

Kupec, Kerri (OPA)

From: Kupec, Kerri (OPA)
Sent: Thursday, April 18, 2019 2:08 PM
To: Moran, John (OAG)
Subject: Transcript

REPORTER: mr. attorney general, we do not have the report in hand, so can you explain the special counsel's articulated reasons for not reaching a decision on obstruction of justice, and if it had anything to do with the department's long-standing guidance on not indicting a setting president?

AG BARR: i would leave it to his description in the report, the special counsel's own articulation of why he did not want to make a determination as to whether or not there was an obstruction offense. i will say when we met with him, deputy attorney general rosenstein and i met with him along with ed o'callaghan, the principal associate deputy, on march 5 and asked about the opinion, and whether or not he was taking the position that he would have found a crime but for the existence of the olc opinion. he made it very clear several times that that was not his position. he was not saying but for the olc opinion, he would have found a crime. he made it clear he had not made the determination there was a crime.

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REPORTER: what did you disagree with him on? given that, why did you feel the need to take it to the next step to conclude there was no crime, especially given doj policy?

AG BARR: the prosecutorial function on all of our powers as prosecutors, including the power to convene grand jury's and the compulsory process involved, is for one purpose. it is determined, yes or no, was alleged conduct criminal or not criminal? that is our responsibility and that is why we have the tools we have. we don't go through this process just to collect information and throw it out to the public. we collect this information and use that compulsory process for the purpose of making that decision. because the special counsel did not make that decision, we felt the department had to. that was a decision by me and the deputy attorney general.

Kerri Kupec
Director
Office of Public Affairs
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kerri.kupec@usdoj.gov

(b) (6)

Rabbitt, Brian (OAG)

From: Rabbitt, Brian (OAG)
Sent: Thursday, April 18, 2019 2:15 PM
To: Moran, John (OAG); Kupec, Kerri (OPA)
Subject: RE: OLC Issue

For what it is worth, (b) (5)

[REDACTED]

From: Moran, John (OAG) <jomoran@jmd.usdoj.gov>
Sent: Thursday, April 18, 2019 2:10 PM
To: Kupec, Kerri (OPA) <kkupec@jmd.usdoj.gov>
Cc: Rabbitt, Brian (OAG) <brrabbitt@jmd.usdoj.gov>
Subject: OLC Issue

Kerri,

To follow up on our discussion, (b) (5)

[REDACTED]

(b) (5) [Redacted]

[Redacted]

[Redacted]

[Redacted]

Happy to follow up if helpful.

John

John S. Moran
Deputy Chief of Staff & Counselor to the Attorney General
U.S. Department of Justice

(b) (6) [Redacted] (W)

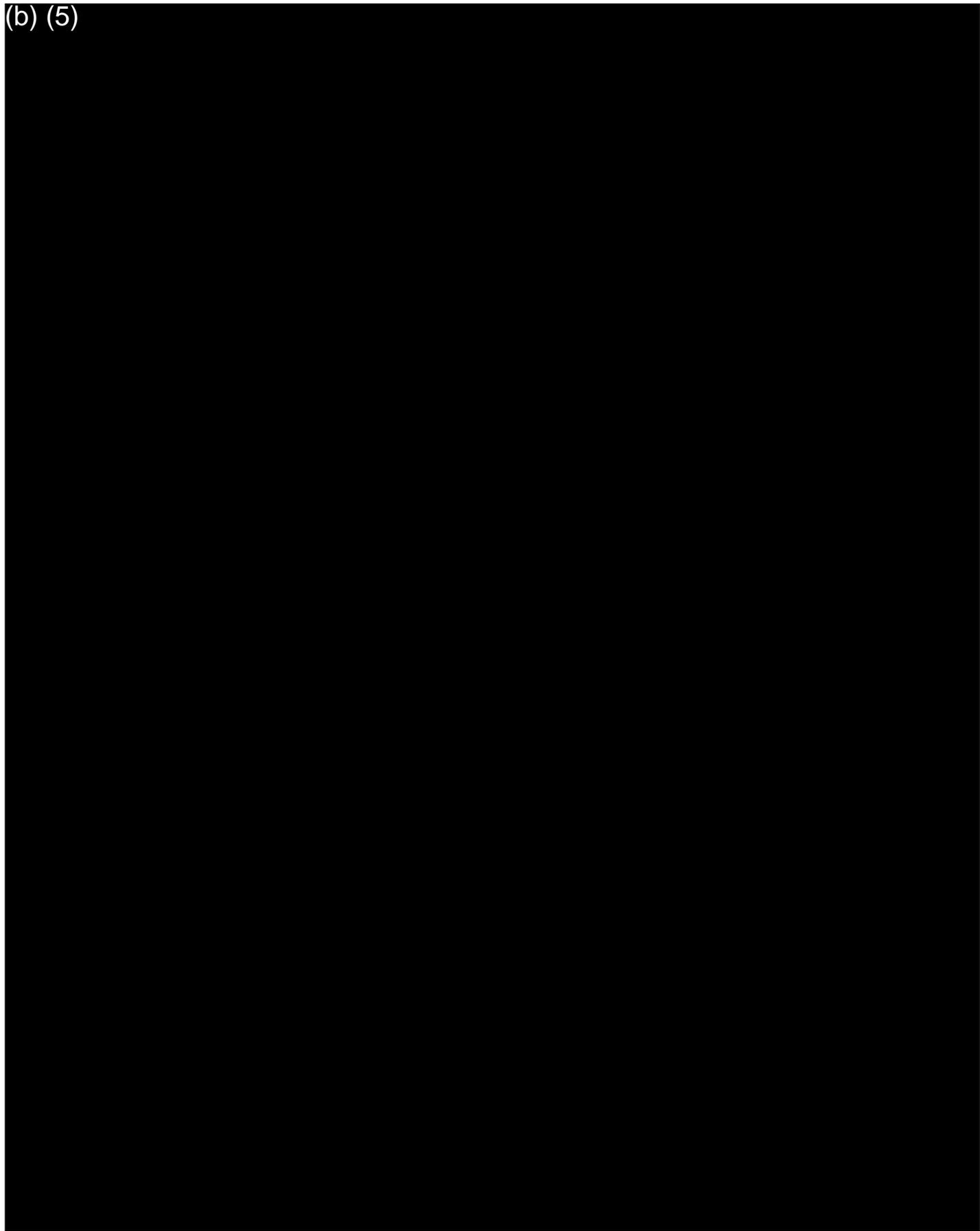
(b) (6) [Redacted] (C)

