



February 21, 2020

Jeffrey R. Ragsdale  
Acting Director  
Office of Professional Responsibility  
U.S. Department of Justice  
Suite 3266  
950 Pennsylvania Avenue N.W.  
Washington, DC 20530  
*Submitted via email to opr.complaints@usdoj.gov*

Dear Acting Director Ragsdale:

Campaign Legal Center (“CLC”) respectfully requests that the U.S. Department of Justice (“DOJ”) Office of Professional Responsibility investigate whether the recent intervention in two criminal prosecutions by three senior DOJ political appointees is a violation of the Standards of Ethical Conduct for Employees of the Executive Branch (“Standards of Conduct”) and DOJ’s internal policies for the conduct of employees (“Justice Manual”). As detailed below, Attorney General William P. Barr, Deputy Attorney General Jeffrey A. Rosen, and U.S. Attorney for the District of Columbia Timothy J. Shea had highly unusual involvement in criminal proceedings against associates of President Donald J. Trump. Their involvement conflicts with legal requirements for the DOJ officials to act impartially and to insulate themselves from political influence.

**Executive Branch Standards of Conduct and DOJ Policies Require the DOJ Officials to Act Impartially and Insulate Themselves from Political Influence.**

Pursuant to 5 C.F.R. § 2635.101 of the Standards of Conduct, the DOJ officials and all executive branch employees “shall act impartially and not give preferential treatment to any private organization or individual.”<sup>1</sup> In addition, the officials “shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards.”<sup>2</sup> “Whether particular circumstances

---

<sup>1</sup> 5 C.F.R. § 2635.101(b)(8).

<sup>2</sup> 5 C.F.R. § 2635.101(b)(14).

create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.”<sup>3</sup>

Under Section 1-8.100 of DOJ’s Justice Manual, “the rule of law depends upon the evenhanded administration of justice [and t]he legal judgments of the Department of Justice must be impartial and insulated from political influence.”<sup>4</sup> The policy emphasizes that it is “imperative” for DOJ’s “investigatory and prosecutorial powers [to] be exercised free from partisan consideration.”<sup>5</sup> The Justice Manual also requires that sentencing recommendations be based on “an individualized assessment of the facts and circumstances of each case and the history and characteristics of the defendant, without improper consideration of the defendant’s . . . political association, activities, or beliefs.”<sup>6</sup>

**Attorney General Barr, Deputy Attorney General Rosen, and U.S. Attorney Shea Intervened in Criminal Proceedings Involving Close Associates of the President.**

Recent conduct by Attorney General Barr, Deputy Attorney General Rosen, and U.S. Attorney Shea raises questions about whether they are upholding the required standards demanded of DOJ public servants. Specifically, they appear to have intervened in criminal cases involving close associates of President Donald Trump in a manner consistent with the expected or anticipated wishes of the president. Such intervention jeopardizes the impartial and apolitical administration of justice at DOJ.

On February 10, 2020, four federal line prosecutors filed a sentencing recommendation for Roger Stone, a longtime friend and former campaign adviser to President Trump, after he was convicted of obstructing a congressional investigation, lying to Congress, and witness tampering.<sup>7</sup> The sentencing recommendation was seven to nine years in prison, which the prosecutors said was compliant with DOJ sentencing guidelines<sup>8</sup> and commensurate with his “contempt for [the court] and the rule of law.”<sup>9</sup> U.S. Attorney Shea submitted the sentencing recommendation document.<sup>10</sup>

In the early morning of February 11, President Trump publicly criticized the possible nine-year prison term for Stone, tweeting, “This is a horrible and very unfair situation. The real crimes were on the other side, as nothing happens to

---

<sup>3</sup> *Id.*

<sup>4</sup> Justice Manual § 1-8.100.

<sup>5</sup> *Id.*

<sup>6</sup> Justice Manual § 9-27.730.

<sup>7</sup> Gov’t’s Sentencing Memorandum, *U.S. v. Roger J. Stone, Jr.*, Criminal No. 19-cr-18-ABJ, (D.D.C. Feb. 10, 2020), available at <https://assets.documentcloud.org/documents/6773167/D-C-19-Cr-00018-Dckt-000279-000-Filed-2020-02-10.pdf>.

