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March 11, 2021

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
Office of the Attorney General
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Garland,

I write to bring to your attention to four episodes that occurred before your tenure at the Department of Justice (Department), but have evaded oversight; and to ask that you facilitate proper oversight by the Senate of these incidents. I also raise separate concerns about an office of the Department—the Office of Legal Counsel—whose conduct has brought discredit on the organization. Having served as a United States Attorney and as my state's Attorney General, I am keenly aware of the cautions that arise when legislators make requests or recommendations to law enforcement officials. The matters I raise below I think fall well within proper bounds for oversight inquiry, but I wanted you to know I am well aware of the cautions.

1. **Civil Fraud Investigation of the Fossil Fuel Industry under Tobacco Case Precedent.**

The Department of Justice brought a successful civil action against the tobacco industry for fraudulently denying the dangerous nature of its products. The Department won that case at trial before Judge Gladys Kessler, whose 1,683-page landmark opinion is a lasting testament both to judicial diligence and to the scale of the fraud that was perpetrated.[1] The Department's verdict was entirely upheld in a strong opinion by the Court of Appeals, and the Supreme Court declined review.[2]

Considerable public commentary ensued about whether similar civil proceedings should be considered against the fossil fuel industry for fraudulently denying the dangerous nature of its products.[3] There was known overlap of participants in the tobacco fraud with those in the fossil

[1] *See United States v. Philip Morris USA, Inc.*, 449 F.Supp.2d 1 (D.D.C. 2006).
[2] *See United States v. Philip Morris USA, Inc.*, 566 F.3d 1095 (D.C. Cir. 2009), *cert. denied*, 561 U.S. 3501 (2010).
[3] *See* Lana Ulrich, *Climate change in the courts: Big Oil and Big Tobacco*, National Constitution Center (July 15, 2016).

fuel industry's scheme, including public relations firms, research institutes, and even some of the same researchers.[4] I went back and reviewed the Department's tobacco complaint, the Kessler decision, and the circuit court opinion, and I thought the successful tobacco case made an obvious template for a civil investigation of the fossil fuel industry's behavior. Indeed, if anything, the fossil fuel industry's scheme seemed more complex and nefarious.[5] So, at a Senate Judiciary Committee hearing I asked Attorney General Lynch to take a look. She said she would.

Time went by, and there appeared to be no activity at the Department. No lawyer appeared to have been assigned to the matter. Despite the broad authority of the Attorney General to conduct preliminary discovery, not a single document appeared to have been requested or reviewed. Despite considerable academic research into the fossil fuel industry scheme,[6] no inquiry appeared to have been made to any knowledgeable expert. The Department's own lawyers in the tobacco case were alive and well, but appeared not to have been consulted. The tobacco case had taken a lot of work and generated predictable political blowback; and it appeared, to use an old prosecutors' phrase, that the Department might be "taking a dive" on considering similar claims regarding the fossil fuel industry scheme.

So I followed up, and when I eventually got a response, it came from a person at the FBI so ill-informed that he explained the inaction using the wrong standard of proof: a criminal standard of proof for a civil case.[7] Clearly, no one had done basic due diligence, as even a cursory review of the Department's complaint or the District Court's decision would have disclosed the correct standard of proof. The case being civil in nature ought to have been an obvious cue. It seemed at that point that the Department had not only "taken a dive," but then produced an expedient but obviously inapposite pretext to explain itself.

The fossil fuel industry's complex scheme to deny the dangers of its products' use, using arrays of front groups,[8] hidden flows of money,[9] and cut-out organizations,[10] may well be the Fraud of the Century. All told, the five largest publicly traded oil companies spent over $1 billion in the three years following the 2016 Paris Agreement on "misleading climate-related branding and

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[4] Benjamin Hulac, *Tobacco and Oil Industries Used Same Researchers to Sway Public*, Scientific American (July 20, 2016).

[5] *Id*.

[6] *See* Shannon Hall, *Exxon Knew about Climate Change almost 40 years ago*, Scientific American (Oct. 26, 2015).

[7] *See* June 30, 2017 letter from Deputy Assistant Director Hacker to Senator Whitehouse (stating "the government must prove beyond a reasonable doubt" in order to charge a RICO violation, instead of preponderance of the evidence standard of proof required for civil actions).