john.moran@usdoj.gov

Gramley, Shannon (OAG)

From: Gramley, Shannon (OAG)
Sent: Friday, May 3, 2019 5:17 PM
To: Rabbitt, Brian (OAG)
Subject: 3/5 Meeting Notes
Attachments: 3.5 Meeting 5.3.2019 5.16 SMG.docx

(b) (5)



Kupec, Kerri (OPA)

From: Kupec, Kerri (OPA)
Sent: Wednesday, May 1, 2019 4:11 PM
To: Boyd, Stephen E. (OLA); Rabbitt, Brian (OAG); Moran, John (OAG); Burnham, James (OAG)
Subject: Fwd: Transcript: AG Barr Hearing at Senate Judiciary (5.1)
Attachments: AG Barr Senate Judiciary Committee Hearing transcript.docx; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: "Sutton, Sarah E. (OPA)" <sesutton@jmd.usdoj.gov>
Date: May 1, 2019 at 3:57:17 PM EDT
To: "Kupec, Kerri (OPA)" <kkupec@jmd.usdoj.gov>
Cc: "Laco, Kelly (OPA)" <klaco@jmd.usdoj.gov>
Subject: Transcript: AG Barr Hearing at Senate Judiciary (5.1)

Attached if you need it!

Sarah Sutton
Department of Justice
Office of Public Affairs
(b) (6)

AG Barr Senate Judiciary Committee Hearing (CSPAN3) – Sen. Lindsey Graham Opening Statement

<http://mms.tveyes.com/transcript.asp?PlayClip=FALSE&DTSearch=TRUE&DateTime=05%2F01%2F2019+10%3A04%3A57&market=m1&StationID=1115>

SEN. LINDSEY GRAHAM: The first order of business is to try to cool the room down. So we'll see if we can do that. The Attorney General will be testifying here in a bit about the Mueller Report. I want to thank him for coming to the committee and giving us an explanation as to the actions he took and why he took them regarding the Mueller report. Here's the good news. Here's the Mueller report. You can read it for yourself. It's about 400 and something pages. I can't say I've read it all but I've read most of it. There's an unredacted version over in the classified section of the Senate, a room where you can go look at the unredacted version, and I did that and I found it not to change anything in terms of an outcome. But a bit about the Mueller report. Who is Mueller? For those who may not know, I don't know where you've been, but you may want to know that Bob Mueller has a reputation in this town and throughout the country as being an outstanding lawyer and a man of the law, who was the FBI Director, who was the Deputy Attorney General, who was in charge of the Criminal Division at the Department of Justice, was a United States Marine and he has served his country in a variety of circumstances long and for those who took time to read the report, I think it was well written, very thorough.

Let me tell you what went into this report. There were 19 lawyers employed, approximately 40 FBI Agents, intel analysts, forensic accountants and other staff, 2800 subpoenas issued, 500 witnesses interviewed. 500 search warrants executed, more than 230 orders for communication, records so the records could be obtained. 13 requests to foreign governments for evidence, over \$25 million spent over two years.

We may not agree on much, but I hope we can agree that he had ample resources, took a lot of time and talked to a lot of people. And you can read for yourself what he found. The Attorney General will tell us a bit about what his opinion of the report is. In terms of interacting with the White House, the White House turned over to Mr. Mueller 1.4 million documents and records, never asserted executive privilege one time, over 20 White House staffers including eight from the White House counsel's office were interviewed voluntarily. Don McGahn, chief counsel for the White House, was interviewed for over 30 hours. Everybody that they wanted to talk to from the Trump campaign on the ground, they were able to talk to. The President submitted himself to written so to the American people, Mr. Mueller was the right guy to do this job. I always believe that Attorney General Sessions was conflicted out because he was part of the campaign. He was the right guy with ample resources and the cooperation he needed to find out what happened was given, in my view. But there were two campaigns in 2016 and we'll talk about the second one in a minute.

So what have we learned from this report? After all this time and all this money, Mr. Mueller and his team concluded there was no collusion. I didn't know, like many of you here, on the Republican side, we all agreed that Mr. Mueller should be allowed to do his job without

interference. I joined with some colleagues on the other side to introduce legislation to protect the Special Counsel that he could only be removed for cause. He was never removed. He was allowed to do his job.

So no collusion, no coordination, no conspiracy between the Trump campaign and the Russian government regarding the 2016 election. As to obstruction of justice, Mr. Mueller left it to Mr. Barr to decide after two years and all this time, he said, Mr. Barr, you decide. Mr. Barr did. There are a bunch of lawyers on this committee and I will tell you the following. You have to have specific intent to obstruct justice. The President never did anything to stop Mueller from doing his job. So I guess theory goes now okay, he didn't collude with the Russians and he didn't specifically do anything to stop Mueller, but attempts obstruction of justice of a crime that never occurred. I guess is sort of the new standard around here. We'll see if that makes any sense. To me it doesn't.