<sup>8</sup> *Id.* at 16.

<sup>9</sup> *Id.* at 26.

<sup>10</sup> *Id.*

them. Cannot allow this miscarriage of justice!”<sup>11</sup> President Trump has long made public his support for Stone. In November 2019, President Trump expressed his view that convicting Stone for false statements and obstruction was unfair and a “double standard like never seen before in the history of our Country.”<sup>12</sup> President Trump has also praised Stone’s unwillingness to testify against him.<sup>13</sup>

Later in the morning on February 11, at the direction of Attorney General Barr,<sup>14</sup> DOJ issued a new sentencing memo that overruled the line prosecutors’ earlier recommendation. The new memo stated, “While it remains the position of the United States that a sentence of incarceration is warranted here, the government respectfully submits that the range of 87 to 108 months presented as the applicable advisory Guidelines range would not be appropriate or serve the interests of justice in this case.”<sup>15</sup> U.S. Attorney Shea also submitted the new sentencing recommendation document.<sup>16</sup> Deputy Attorney General Rosen was also involved in the decision to reduce the sentencing recommendation, per reports.<sup>17</sup> The four line prosecutors resigned after the new memo was issued, which is a highly unusual rebuke of Attorney General Barr’s intervention in the sentencing recommendation decision.<sup>18</sup> Stone was ultimately sentenced to 40 months of incarceration, which was less than half the time proposed in the original sentencing memo.<sup>19</sup>

On February 14, 2020, it was reported that Attorney General Barr assigned an outside prosecutor to review the case against Michael Flynn, President Trump’s

---

<sup>11</sup> Donald J. Trump (@realDonaldTrump), TWITTER (Feb 11, 2020, 1:48 AM), <https://twitter.com/realDonaldTrump/status/1227122206783811585>.

<sup>12</sup> Donald J. Trump (@realDonaldTrump), TWITTER (Nov. 15, 2019, 12:13 PM), <https://twitter.com/realDonaldTrump/status/1195389486659776512>.

<sup>13</sup> Donald J. Trump (@realDonaldTrump), TWITTER (Dec. 3, 2018, 10:48 AM), <https://twitter.com/realDonaldTrump/status/1069619316319035392>.

<sup>14</sup> See *Transcript of Attorney General Bill Barr’s exclusive interview with ABC News*, ABC NEWS (Feb. 13, 2020), <https://abcnews.go.com/Politics/transcript-attorney-general-bill-barrs-exclusive-interview-abc/story?id=68975178> (emphasis added); see also Eileen Sullivan & Michael D. Shear, *Trump Praises Barr for Rejecting Punishment Recommended for Stone*, N.Y. TIMES (Feb. 12, 2020), <https://www.nytimes.com/2020/02/12/us/politics/trump-stone.html>.

<sup>15</sup> Gov’t’s Supplemental and Amended Sentencing Memorandum, *U.S. v. Roger J. Stone, Jr.*, Criminal No. 19-cr-18-ABJ, at 1 (D.D.C. Feb. 11, 2020), available at <https://assets.documentcloud.org/documents/6774085/Download-7.pdf>.

<sup>16</sup> *Id.* at 5.

<sup>17</sup> Katie Benner, Sharon LaFraniere & Adam Goldman, *Prosecutors Quit Roger Stone Case After Justice Dept. Intervenes on Sentencing*, N.Y. TIMES (Feb. 11, 2020), <https://www.nytimes.com/2020/02/11/us/politics/roger-stone-sentencing.html>.

<sup>18</sup> See *id.*

<sup>19</sup> Rachel Weiner, Matt Zapotosky, Tom Jackman & Devlin Barrett, *Roger Stone sentenced to three years and four months in prison, as Trump predicts ‘exoneration’ for his friend*, WASH. POST (Feb. 20, 2020), [https://www.washingtonpost.com/local/public-safety/roger-stone-sentence-due-thursday-in-federal-court/2020/02/19/2e01bfc8-4c38-11ea-9b5c-eac5b16dafa\\_story.html](https://www.washingtonpost.com/local/public-safety/roger-stone-sentence-due-thursday-in-federal-court/2020/02/19/2e01bfc8-4c38-11ea-9b5c-eac5b16dafa_story.html).

