. Shea as Interim United States  
Attorney for the District of Columbia*

**ACTION MEMORANDUM**

The attached proposed Attorney General Order was prepared by the Executive Office for United States Attorneys and submitted to this Office for review with respect to form and legality. The proposed order would designate and appoint Timothy J. Shea, pursuant to 28 U.S.C. § 546, to be the interim United States Attorney for the District of Columbia, effective February 2, 2020. His term under this order would be one hundred and twenty days or until a presidential appointee qualifies under 28 U.S.C. § 541, whichever occurs first.

(b)(5) per OLC

The attached proposed Attorney General Order is approved with respect to form and legality.

Steven A. Engel  
Assistant Attorney General



Office of the Attorney General  
Washington, D. C. 20530

ORDER NO. 4610-2020

AUTHORIZING TIMOTHY J. SHEA TO BE THE INTERIM  
UNITED STATES ATTORNEY FOR THE DISTRICT OF COLUMBIA  
DURING THE VACANCY IN THAT OFFICE

By virtue of the authority vested in the Attorney General by 28 U.S.C. § 546, I designate and appoint Timothy J. Shea to be the United States Attorney for the District of Columbia and to serve in that capacity for the period of one hundred and twenty days or until a Presidential appointee qualifies under 28 U.S.C. § 541, whichever occurs first.

This appointment shall be effective on February 2, 2020.

January 29, 2020

Date

Handwritten signature of William P. Barr in black ink.

William P. Barr  
Attorney General



*Leading the Conservative Movement since 1964*

## **EAGLE FORUM EDUCATION & LEGAL DEFENSE FUND**

Hon. Helen Marie Taylor  
Phyllis Schlafly Eagles  
7800 Bonhomme Avenue  
Saint Louis, MO 63105

January 23, 2020

Attorney General William Barr  
Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Attorney General Barr,

It has come to our attention that there are irregularities with the performance of the FBI as it relates to Lt. Gen. Michael Flynn. With this letter, we are respectfully requesting that you undertake an investigation into the conduct of the FBI agents on the Gen. Flynn case.

For many decades, we have enjoyed serving our nation side by side with the late Phyllis Schlafly. She was a strong believer in the importance of the rule of law to our American society. We can honestly say that Phyllis would be proud of the great work being done by President Trump and yourself.

However, the public trust has been eroded by some of the loose allegations made Mueller's investigators toward Gen. Flynn. He is a patriot, not an asset of the Russian government. Americans should have faith in their law enforcement institutions, but how can they do so when DOJ attorneys like Mr. Brandon Van Grack pressured decorated servicemen to publicly lie? These potential problems should be swiftly and thoroughly dealt with.

Thank you for your prompt consideration of this matter.

Devotedly and with all best wishes,

Helen Marie Taylor  
Chairman, Phyllis Schlafly Eagles

Faithfully,

John F. Schlafly  
Treasurer, Phyllis Schlafly Eagles

Phyllis Schlafly, *Founder* | Ed Martin, *President* | Helen Marie Taylor, *Chairman* | John Schlafly, *Treasurer*

PHYLLIS SCHLAFLY CENTER: 7800 BONHOMME AVE | ST. LOUIS, MO 63105 | (314) 721-1213 | [info@phyllisschlafly.com](mailto:info@phyllisschlafly.com)

OPERATIONS CENTER: 322 STATE ST., STE. 301 | ALTON, IL 62002 | (618) 462-5415 | [eagle@eagletrust.org](mailto:eagle@eagletrust.org)

D.C. Phyllis Schlafly Center: 211 C St. NE | Washington, D.C. 20002 | (202) 544-0353 | [info@phyllisschlafly.com](mailto:info@phyllisschlafly.com)



# AMERICA'S FUTURE<sup>®</sup>

Maj. Gen. John K. Singlaub, U.S. Army (ret.)  
America's Future, Inc.  
7800 Bonhomme Avenue  
Saint Louis, MO 63105

January 23, 2020

Attorney General William Barr  
Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Attorney General Barr,

We write to you today to address what we believe to be a severe miscarriage of justice with regards to Lt. Gen. Michael Flynn. It has come to our attention that pressure was put on Gen. Flynn to lie by one of Robert Mueller's attorneys named Brandon Van Grack. This kind of a political conduct should not be levied at an American hero like Lt. General Flynn.

