

United States Senate

WASHINGTON, DC 20510

June 29, 2021

VIA ELECTRONIC TRANSMISSION

The Honorable Merrick Garland
Attorney General
Department of Justice

Dear Attorney General Garland:

As you are aware, we are examining potential conflicts of interest relating to recent hires at the Department of Justice (DOJ). As part of that review, on February 3, 2021, and March 9, 2021, we wrote to you about the hiring of Nicholas McQuaid as Acting Assistant Attorney General for the Criminal Division. In both letters we raised concerns about potential conflicts of interest in light of the fact that McQuaid was employed at Latham & Watkins until January 20, 2021, and worked with Christopher Clark, who Hunter Biden reportedly hired to work on his federal criminal case.¹ You have failed to fully respond to those letters, including producing McQuaid's recusal memo, should one exist.

Recently, DOJ hired Susan Hennessey to work in its National Security Division (NSD).² We have concerns about her role and potential impact on ongoing matters, including Special Counsel John Durham's inquiry (Durham inquiry). On December 1, 2020, Ms. Hennessey expressed a clear partisan bias against the Special Counsel's investigation:

Durham has made abundantly clear that in a year and a half, he hasn't come up with anything. I guess this kind of partisan silliness has become characteristic of Barr's legacy, but unclear to me why Durham would want to go along with it.³

Ms. Hennessey presumably made this statement without any first-hand knowledge of Durham's ongoing work, including its true scope and the extent of the evidence acquired at that time. Ms. Hennessey's apparent bias against Durham's inquiry presents a clear conflict that makes it

¹ Daniel Chaitin and Jerry Dunleavy, *Tucker Carlson reports DOJ hired ex-business partner of Hunter Biden criminal defense attorney*, Washington Examiner (Jan. 29, 2021), <https://www.washingtonexaminer.com/news/tucker-carlson-justice-department-hunter-biden-attorney-partner>.

² Harper Neidig, *CNN legal analyst joins DOJ's national security division*, The Hill, (May 10, 2021), <https://thehill.com/policy/national-security/552649-cnn-legal-analyst-joins-doj-s-national-security-division>.

³ Chuck Ross, *DOJ's Top National Security Lawyer Slammed Investigation Into Government Wrongdoing in Surveillance of Trump Aide*, WASHINGTON FREE BEACON (May 10, 2021), <https://freebeacon.com/biden-administration/dojs-top-national-security-lawyer-slammed-investigation-into-government-wrongdoing-in-surveillance-of-trump-aide/>.

impossible for her to be objective and credible with respect to any elements relating to the Durham inquiry, should she have access to any of it.

Ms. Hennessey also expressed copious public views in support of the fundamentally flawed Crossfire Hurricane investigation and vouched for the Steele Dossier which, as our joint investigation unveiled, was infected with Russian government disinformation and demonstrably false information.⁴ Ms. Hennessey stated that Steele was “a person whose work intelligence professionals take seriously.”⁵ Ms. Hennessey also publicly said that the 2018 memo from then-House Intelligence Chairman Devin Nunes exposing Crossfire Hurricane’s fundamental flaws would need to be “debunk[ed]” *before* she had opportunity to read the memo.⁶

With respect to the Justice Department Inspector General’s (IG) report on Crossfire Hurricane, she attacked the IG’s credibility before the report was even completed in an effort to discredit it:

This is extremely irregular. There are growing signs that there are serious problems with the IG report and questions as to whether this is designed to be an honest accounting of the views of the IG or a political document driven by Barr’s conspiracy theories.⁷

The IG found “at least” 17 significant errors and omissions in the Carter Page FISA applications and additional Woods Procedure errors. The IG report stated,

[t]hat so many basic and fundamental errors were made on four FISA applications by three separate, hand-picked teams, on one of the most sensitive FBI investigations that was briefed to the highest levels within the FBI and that FBI officials expected would eventually be subjected to close scrutiny, raised significant questions regarding the FBI chain of command’s management and supervision of the FISA process.

Ms. Hennessey’s reaction to the IG report was, “I don’t think the IG findings are significant enough to justify the work of a podcast.”⁸

⁴ Press Release, Senator Charles E. Grassley, IG Footnotes: Serious Problems with Dossier Sources Didn’t Stop FBI’s Page Surveillance (Apr. 15, 2020), <https://www.grassley.senate.gov/news/news-releases/ig-footnotes-serious-problems-dossier-sources-didn-t-stop-fbi-s-page-surveillance>.

⁵ Kimberley Strassel, *The Justice Department’s Resident Conspiracy Theorist*, THE WALL STREET JOURNAL (May 13, 2021), <https://www.wsj.com/articles/the-justice-departments-resident-conspiracist-11620944310>.