[8] *The Climate Denial Machine: How the Fossil Fuel Industry Blocks Climate Action*, Climate Reality Project (Sept. 5, 2019) (hereinafter "Climate Reality Project").

[9] *Big Oil's Real Agenda on Climate Change*, InfluenceMap (March 2019).

[10] *See* Climate Reality Project, *supra* note 8.

lobbying."[11] The Department's seeming failure to undertake basic due diligence—to see if a civil case similar to the successful tobacco case should be brought to force the fossil fuel industry to cease and desist from fraudulent behavior — demands an honest, if overdue, explanation. If the explanation is fear of political pressure from the industry in question, that should be further explained.

I hope we agree that the course of justice should run fearlessly, and that an honest and informed case review is the first step in that course. Should such a review confirm my suspicions outlined here, I hope the Department will take an honest look at the fossil fuel industry's potential liability.

2. The FBI's Background Investigation into Allegations Against Brett Kavanaugh.

The second matter of concern is what appears to have been a politically-constrained and perhaps fake FBI investigation into alleged misconduct by now-Supreme Court Justice Brett Kavanaugh, rather than what Director Wray promised: a background investigation "consistent with [the FBI's] long-standing policies, practices, and procedures."[12] As you will recall, Dr. Christine Blasey Ford testified to the Senate Judiciary Committee on September 27, 2018 about an alleged sexual assault incident that took place while Dr. Ford and Justice Kavanaugh were in high school.[13] Her shards of recollection were consistent with the nature of recollections of victims of traumatic experiences of sexual assault. Dr. Ford subjected herself to personal danger, public scorn, and professional cross-examination to testify before us, and presented credible and compelling testimony.

Dr. Ford's testimony obviously justified further investigation to seek corroborating or inconsistent evidence. The nominee disputed her testimony, so there were questions of fact to resolve. Furthermore, other allegations were brought against Judge Kavanaugh, requiring their own investigation.[14] At least two law firms contacted the FBI with the names of credible witnesses who had information pertaining to the investigations. One firm provided names of potential witnesses that had information "highly relevant to … allegations" of misconduct by Judge Kavanaugh.[15] The other firm's letter recounted how counsel for a witness with whom agents had met provided the FBI with "more than twenty additional witnesses likely to have relevant information" and included an affidavit from a credible witness.[16] Max Stier, the widely respected president of the Partnership for Public Service, and a college classmate of Mr.

[11] *Id.*

[12] Testimony of FBI Director Christopher Wray Before the Senate Committee on the Judiciary, *Hearing: Oversight of the Federal Bureau of Investigation* (July 23, 2019).

[13] Haley Sweetland Edwards, *How Christine Blasey Ford's Testimony Changed America*, TIME (Oct. 4, 2018).

[14] Robin Pogrebin & Kate Kelly, *Brett Kavanaugh Fit In With the Privileged Kids. She Did Not.*, N.Y. Times (Sept. 14, 2019).

[15] *See* Oct. 4, 2018 letter from Katz, Marshall, and Banks, LLP to Director Wray

[16] *See* Oct. 4, 2018 letter from Kaiser Dillon, PLLC to Director Wray.

Kavanaugh, offered specific corroborating evidence,[17] but the FBI refused to interview Mr. Stier.[18]

Some of these allegations were brought to the attention of committee members on behalf of witnesses who had "tried in vain to reach the F.B.I. on their own," but could find no one at the Bureau willing to accept their testimony.[19] When members made inquiries we faced the same experience: the FBI had assigned no person to accept or gather evidence. This was unique behavior in my experience, as the Bureau is usually amenable to information and evidence; but in this matter the shutters were closed, the drawbridge drawn up, and there was no point of entry by which members of the public or Congress could provide information to the FBI. Senator Coons asked for a clear procedure at the time, to no avail.[20]

After several days with the drawbridge up against evidence or information, the FBI ultimately opened up an entry point for additional allegations and other potential corroborating evidence through a "tip line." When allegations flowed in through that "tip line," we received no explanation of how, or whether, those allegations were processed and evaluated.[21] Senators were later given only highly restricted access, over intermittent one-hour windows, to review various materials the FBI had gathered. In addition to showing some cursory efforts to corroborate Dr. Ford's hearing testimony, our brief review showed that a stack of information had indeed flowed in through the "tip line."