There was another campaign. It was the Clinton campaign. What have we learned from this report? The Russians interfered in our election. So can some bipartisanship come out of this? I hope so. I intend to work with my colleagues on the other side to introduce the deter act and to introduce legislation to defend the integrity of the voting system. Senator Durbin and I have legislation that would deny anyone admittance into the United States a visa in the immigration system if they were involved in interfering in an American election. Working with Senators Whitehouse and Blumenthal to make sure if you hack into a state election system, even though it's not tied to the internet, that's a crime. I would like to do more to harden our infrastructure because the Russians did it. It wasn't some 400 pound guy sitting on a bed somewhere.

It was the Russians. And they're still doing it. It could be the Chinese, it could be somebody next. So my take-away from this report is that we've got a lot of work to do to defend democracy against the Russians and other bad actors. I promise the committee we will get on with that work, hopefully in a bipartisan fashion.

The other campaign. The other campaign was investigated not by Mr. Mueller, by people within the Department of Justice. The accusation against Secretary Clinton was that she private server up somewhere in her house and classified information was on it to avoid the disclosure requirements and transparency requirements required of being Secretary of State. So that was investigated. What do you know? We know that the person in charge of investigating hated Trump's guts. I don't know how Mr. Mueller felt about Trump, but I don't think anybody on our side believes that he had a personal animosity toward the President to the point that he couldn't do his job.

This is what Strzok said on February 12th, 2016. He's in charge of the e-mail investigation: Oh he's (Trump's) abysmal. I keep hoping the charade will end and people will just dump him.

February 12th, 2016: Page is the Department of Justice lawyer assigned to this case.

March 3rd, 2016: god Trump is a loathsome human being. Strzok: god Hillary should win.

Compare those two people to Mueller.

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March 16, 2016: I cannot believe Trump is likely to be an actual serious candidate for President.

July 21, 2016, Trump is a disaster. I have no idea how destabilizing his presidency would be.

August 28th, 2016, three days before Strzok was made Deputy acting in charge of the counter intelligence division of the FBI: he's never going to become President, right? PAGE to Strzok: no, no, he won't. We'll stop him.

These are the people investigating the Clinton e-mail situation and start counter intelligence investigation of the Trump campaign. Compare them to Mueller.

August the 15th, 2016, Strzok: I want to believe the path you threw out for consideration in Andy's office that there's no way he gets elected, but I'm afraid we can't take that risk. It's like an insurance policy in the unlikely event you die before you're 40.

August 26th, 2016: Just went to the southern Virginia Walmart. I could smell the Trump support.

October the 19th, 2016: Trump is a fucking idiot. He's unable to provide a coherent answer.

Sorry to the kids out there. These are the people that made a decision that Clinton didn't do anything wrong and that counter intelligence investigation of the Trump campaign was warranted. We're going to in a bipartisan way, I hope, deal with Russia. But when the Mueller report is put to bed and it soon will be, this committee is going to look long and hard at how this all started. We're going to look at the FISA warrant process. Did Russia provide Christopher Steel the information about Trump that was used to get a warrant on an American citizen and if so, how did the system fail. Was there a real effort between Papadopoulos and anybody in Russia to use the Clinton e-mails stolen by the Russians, or is that thought planted in his mind?

I don't know, but we're going to look. And I can tell you this, if you change the names, y'all would want to look too. Everything I just said, just substitute Clinton for Trump. See what these people with cameras would be saying out here about this. As to cooperation in the Clinton investigation, I told you what the Trump people did. Tell you a little bit about what the Clinton people did. There was a protective order for the server issued by the house and there was a request by the State Department to preserve all the information on the server. Paul Cambetta after having the protective order used a software program called bleach bit to wipe this e-mail server clean. Has anybody ever heard of Paul Cambetta? No. Under a protective order from the house to preserve the information, under a request from the State Department to preserve the information on the server, he used a bleach bit program to wipe it clean. What happened to him? Nothing. 18 devices possessed by Secretary Clinton she used to do business as secretary. How

many of them were turned over to the FBI? None. Two of them couldn't be turned off because Judith Casper took a hammer and destroyed two of them. What happened to her? Nothing. the bottom line is we're about to hear from Mr. Barr the results of a two-year investigation into the Trump campaign, all things Russia, the actions the President took before and after the campaign, \$25 million, 40 FBI AGents. I appreciate very much what Mr. Mueller did for the country. i have read most of the report. For me, it is over. Senator Feinstein.

AG Barr Senate Judiciary Committee Hearing (C-SPAN3) – Sen. Dianne Feinstein Opening Statement

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SEN. DIANNE FEINSTEIN: Thank you, Mr. Chairman. Welcome, Attorney General. On March 24th you sent a letter to Chairman Graham and the ranking member of this committee providing your summary of the principal conclusions set out in Special Counsel Mueller's report. This report was widely characterized as a win for the President and was confirming there was no collusion. Following this letter the White House put out a statement declaring, and I quote, “the Special Counsel did not find any collusion and did not find any obstruction”, end quote, and that the report, quote, “was a total and complete exoneration,” end quote, of the President. However, last night the Washington Post reported that Special Counsel Mueller sent you a letter in late March where he said your letter to Congress failed to, quote, fully capture the context, nature and substance of his office's work and conclusions, end quote. And that he spoke with you about the concern that the letter threatened to undermine the public confidence in the outcome of the investigations. That’s in quotes as well. Then on April 18th, you held a press conference where you announced repeatedly that the Mueller report found no collusion and no evidence of a crime. An hour later, a copy of the Mueller report was provided to the public and the Congress, and we saw why Mueller was concerned.