former national security adviser.<sup>20</sup> Flynn pleaded guilty in late 2017 to making false statements to the FBI, but moved to withdraw his guilty plea in January 2020 based on allegations of prosecutorial misconduct. Attorney General Barr assigned a special prosecutor, Jeffrey Jensen, the U.S. Attorney for the Eastern District of Missouri, to review the FBI interview underlying Flynn’s guilty plea.<sup>21</sup> These actions come after line prosecutors allegedly faced pressure from senior DOJ officials to reduce Flynn’s sentence from jail time to probation.<sup>22</sup> President Trump has publicly questioned the underpinnings of Flynn’s false statement charge,<sup>23</sup> and believes that Flynn’s treatment was unfair.<sup>24</sup>

According to the *New York Times*, people familiar with the matter said that Attorney General Barr also “installed a handful of outside prosecutors to broadly review the handling of other politically sensitive national-security cases in the U.S. attorney’s office in Washington.”<sup>25</sup> Attorneys in the office of Deputy Attorney General Rosen are part of the team reviewing these politically sensitive cases.<sup>26</sup>

### **The Actions of Attorney General Barr, Deputy Attorney General Rosen, and U.S. Attorney Shea Appear to Violate the Legal Requirements for Impartiality and Insulation from Political Influence.**

The three officials’ involvement in the Stone and Flynn matters appear to violate both the Executive Branch Standards of Conduct and the DOJ’s internal policies.

First, the officials failed to act impartially and failed to avoid even the appearance that they were acting partially, as required by the Standards of Conduct.<sup>27</sup> Attorney General Barr and Deputy Attorney General Rosen overruled the guideline-compliant recommendation of line prosecutors, and instead advocated for a reduced sentence for Stone, a friend and ally of the president. Similarly, Barr’s insistence on a special review of Flynn’s case, and his appointment of his deputy to conduct other politically sensitive reviews, also suggest partial treatment for the

---

<sup>20</sup> See Charlie Savage, Adam Goldman & Matt Apuzzo, *Barr Installs Outside Prosecutor to Review Case Against Michael Flynn, Ex-Trump Adviser*, N.Y. TIMES (Feb. 14, 2020), <https://www.nytimes.com/2020/02/14/us/politics/michael-flynn-prosecutors-barr.html>; Sarah N. Lynch, *Attorney General Barr taps outside prosecutor to review case against ex-Trump adviser Michael Flynn*, REUTERS (Feb. 14, 2020), <https://www.reuters.com/article/us-usa-justice-flynn/attorney-general-barr-taps-outside-prosecutor-to-review-case-against-ex-trump-adviser-michael-flynn-idUSKBN2082I4>.

<sup>21</sup> Carol E. Lee, *Justice Department opens inquiry into FBI interview at heart of Flynn’s guilty plea*, NBC (Feb. 14, 2020), <https://www.nbcnews.com/politics/justice-department/justice-department-opens-inquiry-fbi-interview-heart-flynn-s-guilty-n1136481>.

<sup>22</sup> *Id.*

<sup>23</sup> Donald J. Trump (@realDonaldTrump), TWITTER (Dec. 13, 2018 11:07 AM), <https://twitter.com/realDonaldTrump/status/1073248137320509440>.

<sup>24</sup> Donald J. Trump (@realDonaldTrump), TWITTER (Apr. 20, 2018 6:34 AM), <https://twitter.com/realdonaldtrump/status/987278269765517312?lang=en>.

<sup>25</sup> Savage, Goldman, & Apuzzo, *supra* note 20.

<sup>26</sup> *Id.*

<sup>27</sup> 5 C.F.R. § 2635.101(b)(8).

president's political allies. President Trump has publicly stated his support for Stone and Flynn<sup>28</sup> and it seems likely that the special treatment in these cases resulted from the political relationship between the defendants and President Trump.

The officials' conduct in these cases amounts to giving preferential treatment to a private individual, in violation of the Standards of Conduct. Even on the unlikely assumption that their conduct does not amount to preferential treatment, they still failed to avoid the appearance of partiality by intervening in the administration of justice in politically sensitive cases involving the president's associates.