It did not appear, however, that any review had been undertaken of any of the information that flowed through this tip line. We could get no explanation of the tip line procedures. In 2011, the FBI had posted a video, "Inside the FBI's Internet Tip Line,"[22] in which the Bureau described procedures for review of tip line information in criminal investigations, for sorting out investigative wheat from the chaff such tip lines customarily produce, and for forwarding credible information appropriately within the Bureau for further investigation. The FBI appears not to have followed these procedures, and the Bureau has repeatedly refused to answer questions from Senate Judiciary Committee members about this matter. This 'tip line' appears to have operated more like a garbage chute, with everything that came down the chute consigned without review to the figurative dumpster.

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[17] Adam Cohen, *The Ascent: Dissecting the Political Maneuvers that Enable Justice Kavanaugh's Confirmation*, N.Y. Times Book Rev. (Jan. 12, 2020), at 9.

[18] *Id.*

[19] *Id*.

[20] *See* Aug. 1, 2019 Letter from Sens. Whitehouse and Coons to Director Wray, https://www.whitehouse.senate.gov/imo/media/doc/2019-08-01%20Ltr%20to%20FBI%20Wray%20re%20supplemental%20Kavanaugh%20investigation.pdf .

[21] *See id*.

[22] Federal Bureau of Investigations, *Inside the FBI's Internet Tip Line*, YOUTUBE (Feb. 24, 2011), https://www.youtube.com/watch?v=KJlDZ4OMIMM.

In July 2019, Director Wray appeared at an oversight hearing before the Senate Judiciary Committee, where he assured senators he was "committed to making sure the FBI does all of its work by the book, utterly without partisan interference." He further testified that he had met with Bureau personnel to ensure that the Kavanaugh background investigation was "consistent with our long-standing policies, practices, and procedures for background investigations." But Director Wray has refused to answer Congressional inquiries about whether that was actually the case. Senators' Questions for the Record from that July 2019 oversight hearing remain unanswered today, as does Senator Coons' and my letter of August 1, 2019.[23] Such stonewalling does not inspire confidence in the integrity of the investigation.

If standard procedures were violated, and the Bureau conducted a fake investigation rather than a sincere, thorough and professional one, that in my view merits congressional oversight to understand how, why, and at whose behest and with whose knowledge or connivance, this was done. The FBI "stonewall" of all questions related to this episode provides little reassurance of its propriety. If, on the other hand, the "investigation" was conducted with drawbridges up and a fake "tip line" and that was somehow "by the book," as Director Wray claimed, that would raise serious questions about the "book" itself. It cannot and should not be the policy of the FBI to *not* follow up on serious allegations of misconduct during background check investigations.

3. The Antitrust Investigation into California's Fuel-Emission Agreements.

The third episode of concern relates to an Antitrust Division investigation initiated in the last administration against several major automobile companies.[24] Again, much information has been withheld — often a warning sign. In this case, the alleged conduct was Ford Motor Company, BMW of North America, Honda, and Volkswagen coming together to negotiate with the State of California new state fuel efficiency regulations.[25] The seemingly obvious application of the First Amendment's Freedom of Petition Clause, the antitrust state action doctrine, and the *Noerr-Pennington* exception raises further warning flags. The background to this episode, and a whistleblower's testimony, raise further concerns.

My nutshell version of the background is as follows. In 2011, the auto industry agreed to meet higher federal fuel efficiency standards set by the Obama administration.[26] Under the Trump administration, the auto industry sought some adjustments to those agreed-upon standards.[27]

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[23] *See* Aug, 1, 2019 Letter from Sens. Whitehouse and Coons to Director Wray, https://www.whitehouse.senate.gov/imo/media/doc/2019-08-01%20Ltr%20to%20FBI%20Wray%20re%20supplemental%20Kavanaugh%20investigation.pdf.

[24] *See* Aug. 28, 2019 Letter to automobile companies from Assistant Attorney General Makan Delrahim.

[25] Coral Davenport & Hiroko Tabuchi, *Automakers, Rejecting Trump Pollution Rule, Strike a Deal With California*, N.Y. Times (July 15, 2019).

[26] Press Release, The White House, *Obama Administration Finalizes Historic 54.5 MPG Fuel Efficiency Standards* (Aug. 28, 2012) (on file with Nat'l Archives).

[27] Davenport & Tabuchi, *supra* note 25.