Contrary to the declarations of the total and complete exoneration, the Special Counsel's report contained substantial evidence of misconduct. First, Special Counsel Mueller's report confirms that the Russian government implemented a social media campaign to mislead millions of Americans and that Russian intelligence services hacked into the dnc and the dccc computers, stole e-mails and memos and systemically released them to imPACt the Presidential election. your march letter stated that there was no evidence that the Trump campaign, quote, conspired or coordinated with Russia, end quote. However, the report outlined substantial evidence that the Trump campaign welcomed, encourAGED and expected to benefit electorally from Russia's interference in the election. The Mueller report also details how time and time AGain the Trump campaign took steps to gain advantAGe from Russia's unlawful interference. For example, President Trump's campaign manAGER Paul Manafort passed internal campaign polling data, messAGING and strategy updates to Konstantin Kilimnik, a Russian national with ties to Russian intelligence.

The Mueller report explains how Paul Manafort briefed Kilimnik in early August of 2016 on, and I quote, “the state of the Trump campaign and Manafort's plan to win the election, quote, including the campaign's focus on the battleground states of Michigan, Wisconsin, Pennsylvania and Minnesota”. next, the Mueller report documents the Trump campaign's communications regarding secretary Clinton's and the DNC's stolen e-mails, specifically the report states, and I quote, within approximately five hours of President Trump calling on Russia to find secretary Clinton's e-mails, Russian intelligence Agency officers, quote, “targeted for the first time Clinton's personal office,” end quote. The Mueller report also revealed that President Trump repeatedly asked individuals affiliated with his campaign, including Michael Flynn, quote, to “find the deleted Clinton e-mails”, end quote. These efforts included suggestions to contact foreign intelligence services, Russian hackers and individuals on the dark web. The report confirms that Trump knew of WikiLeaks releases of the stolen e-mails and received status updates about upcoming releases while his campaign promoted coverage of the leaks. Donald Trump Jr. communicated directly with WikiLeaks and at its request publicly tweeted a link to e-mails stolen from Clinton's campaign manager.

Second, in your March letter to Congress you concluded, and I quote, that the evidence is not sufficient to establish that the President committed an obstruction of justice offense, end quote. However, Special Counsel Mueller methodically outlined ten episodes, some continuing multiple actions by the President to mislead the American people and interfere with the investigations into Russian interference and obstruction. In one example the President repeatedly called White House counsel Don McGahn at home and directed him to fire Mueller saying, quote, Mueller has to go, call me back when you do it. Then later the President repeatedly orders McGahn to release a press statement and write a letter saying the President did in the order Mueller fired. The Mueller report also outlines efforts by President Trump to influence witness Democrat and deter cooperation with law enforcement. For example, the President's team communicated to witnesses that pardons would be available if they, quote, stayed on message, end quote and remained, quote, on the team, end quote. In one case, the President sent messages through his personal lawyers to Paul Manafort that he would be taken care of and just, quote, sit tight, end quote.

The President then publicly affirmed this communication by stating that Manafort was, quote, a brave man, end quote, for refusing to break. Similarly, the Mueller report stated the President used inducements in the form of positive messages in an effort to get Michael Cohen not to cooperate and then turned to attacks and intimidation to deter the provision of information or undermine Cohen's credibility. Finally, while the letter to Congress and the April press conference left the impression there were no remaining questions to examine, this report notes several limitations Mueller faced while gathering the facts that Congress needed to examine. More than once the report documents that legal conclusions were not drawn because witnesses refused to answer questions or failed to recall the events. In addition, numerous witnesses including but not limited to Jared Kushner, Sarah Sanders, Rudy Giuliani, Michael Flynn, Steve Bannon and John Kelly all stated they could not recall events. The President himself said more than 30 times that he could not recall or remember enough to be able to answer written questions from the Special Counsel. The Special Counsel also recounted that, quote, some associated with the Trump campaign deleted relevant communications or communicated during the relevant period using applications that featured encryption or do not provide for long-term retention of data, end quote.

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Based on these gaps the Mueller report concluded, and I quote AGain, the office cannot rule out the possibility that the unavailable information would have shed additional light on or cast a new light on events described in the report, end quote. and contrary to the conclusion that the Special Counsel's report did not find evidence of communication or coordination between the Trump campaign and Russia, the Mueller report explicitly states, and I quote, a statement that the investigation did not establish particular facts does not mean there was no evidence of those facts. Volume 2, pAGe 2.

Let me conclude with this. Congress has both the constitutional duty and the authority to investigate the serious findings contained in the Mueller report. I strongly believe that this committee need to hear directly from Special Counsel Mueller about his views on the report in his March letter. I also believe Senators should have the opportunity to ask him about these subjects in questions directly. I have requested this to our Chairman to authorize a hearing with Special Counsel Mueller and I hope that will happen soon. Thank you, Mr. Chairman.

AG Barr Senate Judiciary Committee Hearing (CSPAN3) – Attorney General William Barr Opening Statement

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SEN. LINDSEY GRAHAM: Thank you. Before we receive your testimony, Mr. Barr, we have the letter that Mr. Mueller sent to you on March 27th, 2019. I'll put that in the report now. The floor is yours.

Got to swear you in. Sorry. Do you solemnly swear the testimony you're about to give this committee is the truth, the whole truth and nothing but the truth so help you god?

ATTORNEY GENERAL WILLIAM BARR: yes.

SEN. GRAHAM: sorry about that.