Second, the officials' conduct failed to insulate the DOJ from political influence, in violation of DOJ principles laid out in the Justice Manual. Instead, Attorney General Barr seems to have improperly intervened in the sentencing phases of two politically sensitive criminal prosecutions due to the defendants' political association with the president. After line prosecutors made a sentencing recommendation for Stone, based on established DOJ guidelines, Attorney General Barr, Deputy Attorney General Rosen, and U.S. Attorney Shea intervened to recommend a lesser sentence.<sup>29</sup> Once Flynn withdrew the guilty plea that DOJ career prosecutors secured, citing unfounded prosecutorial misconduct, Attorney General Barr commissioned a special prosecutor to review the underlying charges. The logical inference is that Attorney General Barr and his associates intervened in these cases due to the defendants' political association with President Trump, in violation of the Justice Manual's standards of conduct for DOJ employees.

The violations alleged herein satisfy the essential elements for a professional misconduct finding.<sup>30</sup> In order to constitute a professional misconduct finding, (a) the department attorney must have violated a clear and unambiguous legal obligation or professional standard; and (b) the violation was intentional or resulted from the attorney's reckless disregard of the clear and unambiguous legal obligation or standard.<sup>31</sup>

---

<sup>28</sup> See Donald J. Trump (@realDonaldTrump), *supra* notes 12, 13, 23, and 24.

<sup>29</sup> Attorney General Barr maintains that he had been planning to reduce the sentence prior to President Trump's tweet, but this appears unlikely based on the chronology of events and an investigation is needed to determine the influence of President Trump's statements about Stone's case on and before February 10, 2020. Nevertheless, a violation also lies in Attorney General Barr's influence over individual sentencing recommendations, which are traditionally dictated by line prosecutors following sentencing guidelines; the guideline range is appropriate in the typical case. See Justice Manual § 9-27.730. Before recommending the original sentence of seven to nine years, the line prosecutors would have performed an individualized assessment of the facts and circumstances of the case to determine whether a deviation from the guideline range was appropriate. See *id.*

<sup>30</sup> U.S. DEP'T OF JUSTICE. OFF. OF PROF. RESPONSIBILITY, "Attorney Professional Misconduct Matters," <https://www.justice.gov/opr/professional-misconduct> (last visited Feb 19, 2020). The officials' conduct also meets the standard for a "poor judgment" finding. *Id.*

<sup>31</sup> *Id.*

The Standards of Conduct and the Justice Manual are “unambiguous legal obligations” for employees of the executive branch and DOJ lawyers. Attorney General Barr, Deputy Attorney General Rosen, and U.S. Attorney Shea knew or should have known of these obligations, given their position as top law enforcement officers in the country and some of the most senior officials in the executive branch. And, as discussed above, they seem to have violated these obligations.

Further, their violations appear intentional, or at least to have been committed with reckless disregard for the Standards of Conduct and the Justice Manual. These officials altered the sentencing recommendation for Stone, and Attorney General Barr installed a special prosecutor to review the conduct underlying Flynn’s guilty plea. These cases were politically sensitive and involved close associates of President Trump. Given this context, these officials should have known that the “natural or probable consequences”<sup>32</sup> of his conduct were unambiguously prohibited by the Standards of Conduct, which require impartiality in the performance of official duties, and the Justice Manual, which requires sentencing without improper consideration of the defendant’s political association. The violations of the Attorney General, Deputy Attorney General, and US Attorney undermine the independence of the Department of Justice and the integrity of its administration of the criminal justice system.

The facts detailed in this letter warrant an investigation by your offices. Thank you for your consideration.

Sincerely,

\_\_\_\_\_/s/\_\_\_\_\_  
Kedric L. Payne  
General Counsel and Senior Director,  
Ethics

\_\_\_\_\_/s/\_\_\_\_\_  
Delaney N. Marsco  
Legal Counsel, Ethics

Cc:  
Cynthia K. Shaw  
Director  
Departmental Ethics Office  
U.S. Department of Justice  
950 Pennsylvania Avenue N.W.  
Washington, DC 20530

---

<sup>32</sup> *Id.*