Through that opening barged gasoline companies, including Marathon Petroleum, to pursue a massive rollback of the new fuel efficiency targets well beyond anything sought by the auto companies, and even to undo the authority of states to have their own fuel efficiency standards.[28] This intervention caused several automakers to quietly begin negotiations with California—the leader of the seventeen states that maintain a common state fuel efficiency standard—to get the adjustments they wanted.[29]

In July 2019, California and these automakers announced an agreement to adjust state fuel efficiency standards for the seventeen-state consortium to an average of 51 mpg by 2026.[30] According to an August 20, 2019 *New York Times* report, this "enraged" President Trump,[31] as it foiled the fossil fuel industry's plot to blow up the fuel efficiency standards regime. The following day, President Trump sent tweets decrying the arrangement. And on August 22, 2019, according to whistleblower testimony by an Antitrust Division official, the Division's "political leadership instructed staff to initiate an investigation that day"[32]; that contrary to the Division's standard practice the investigation's initiating paperwork did "not include a staff 'recommendation' but instead state[d] that '[t]he Antitrust Division would like to open an investigation"[33]; and that the letter was generated by the Division's policy staff, which does not ordinarily conduct enforcement investigations of this type.[34] On August 28, 2019, Assistant Attorney General Delrahim sent the letter to the four auto companies, alleging potential violations of federal antitrust laws.[35]

The place of these letters in the larger saga raises obvious concerns that they were sent to threaten or punish those auto companies, that their true origin may have been in the White House, and that they were perhaps devised in concert with Marathon Petroleum and the oil industry in a joint political effort. Once again, the Department's refusal to provide complete or meaningful responses to our questions inhibits our understanding of this matter. That failure to submit to scrutiny should cut against the Department, however, and not to its benefit. The blockade of information frustrated Chairman Graham sufficiently that he summoned Deputy Attorney General Rosen to his office on June 15, 2020 to go through with me the list of our

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[28] Hiroko Tabuchi, *The Oil Industry's Covert Campaign to Rewrite American Car Emissions Rules*, N.Y. Times (Dec. 13, 2018).

[29] Juliet Eilperin & Brady Dennis, *Major automakers strike climate deal with California, rebuffing Trump on proposed mileage freeze*, Wash. Post (July 25, 2019).

[30] Davenport & Tabuchi, *supra* note 25.

[31] Coral Davenport & Hiroko Tabuchi, *Trump's Rollback of Auto Pollution Rules Shows Signs of Disarray*, N.Y. Times (Aug. 20, 2019).

[32] *See* June 24, 2020 testimony of John Elias before House Committee on the Judiciary.

[33] *Id*.

[34] *Id.*

[35] *See* August 28, 2019 letter to automobile companies from Assistant Attorney General Makan Delrahim.

stonewalled questions, with specific reference to this matter, and to urge improved cooperation. The Department's responses remained incomplete and unsatisfactory.

4. Department Policy Regarding IRS Referrals for False Statement Cases.

In *Citizens United*, the Supreme Court struck down provisions of the Bipartisan Campaign Reform Act ("BCRA")[36] and allowed unlimited spending in elections. The decision wrought a seismic shift in our political ecosystem. When *Citizens United* allowed unlimited political spending in elections, the value to hiding donors' identities exploded, and political activity by organizations formed under section 501(c)(4) of the Internal Revenue Code 501(c)(4) exploded in parallel, exploiting the IRS's weak enforcement and outdated regulations. The money poured in precisely because these organizations do not have to publicly disclose their contributors,[37] and could be turned to political work, contrary to Congress's clear statutory intent. Since 2010, 501(c)(4) organizations have spent over $900 million on political expenditures, compared to $103 million in the previous decade.[38]

Under intense political pressure, the IRS failed to protect against this novel explosion of nonprofit political activity performed for hidden donors. According to one *ProPublica* study, from 2015-2019, the IRS failed to strip any non-profit of its tax-exempt status, despite receiving thousands of complaints of abuse from watchdog groups and concerned taxpayers.[39] The IRS ignored flagrant discrepancies between sworn statements made to the IRS and sworn statements made by the same groups to election regulators.[40]

This is where the Department has a role, examined in an April 9, 2013 hearing of the Senate Judiciary Committee Subcommittee on Crime and Terrorism entitled "Current Issues in

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[36] *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010).