⁶ Quinta Jurecic, *Devin Nunes’s Mystery Memo: Repeating the Cycle of Distraction*, LAWFARE (Jan. 20, 2018), <https://www.lawfareblog.com/devin-nuness-mystery-memo-repeating-cycle-distraction>.

⁷ Ashe Schow, *As Expected, Media Move to Discredit IG Report Regarding Origins of the Russian Collusion Narrative*, The Daily Wire (Nov. 16, 2019) <https://www.dailywire.com/news/as-expected-media-move-to-discredit-ig-report-regarding-origins-of-the-russian-collusion-narrative>.

⁸ Jordan Davidson, *Biden’s DOJ Hired Full-On Russia Collusion Hoaxer Susan Hennessey To Its National Security Division*, THE FEDERALIST (May 10, 2021), <https://thefederalist.com/2021/05/10/bidens-doj-hired-full-on-russia-collusion-hoaxer-susan-hennessey-to-its-national-security-division/>; see also Tobias Hoonhout & Isaac Schorr, *DOJ Pick Susan Hennessey’s Long, Sordid History of Partisan Conspiracy-Mongering*, NATIONAL REVIEW (May 10, 2021), <https://www.nationalreview.com/news/doj-pick-susan-hennesseys-long-sordid-history-of-partisan-conspiracy-mongering/>.

As a general matter, all government employees must avoid situations that create even the appearance of impropriety and impartiality so as to not affect the public perception of the integrity of an investigation.⁹ Ms. Hennessey’s partisan comments show a clear political bias that undercuts her ability to impartially work on some matters within the NSD’s purview, including the Durham inquiry. At your February 22, 2021, nomination hearing, you stated that you are “very much committed to transparency and to explaining Justice Department decision-making.”¹⁰ Accordingly, please answer the following no later than July 13, 2021:

1. Does Ms. Hennessey have any role in the Durham inquiry? If so, please describe that role.
2. Does Ms. Hennessey have authorization to access any aspect of the Durham inquiry, including records? If so, has she used that authorization? If so, for what?
3. Has Ms. Hennessey been recused from all matters relating to the Durham inquiry? If not, why not? If so, please provide all records relating to her recusal obligations, including a recusal memo.
4. Please describe the extent to which DOJ officials were aware of Ms. Hennessey’s previous partisan statements when considering hiring her to work at DOJ.
5. What is the status of the Durham inquiry? When will it be completed?
6. Former Attorney General Barr’s October 19, 2020, memo, cited 28 C.F.R § 600.8, which requires Durham to submit interim reports and a final report to you. Barr’s memo also directed Durham to submit the reports “to the maximum extent possible...in a form that will permit public dissemination.”¹¹
 - a. Do you agree with former Attorney General Barr that interim reports and a final report should be drafted “to the maximum extent possible...in a form that will permit public dissemination”? If not, why not? If so, what steps have you taken to ensure that they will be produced in that manner?

⁹ Specifically, 5 C.F.R. § 2635.502, advises that a government employee should seek clearance before participating in any matter that could cause his or her impartiality to be questioned. Executive Order 12674, “Principles of Ethical Conduct for Government Officers and Employees,” makes clear that “[e]mployees shall not hold financial interests that conflict with the conscientious performance of duty,” “[e]mployees shall act impartially and not give preferential treatment to any private organization or individual,” and “[e]mployees shall endeavor to avoid any actions creating the *appearance* that they are violating the law or the ethical standards set forth in this part.” Emphasis added.

¹⁰ At your nomination hearing on February 22, 2021, Senator Grassley asked you, “If confirmed, would you commit to publicly releasing Special Counsel Durham’s report, just like [the] Mueller report was made public?” You responded, “So, Senator, I am a great believer in transparency. I would, though, have to talk with Mr. Durham and understand the nature of what he has been doing and the nature of the report. But I am a big – very much committed to transparency and to explaining Justice Department decision-making.” Hearing Transcript at 38. <https://www.judiciary.senate.gov/meetings/the-nomination-of-the-honorable-merrick-brian-garland-to-be-attorney-general-of-the-united-states-day-1>.

¹¹ Charlie Savage, *Barr Makes Durham a Special Counsel in a Bid to Entrench Scrutiny of the Russia Inquiry*, The New York Times (Dec. 1, 2020), <https://www.nytimes.com/2020/12/01/us/politics/john-durham-special-counsel-russia-investigation.html>. See also, <https://www.politico.com/f/?id=00000176-2008-d692-a977-3c7afcd50000> (copy of then-Attorney General Barr’s order appointing Durham as a special counsel.).

- b. Will Ms. Hennessey have access to any of Durham's draft and final reports?
- c. Please provide a list of all DOJ employees who will be able to review draft and final versions of the Durham report.

Thank you for your attention to this matter.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Judiciary



Ron Johnson
Ranking Member
Permanent Subcommittee
on Investigations