AG BARR: thank you, Mr. Chairman and Ranking Member Feinstein, members of the committee. During my confirmation process, there were two concerns that dominated, as I think you will all agree. The first was whether I would in any way impede or curtail Special Counsel Mueller's investigation and the second, whether I would make public his final report. As you see, Bob Mueller was allowed to complete his work as he saw fit. and as to the report, even though the applicable regulations require that the report is to be made to the AG and is to remain confidential and not be made public, I told this committee that I intended to exercise whatever discretion I had to make as much of the report available to the public and to Congressional leaders as I could consistent with the law. This has been done. I arrived at the department on February 14th and shortly thereafter I asked it to be communicated to Bob Mueller's team that in preparing the report we requested that they make it so we could ready identify 6e material so we could quickly process the report.

SEN. GRAHAM: could you tell the public what 6e is?

AG BARR: 6e is grand jury material that cannot be made public. It's prohibited by statute. I wanted that identified so we could redact that material and prepare the report for public release as quickly as we could. When I arrived at the department I found and was eventually briefed in on the investigation. I found that the Deputy Attorney General and his Principal Associate Deputy at had discussions about the timing of the report and the nature of the report. On March 5th, I met with Bob at the suggestion of the Deputy and the Principal Associate Deputy. I met with Bob Mueller to get a read-out on what his conclusions would be. On March 25th -- and at that meeting I reiterated to Special Counsel Mueller that in order to have the shortest possible time before I was in a position to release the report, I asked that they identify 6e material. When I received the report on March 22nd and we were hoping to have that easily identified, the 6e material, unfortunately it did not come in that form. It quickly became apparent that it would take about three or four weeks to identify that material and other material that had to be redacted. So there was necessarily going to be a gap between the receipt of the report and getting the full report out publicly. The Deputy and I identified four categories of information that we believe require redaction. I think you all know of them, but they were the grand jury material, information that the intelligence community advised would reveal sensitive sources and methods, information that if revealed at this stage would impinge on the investigation or prosecution of related cases and information that would unfairly affect the privacy and reputational interests of peripheral third parties.

We went about redacting this material in concert with the Special Counsel's office. We needed their assistance to identify the 6e material in particular. The redactions were all carried out by DOJ lawyers with Special Counsel lawyers in consultation with intelligence community. the report contained a substantial amount of material over which the President could have asserted executive privilege but the President made the decision not to assert executive privilege and

make public as much of the report as we could, subject to the redactions we thought required. Now, as you see, the report has been lightly redacted. The public version has been estimated to have only 10% redactions. The vast bulk of those redactions are in volume one which is the volume that deals with collusion and it relates to existing ongoing cases. Volume two had only about 2% redactions for the public version. So 98% of volume two dealing with obstruction is available to the public. We have made a version of the report available to Congressional leaders that only contains redactions of grand jury material. For this version, overall redactions are less than 2% for the whole report and for volume two dealing with obstruction they are less than .1 of 1%. Given the limited nature of redactions I believe that the publicly released report will allow every American to understand the results of the Special Counsel's work. By now everyone is familiar with the Special Counsel's bottom line conclusions about the Russian attempts to interfere in the election. In volume one the Special Counsel found that the Russians engaged in two distinct schemes.

First the internet research agency, a Russian entity with close ties to the Russian government conducted disinformation and social media operation to sow discord amongst Americans. Second the GRU, Russian military intelligence, hacked into computers and stole e-mails from individuals affiliated with the Democratic Party and Hillary Clinton's campaign. The Special Counsel investigated whether anyone affiliated with President Trump's campaign conspired or coordinated with these criminal schemes. They concluded that there was not sufficient evidence to establish that there had been any conspIRAcY or coordination with the Russian government or the I.R.A. as you know volume two of his report dealt with obstruction and the Special Counsel considered whether certain actions of the President could amount to obstruction. He decided not to reach a conclusion. Instead the report recounts ten episodes and discusses potential legal theories for connecting the President's actions to elements of obstruction offenses. now, we first heard that the Special Counsel's decision not to decide the obstruction issue at the march 5th meeting when he came over to the department and we were frankly surprised that they were not going to reach a decision on obstruction. And we asked them a lot about the reasoning behind this and the basis for this. Special Counsel Mueller stated three times to us in that meeting in response to our questioning that he emphatically was not saying that but for the olp opinion he would have found obstruction. He said that in the future the facts of a case AGainst a President might be such that a Special Counsel would recommend abandoning the OLC opinion but this is not such a case. We did not understand exactly why the Special Counsel was not reaching a decision. And when we pressed him on it, he said that his team was still formulating the explanation.

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Once we heard that the Special Counsel was not reaching a conclusion on obstruction, the Deputy and I discussed and agreed that the department had reach a decision. We had the responsibility to assess the evidence as set forth in the report and to make the judgment. I say this

because the Special Counsel was appointed to carry out the investigative and prosecutorial functions of the department and to do it as part of the Department of Justice. The powers he was using including the power of using a grand jury and using compulsory process exist for that purpose, the function of the Department of Justice in this arena, which is to determine whether or not there has been criminal conduct. It's a binary decision. Is there enough evidence to show a crime and do we believe a crime has been committed? We don't conduct criminal investigations just to collect information and put it out to the public. We do so to make a decision, and here we thought there was an additional reason, which was this was a very public investigation and we had made clear that the results of the investigation were going to be made public and the Deputy and I felt that the evidence developed by the Special Counsel was not sufficient to establish that the President committed a crime and therefore it would be irresponsible and unfair for the department to release a report without stating the department's conclusions and thus leave it hanging as to whether the department considered there had been criminal conduct. So the Deputy Attorney General and I conducted a careful review of the report with our staffs and legal advisors.