As a decorated military officer with a career spanning from World War II to the Reagan Administration, and in light of my continued efforts to help our President and democracy, I know what courage looks like. I have fought Nazis, Communists, and other enemies of freedom. I have worked against enemy lines and behind them. I've seen the atrocities of war and tasted victory.

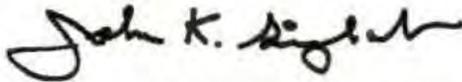
There may be few people today who have seen what I have seen, but courage doesn't just belong to my generation. Many brave men and women fight for freedom today. Lt. Gen. Michael Flynn is one such courageous individual. He served our nation honorably for thirty-three years in the U.S. Army. During his time in Afghanistan and Iraq, he had an important role in developing counterterrorism strategy. As a founding member of the Central Intelligence Agency, I can attest to the difficulty and importance of the work he did. He is clearly a patriot in every sense of the word. That's why I was so pleased to honor him as the inaugural recipient of an award bearing my name in 2018, the Maj. Gen. John K. Singlaub Award For Service To America.

Now Lt. Gen. Flynn faces character assassination, financial ruin, and prison time because of a vendetta-driven narrative launched by Robert Mueller's phony investigation. I call on you to show courage now by supporting Lt. Gen. Flynn as the American hero he is. As the chairman and president of America's Future, Inc respectively, we believe our men and women in uniform should be treated with fairness

and respect. No one who has served America so faithfully should have the Department of Justice pressuring them to lie. You are a man who holds justice in very high regard, Mr. Barr. Please see that Lt. Gen. Michael Flynn receives the justice he deserves.

The underlying narrative of destroying our Nation's core belief system and social justice with injustice is what these rogue men and women are instigating. We must not allow our way of life to be upended by those who want to rule by ruining the careers of those that stand for righteousness. You can see that the rule of law means something and those that conspire to take down our leaders do not prevail. Rule in favor of the Honorable Lt. General Michael Flynn, dismiss the charges, and show the nation and the world our Department of Justice will not tolerate these insubordinate pressures thrust upon good people.

Respectfully,

A handwritten signature in black ink that reads "John K. Singlaub". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Maj. Gen. John K. Singlaub, U.S. Army (ret.)  
Chairman, America's Future Inc.

All the best.

A handwritten signature in black ink that reads "Ed Martin". The signature is cursive and stylized, with the first letters of the first and last names being capitalized and prominent.

Ed Martin  
President, America's Future, Inc.

Preble Law Firm, P.S.  
Attorneys at Law  
State & Sawyer Building, Suite 101  
2120 State Avenue N.E.  
Olympia, Washington 98506  
(360) 943-6960 FAX (360) 943-2603

Gary A. Preble

<http://preblelaw.com>

[gary@preblelaw.com](mailto:gary@preblelaw.com)

January 21, 2020

The Hon. William Barr  
U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530-0001

Dear Attorney General Barr:

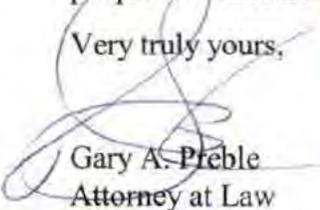
I write as an everyday American citizen extremely concerned about our country and its future. I write because I am baffled that apparent crimes, a few of which are listed in the attachment, are going uncharged. Hillary Clinton said, "No one is too big to jail." The time is past for action.