[37] *See, e.g.,* Trevor Potter & B. B. Morgan, *The History of Undisclosed Spending in U.S. Elections & How 2012 Became the Dark Money Election*, 27 Notre Dame J.L. Ethics & Pub. Pol'y 383, 463-64 (2013) (discussing the formation of Crossroads GPS, a 501(c)(4) spin-off of super PAC American Crossroads, formed to protect donors from disclosure).

[38] *Outside Spending*, OPENSECRETS.ORG, https://www.opensecrets.org/outsidespending/index.php?type=A&filter=N (last visited Jan 26, 2021).

[39] Maya Miller, *How the IRS Gave Up Fighting Political Dark Money Groups,* ProPublica (April 18, 2019), https://www.propublica.org/article/irs-political-dark-money-groups-501c4-tax-regulation.

[40] In 2012, ProPublica investigated 501(c)(4) filings from 104 organizations that had reported electioneering activity to the Federal Election Commission or state equivalents, saying "here is what we spent on elections." ProPublica cross-checked those claims with what the organizations had reported to the IRS. Thirty-two groups had told the IRS they spent no money to influence elections, either directly or indirectly. Both statements cannot be true. *See* Kim Baker, *How Nonprofits Spend Millions on Elections and Call it Public Welfare*, ProPublica (Aug. 18, 2012), https://www.propublica.org/article/how-nonprofits-spend-millions-on-elections-and-call-it-public-welfare; *see also*, Hearing: "*Current Issues in Campaign Finance Law Enforcement*," U.S. Senate Committee on the Judiciary, Subcommittee on Crime and Terrorism, Apr. 9, 2013.

Campaign Finance Law Enforcement."[41] As the hearing and outside reporting established,[42] there have been numerous instances of 501(c)(4) organizations, or organizations seeking 501(c)(4) status, answering "no" to questions on IRS forms that ask whether they are engaging in political activity, while reporting millions of dollars in political advertising to federal and state election agencies. These discrepancies would seem to predicate "false statement" investigations under 26 U.S.C. § 7206[43] and 18 U.S.C. § 1001.[44]

The Department of Justice appears to have undertaken no investigation, evidently on grounds that it customarily defers to the Internal Revenue Service and requires a referral from the IRS in criminal tax cases. This policy seems misguided as to prima facie election false statement cases, for two reasons. First, the IRS has no special expertise and is not equipped to investigate and prosecute crimes related to elections. As former Federal Election Commission Chairman Bradley Smith wrote in his testimony, the IRS "is not equipped or structured to do the job it was asked to do in overseeing political activities." Second, unlike technical tax law violations where prosecutions need to align with IRS tax policy, false statements are, as the Department of Justice witness said at the hearing, the Department's "bread-and-butter" cases.

Given the intensity of the political pressure that was brought to bear against IRS enforcement in this area, one can sympathize with the Department's hesitancy to take on these seemingly prima facie cases, but the course of justice should run fearlessly and true, and veering away from "false statement" cases because they are politically hard is wrong.

All three of these episodes share the plain and obvious specter of political influence, an apparent failure of duty in regard to dispassionate, fearless and professional enforcement of the law, and

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[41] Hearing: "*Current Issues in Campaign Finance Law Enforcement*," U.S. Senate Committee on the Judiciary, Subcommittee on Crime and Terrorism, Apr. 9, 2013.

[42] In 2012, ProPublica investigated 501(c)(4) filings from 104 organizations that had reported electioneering activity to the Federal Election Commission or state equivalents, saying "here is what we spent on elections." ProPublica cross-checked those claims with what the organizations had reported to the IRS. Thirty-two groups had told the IRS they spent no money to influence elections, either directly or indirectly. *See* Kim Baker, *How Nonprofits Spend Millions on Elections and Call it Public Welfare*, PROPUBLICA (Aug. 18, 2012), https://www.propublica.org/article/how-nonprofits-spend-millions-on-elections-and-call-it-public-welfare; *see also*, Kim Barker, *Controversial Dark Money Group Among Five that Told IRS They would Stay Out of Politics Then Didn't*, ProPublica, (Jan. 2, 2013), https://www.propublica.org/article/controversial-dark-money-group-among-five-that-told-irs-they-would-stay-out.

[43] 26 U.S.C. § 7206(1) makes it a felony punishable by up to three years of imprisonment and $100,000 in fines for a person who: "[w]illfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter."