And while we disagreed with some of the legal theories and felt that many of the episodes discussed in the report would not constitute obstruction as a matter of law, we didn't rest our decision on that. We took each of the ten episodes and we assessed them against the analytical framework that had been set forth by the Special Counsel and we concluded that the evidence developed during the Special Counsel's investigation was not sufficient to establish that the President committed an obstruction of justice offense. Let me take a little bit about this March 24th letter and Bob Mueller's letter which I received on the 28th. when I report came in on the 22nd and we saw it was going to take a great deal of time to get it out to the public, I made the determination that we had to put out some information about the bottom line. The body politic was in a high state of agitation. This was massive interest in learning what the bottom line results of Bob Mueller's investigation was, particularly as to collusion. Former government officials were confidently predicting that the President and members of his family were going to be indicted. There were people suggesting that if it took any time to turn around the report and get it out, it would mean that the President was in legal jeopardy. so I didn't feel that it was in the public interest to allow this to go on for several weeks without saying anything so I decided to simply state what the bottom line conclusions were, which is what the department normally does, make a binary determination is there a crime or isn't there a crime. We prepared the letter for that purpose to state the bottom line conclusions. We used the language from the report to state those bottom line conclusions.

I analogize it to announcing after an extended trial what the verdict of the trial is pending release of the full transcript. That's what we were trying to do, notify the people as to the bottom line conclusion. We were not trying to summarize the 410-page report. So I offered Bob Mueller the chance to review that letter before it went out and he declined. On Thursday morning I received - - probably it was received at the department Wednesday night or evening. But on Thursday morning I received a letter from Bob, the letter that's just been put into the record. And I called Bob and said, you know, what's the issue here? And I asked him if he was suggesting that the March 24th letter was inaccurate and he said no, but that the press reporting had been inaccurate and that the press was reading too much into it. I asked him specifically what his concern was. And he said that his concern focused on his explanation of why he did not reach a conclusion on

obstruction. And he wanted more put out on that issue. He argued for putting out summaries of each volume, the executive summaries that had been written by his office. And if not that, then other material that focused on the issue of why he didn't reach the obstruction question but he was very clear with me that he was not suggesting that we had misrepresented his report. I told Bob that I was not interested in putting out summaries and I wasn't going to put out the report piecemeal. I wanted to get the whole report out and I thought summaries by very definition regardless of who prepared them would be under inclusive and we'd have a series of different debates and public discord over each launch of information that went out and I wanted to get everything out at once and we should start working on that. so the following day I put out a letter explaining the process we were following and stressing that the march 24th letter was not a summary of the report but a statement of the principal conclusions and that people would be able to see Bob Mueller's entire thinking when the report was made public. I'll end my statement there, Mr. Chairman. glad to take any questions.

AG Barr Senate Judiciary Committee Hearing (CSPAN3) – Sen. Lindsey Graham Questioning

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SEN. LIDSEY GRAHAM: thank you very much. As to the actual report itself, was there ever an occasion where something was redacted from the report that Mr. Mueller objected to?

AG WILLIAM BARR: I wouldn't say objected to. His understanding is the categories were defined by me and the Deputy. I don't believe-

SEN. GRAHAM: did you work with him to redact the report?

AG BARR: right. Those categories were executed by DOJ lawyers working with his lawyers. I think there were maybe a few judgment calls, very few, as to whether or not as a prudential matter should be treated as a reputational interest or something. So there may have been some occasions of that.

SEN. GRAHAM: as i understand it you did not want it to hurt somebody's reputation unless it affected the outcome.

AG BARR: right.

SEN. GRAHAM: was there any disagreement about 6e material?

AG BARR: not that I'm aware of.

SEN. GRAHAM: any disagreement about classified information?

AG BARR: not that I'm aware of.

SEN. GRAHAM: so the conclusions in your four-page summary you think accurately reflect his bottom line on collusion, is that correct?

AG BARR: yes.

SEN. GRAHAM: you can read it for yourself if you've got any doubt. As to obstruction of justice, were you surprised he was going to let you decide?

AG BARR: yes, i was surprised. i think the function he was carrying out, the investigative and procesecutive function --

SEN. GRAHAM: how many people did he actually indict?

AG BARR: i can't remember off the top of my head.

SEN. GRAHAM: it was a lot. so he has the ability to indict if he wants to, he used that power during the investigation, is that correct?

AG BARR: that is correct. the other thing that was confusing to me was that the investigation carried out for a while as additional episodes were looked into, episodes involving the President. so my question is or was why were those investigated if at the end of the day you weren't going to reach a decision on them?

SEN. GRAHAM: so did you consult Deputy Attorney General Rosenstein about the obstruction matter?

AG BARR: constantly.

SEN. GRAHAM: was he in agreement with your decision not to proceed forward?

AG BARR: yes. I'm sorry, the agreement what?

SEN. GRAHAM: not to proceed forward with the obstruction.

AG BARR: right.

SEN. GRAHAM: so very quickly give us your reasoning why you think it would be inappropriate to proceed forward on obstruction of justice in this case.

AG BARR: well, generally speaking an obstruction case typically has two aspects to it. one, there's usually an underlying criminality.

SEN. GRAHAM: let's stop right there. was there an underlying crime here?

AG BARR: no.

SEN. GRAHAM: so usually there is?

AG BARR: usually. but it's not necessary. but sort of the paradigmatic case is there's an underlying crime and the person or people implicated are concerned about that criminality being discovered, take an inherently malignant act as the supreme court has said to obstruct that investigation such as destroying documents.

SEN. GRAHAM: people were worried about that he fired Comey to stop the Russia investigation. that's one of the concerns people had. let me tell you a little bit about Comey. i do not have confidence in him, Comey, any longer. That was chuck schumer, November 2nd, 2016. i think he, Comey, should take a hard look at what he has done and i think it would not be a bad thing for the American people if he did step down, Bernie Sanders, January 15th, 2017. the President ought to fire Comey immediately. and he ought to initiate an investigation. that is Congressman Nadler, November 14th, 2016. did you have a problem with the way comey handled the Clinton e-mail investigation?