Why is my concern important? It is critically important because **the continuing viability of the rule of law in the United States of America is at stake**. You yourself spoke of the importance of the rule of law in your recent excellent speech to the Federalist Society. Yet the FBI and DOJ have actively participated in this lawlessness to take down a duly elected President. The first victim of lawlessness is that law-abiding citizens lose hope as they see the guilty not charged or prosecuted. "Hope deferred maketh the heart sick." Prov. 13:12. The next victim of lawlessness is the stability of society. As lawbreaking goes unchallenged, the rule of law breaks down at all levels of society. "If the foundations be destroyed, what can the righteous do?" Ps. 11:3. One need then only look at the birth of the USA to foresee potential outcomes, none desirable in themselves.

The essential problem is the insatiable powerlust of the left, coupled with a complicit and entrenched power structure, which assaults without cessation any and all adversaries. The response must be like that of President Trump—hit back, hit back hard, keep hitting back, and hit back until there is total victory. Yet any defense or counterattack will appear politically motivated—and the media will most certainly spin that lie. Prosecuting these criminals will thus be an act of courage. And you, Mr. Barr, must be prepared to receive the inevitable vituperation, slander, lies and character assassination of those who perceive their power to be at risk. But to withhold prosecutions because they may *appear* political would be to violate the rule of law out of cowardice. Lady Justice should not remove her blindfold because a prosecution may appear political or have a political effect.

You have come to office when our very culture and social fabric is at risk. But unless you have a broader and better strategy and timeline, it is time to begin highly publicized prosecutions of high-level criminals. To paraphrase the words of Mordecai to the ancient Persian Queen Esther, "**And who knows whether you have not attained the office of Attorney General for such a time as this?**" Will your tenure be just the sequel to the impotent Sessions-Huber fizzle? The Marquess of Queensbury rules have no place while opponents come at you—and in truth, at us, the American people—with brass knuckles and switchblades. May God grant you wisdom, protection and success.

Very truly yours,

  
Gary A. Preble  
Attorney at Law

# ATTACHMENT

## SUGGESTED EXAMPLES OF CRIMINAL PROSECUTIONS

- Why is Hillary Clinton not charged with violations of national security or treason?
- Why is Joe Biden not charged with corruption and bribery? (Rudy Guilani told Dan Bongino he could get a conviction of Joe Biden with his eyes closed.)
- Why is Hunter Biden not charged?
- Why is Eric Ciaramella not charged with leaking?
- Why is the apparently vast web of corruption regarding Ukraine not being charged?
- Why is Adam Schiff not charged with leaking classified material?
- Why are a number of people not charged with treason?
- Why are many people not being charged with threatening the life of the President?
- Why is every mayor or governor who supports or signs a law enacting a sanctuary city or state not charged with obstruction of justice?
- Why is Oakland Mayor Libby Schaaf, who tipped off illegals in February 2018 about an ICE raid, not charged with obstruction of justice?
- Why is Rep. Nancy Pelosi (and others) not charged with obstruction of justice for advising illegals how to avoid ICE?
- Why is Sen. Corey Booker not charged with aiding and abetting illegal immigration for walking across the border with illegals?
- Why is John Kerry not charged with violation of the Logan Act for his communications with Iran?
- Why is Andrew McCabe not being charged with violation of the Hatch Act?
- Why is Andrew McCabe not being charged with lying and/or leaking?
- Why are Peter Strzok or Lisa Page not charged?
- Why were there no prosecutions for Fast and Furious?
- Has Ilhan Omar been investigated for immigration fraud, passport fraud, tax fraud and campaign fraud?
- Why are big tech not guilty of campaign finance violations?
- There must be some federal crime with which Antifa thugs can be charged.
- For that matter, is it not worth investigating when someone of the stature of Peter Theil asks if Google has committed treason?
- And why, when there is a new sheriff in town, does DOJ aggressively pursue Gen. Flynn after having set him up and threatened his family with prison?