[44] 18 U.S.C. § 1001, makes it a felony punishable by up to 5 years and fines of up to $250,000 ($500,000 for a corporation) for "whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully – (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry."

marked failures of transparency and candor. I ask your cooperation in full and unstinting inquiry into these three unfortunate episodes.

5. The Office of Legal Counsel

My last concern is the Department's Office of Legal Counsel (OLC). This office has had a distinguished history. In recent years, however, it has more and more appeared to run political errands, and its reputation has dimmed.[45]

OLC's role in the warrantless wiretapping and detainee torture programs sparked grave consternation even in the Department.[46] In the former program, when the hidden state of affairs came to light, Attorney General Ashcroft, Deputy Attorney General Comey, and other senior officials threatened to resign *en masse* if the White House did not reform the program OLC had approved.[47] The infamous "torture memos" were recanted by the Department itself shortly after their content was revealed.[48] None had taken note of military justice experience with waterboarding. One omitted mention of a Fifth Circuit case that described the waterboarding technique and repeatedly referred to it as "torture."[49] An OPR investigation was shut down before completion, when Associate Deputy Attorney General Margolis determined no "duty of candor" was implicated.[50]

Another OLC memo that has not been withdrawn creates a procedural box canyon for the theory that no president can be investigated or prosecuted for a criminal offense.[51] This ruling is self-fulfilling, and has effectively made it the executive branch's call how this important question affecting the executive branch should be answered. Amidst separation of powers among executive, legislative and judicial branches, this OLC theory evades judicial scrutiny and review, though in our government of laws it is the responsibility of courts to state what the law is.

Where courts have had the chance to review OLC opinions, the results have been disturbing. Federal district courts in the District of Columbia and the Southern District of New York have

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[45] Erica Newland, *Opinion: I Worked in the Justice Department. I Hope its Lawyers Won't Give Trump an Alibi*, Wash. Post (Jan. 10, 2019) (OLC sometimes "wouldn't look that closely at the claims the president was making" and author felt that her and her colleagues were sometimes "using the law to legitimize lies").

[46] *See e.g.*, Jan Crawford Greenburg & Ariane de Vogue, *Former AG Accused of Playing Politics with Justice*, ABC News (June 24, 2008).

[47] Christopher Weaver, *The Men Behind the Memos*, ProPublica (Jan. 28, 2009).

[48] Press Release, U.S. Dept. of Justice Office of Pub. Affairs, Department of Justice Releases Four Office of Legal Counsel Opinions (Apr. 16, 2009) (on file with DOJ).

[49] *See United States v. Lee*, 744 F.2d 1124 (5th Cir. 1984).

[50] Memorandum for the Attorney General and Deputy Attorney General from Associate Deputy Attorney General David Margolis (Jan. 5, 2010) (on file with DOJ) (emphasis added).

[51] Memorandum Opinion from the Office of Legal Counsel to the Attorney General (Oct. 16, 2000) (on file with DOJ) (discussing a sitting president's amenability to indictment and criminal prosecution).

been — to put it mildly — unpersuaded by OLC work offered as argument before them.[52] As a supervisor of lawyers, I see the critiques leveled in those judicial opinions as signaling a need for some serious management oversight, far from the once-Olympian standard of OLC. It is not clear that the OLC opinions found so wanting by actual Article III judges have been modified to comport with the courts' caustic reviews.

I am not sure what should be done about OLC, but the response to its work, both from within the Department when secret OLC work later comes to light, and from the courts of the country when OLC opinions are presented for judicial scrutiny, is a signal that attention must be paid.

Your consideration of these views is greatly appreciated.

Sincerely,

Senator Sheldon Whitehouse

with congratulations and best regards

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[52] *See Comm. on the Judiciary v. McGahn*, 415 F.Supp.3d 148 (D.D.C. 2019) (holding that a president's senior-level aide is not a president's "alter ego," as asserted by OLC, and did not qualify for absolute immunity from Congressional subpoenas seeking testimony); *Trump v. Vance*, 395 F.Supp.3d 283 (S.D.N.Y. 2019) (finding OLC's assertion of the president's absolute immunity from criminal process of any kind could be "far-reaching" and "potentially enabl[e] both the President and any accomplices to escape being brought to justice"); *Comm. on the Judiciary v. Miers*, 558 F.Supp.2d 53 (D.D.C. 2008) (holding that former White House counsel was not entitled to absolute or qualified immunity and must comply with subpoena to testify before House Judiciary Committee).