AG BARR: yes. i said so at the time.

SEN. GRAHAM: okay. so given the fact that a lot of people thought Comey should be fired, did you find that to be a persuasive act of obstructing justice?

AG BARR: no. i think even the report at the end of the day came to the conclusion if you read the analysis that a reason that loomed large there for his termination was his refusal to tell the public what he was privately telling the President, which was that the President was not under investigation.

SEN. GRAHAM: as to how go forward, would you recommend that this committee and every committee in Congress do our best to harden our interests against future Russian attacks?

AG BARR: yes.

SEN. GRAHAM: do you think they're still up to it?

AG BARR: yes.

SEN. GRAHAM: do you think other countries will be involved in getting involved in our election in 2020?

AG BARR: yes.

SEN. GRAHAM: is that a take away from the Mueller report?

AG BARR: yes.

SEN. GRAHAM: do you share my concerns about the FISA warrant process?

AG BARR: yes.

SEN. GRAHAM: do you share my concerns about the investigation how and why it was opened?

AG BARR: yes

SEN. GRAHAM: do you share my concerns that the lack of professionalism in the e-mail investigation is something we should look at?

AG BARR: yes.

SEN. GRAHAM: do you expect to change your mind about the bottom line conclusions of the Mueller report?

AG BARR: no.

SEN. GRAHAM: do you know Bob Mueller?

AG BARR: yes.

SEN. GRAHAM: do you trust him?

AG BARR: yes.

SEN. GRAHAM: how long have you known him?

AG BARR: 30 years, roughly.

SEN. GRAHAM: do you think he had the time and money he needed?

AG BARR: yes.

SEN. GRAHAM: the resources he needed?

AG BARR: yes.

SEN. GRAHAM: do you think he did a thorough job?

AG BARR: yes, and i think he feels he did a thorough job and had adequate evidence to make the calls.

SEN GRAHAM: do you think the President's campaign in 2016 was thoroughly looked at as to whether or not they colluded with the Russians?

AG BARR: yes.

SEN. GRAHAM: and the answer is no according to Bob Mueller?

AG BARR: that's right.

SEN. GRAHAM: he could not decide about obstruction and you did, is that right?

AG BARR: yes.

SEN. GRAHAM: do you feel good about your decision?

AG BARR: absolutely.

SEN. GRAHAM: thank you very much.

AG Barr Senate Judiciary Committee Hearing (CSPAN3) – Sen. Dianne Feinstein Questioning

<http://mms.tveyes.com/transcript.asp?PlayClip=FALSE&DTSearch=TRUE&DateTime=05%2F01%2F2019+10%3A52%3A18&market=m1&StationID=1115>

SEN. DIANNE FEINSTEIN: Chairman, Mr. Attorney General, the Special Counsel's report describes how the President directs Don McGahn to fire Special Counsel Mueller and later told McGahn to write a letter for our record stating that the President had not ordered him to fire Mueller. It also recounts how the President made repeated efforts to get McGahn to change his story, knowing that the President believes McGahn's recollection of the results were false, that the President tried to change McGahn's account to prevent further scrutiny of the President forward the investigation. Special Counsel also found that McGahn is an incredible witness that can lie and exaggerate given the position he had in the White House. Does existing law prohibit efforts to get a witness to lie, to say something the witness believes is false?

ATTORNEY GENERAL WILLIAM BARR: yes. Lie to the government, yes.

SEN. FEINSTEIN: and what law is that?

AG BARR: the obstruction statutes.

SEN. FEINSTEIN: the obstruction statutes. i assume you don't have it before you?

AG BARR: it was probably 1512 c 2.

SEN. FEINSTEIN: so these things in effect constitute obstruction.

AG BARR: you're talking in general terms.

SEN. FEINSTEIN: what I'm talking about specifically, yes, you're correct in a sense that it is the Special Counsel in his report found substantial evidence that the President tried to change McGahn's account in order to prevent further scrutiny of the President forward the investigation. And they found that McGahn was a credible witness with no motive to lie or exaggerate.

AG BARR: we felt with that episode the government would not be able to establish obstruction. if you look at the episode where McGahn -- the President gave McGahn an instruction, McGahn's version of that is quite clear in each time that he gave it and that was that the instruction said go to Rosenstein. Raise the interest of conflict of interest, and Mueller has to go because of his conflict of interest. So there is no debate that, that whatever instruction was given to McGahn had to do with Mueller's conflict of interest. The President later said that what he meant is that the conflict of interest should be raised with Rosenstein, but the decision should be left with Rosenstein. on the other end of the spectrum, McGahn felt it was more directed and the President was saying push Rosenstein to invoke a conflict of interest to push Mueller out. Wherever it fell on that spectrum of interest, the New York Times story was very difficult. The New York Times story said the President directed the firing of Mueller, told McGahn Mueller. There is something very different between firing a Special Counsel outright, which suggests ending the investigation, and having a Special Counsel removed for conflict that suggests you're going to have another Special Counsel. so the fact is that even under McGahn's -- and the report says and recognizes there is evidence that the President truly felt that the time's article was

inaccurate and he wanted McGahn to correct it. we believe it's impossible for the government to establish beyond a reasonable doubt that the President understood that he was instructing McGahn to say something false because it wasn't necessarily false. Moreover, McGahn had, weeks before, given testimony to the Special Counsel and the President was aware of that. and as the report indicates, it could be the case that he was primarily concerned about press reports and making it clear that he never outright directed the firing of Mueller. so in terms of -- so in terms of the request to ask McGahn to memorialize that fact, we do not think, in this case, that the government could show corrupt intent beyond a reasonable doubt.

SEN. FEINSTEIN: just to finish this you have a situation where a President essentially tries to change the lawyer's account in order to prevent further criticism of himself.

AG BARR: well that's not a crime.

SEN. FEINSTEIN: so you can, in this situation instruct someone to lie?

AG BARR: no, it has to be. to be obstruction of justice, to be obstruction of justice it has to be a lie for a particular proceeding. McGahn had already given his and i think it would be plausible that the purpose of McGahn memorializing what he was asking is to make a record that he was never fired. there is a distinction between go fire Mueller and have him removed based on conflict.

SEN. FEINSTEIN: what would that conflict be?

AG BARR: the difference between them is if you remove someone for a conflict of interest, then there would be another presumably person appointed.

SEN. FEINSTEIN: yeah, but wouldn't you have to have an identifiable conflict that made sense or else doesn't it just become a fabrication?

AG BARR: now we're shifting from the issue of writing the memo or somehow putting out later on and the issue of the direction to McGahn. there was a number of different levels to it. first as a matter of law, i think the department's position would be that the President can direct determination for the replacement of a Special Counsel. as a matter of law, the obstruction statute does not reach that conduct. putting that aside, the next question would be if it reached the conduct, could you hear establish corrupt intent beyond a reasonable doubt. when you take away there is no criminal conduct, no maligned act that the President was carrying out his constitutional duties, the question is what is the imPACt of taking away the underlying crime? and it is not, the report suggests that one imPACt is that we have to find another reason that the President would obstruct the investigation, but if the President is being falsely accused, but the President suggests the accusations against him were false, and he knew they were false, and he felt this investigation was unfair, propelled by his political opponents, and was hampering his ability to govern, that is not a corrupt motive for replacing an independent council. that is another reason we would say that we would have difficulty proving this beyond a reasonable doubt.

AG Barr Senate Judiciary Committee Hearing (CSPAN3) – Sen. Chuck Grassley Questioning

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SEN. CHUCK GRASSLEY: Senator Johnson and i wrote you about text messages between Peter Strok, that they may have used the communications as evidence gathering. i hope you will provide the requested briefing. that is my question.

AG BARR: yes, Senator.

SEN. GRASSLEY: have you already tasked any staff to look into whether or not spying was properly predicated and can Congress expect a formal report on your findings?

AG BARR: yes, i have people in the department helping me review the activities over the summer of 2016.

SEN. GRASSLEY: i suppose it depends on what conclusions you come to, but is there any reason that Congress would not be briefed on your conclusions.

AG BARR: it is a little early for me to commit completely, but i expect a report at this.

SEN. GRASSLEY: the Democratic national campaign hired fusion GPS to do opposition research against candidate Trump. then they hired Christopher Steel to compile what we know as the steel dossier. the steel dossier was essential to the now debunked collusion narrative. the Mueller report spent millions investigating and found no collusion between Trump campaign and Russia, but the Democrats paid for a document created by a foreign national with reported foreign government sources. not Trump, but the detectives. the Mueller report failed to analyze whether or not the dossier was filled with misinformation. my question, in order for a full accounting of Russian interference attempts, shouldn't the Special Counsel have considered on whether or not the steel dossier was part of a Russian disinformation and interference campaign?

AG BARR: Special Counsel Mueller has gone through the full scope of the investigation to determine whether or not he addressed looked into those issues. one of the things that I'm doing in my review is to try to establish all of the information out there about it. also to see what the Special Counsel looked into. so i can't say what he actually looked into.

SEN. GRASSLEY: but you think, in other words if you looked at all of that information right now you're telling me you could not tell me yes or no to that question sdplp.

AG BARR: if i looked at it.

SEN. GRASSLEY: and you're going to try to find some of this information. similarly shouldn't the Special Counsel have looked into the origins between the Trump campaign and Russia.

AG BARR: the origins of that narrative?

SEN. GRASSLEY: yes.

AG BARR: i don't know if he viewed his charter that broadly. that is something that I'm reviewing and i i look at whatever the Special Counsel found on that.

SEN. GRASSLEY: the Special Counsel laid out 200 or so pages relating to a potential obstruction analysis and then dumped that on your desk. You said you asked the Special Counsel whether or not he would have made a charging decision or recommended charges on obstruction, but for the office of legal counsel's decision, and that the Special Counsel made clear that was not the case. So Mr. Barr, is that an accurate description?

AG BARR: yes, he reiterated several times in the group meeting that he was not saying that butt for the OLC opinion heave found obstruction.

SEN. GRASSLEY: if they found facts sufficient for obstruction of justice, would he have stated that finding?

AG BARR: I think so, yes.

SEN. GRASSLEY: was it Special Counsel Mueller's responsibility to make a finding?

AG BARR: i think the Deputy Attorney General and I thought it was, but not just charging, but to determine whether or not the conduct was criminal. The President could not be charged as long as he informs office.

SEN. GRASSLEY: do you agree that the reasons for him not making a decision in volume two of the report and why or why not?

AG BARR: I'm not really sure of his reasoning. i could not recapitulate his analysis, which is one of the reasons in my march 24th letter i stated that he did not reach a conclusion and i did not

put words in his mouth. i think if he felt that he should not go down the path of making a traditional prosecutive decision.

SEN. GRASSLEY: there has been a number of leaks, during the department's investigation of Hillary Clinton for mishandling sensitive information, there was a culture of unauthorized speaking. Further leaking to Congress's questions to the department go unanswered is unacceptable. why, what are you doing to investigate unauthorized media contacts.

AG BARR: we have multiple criminal leak investigations under way.

SEN. GRASSLEY: thank you.

AG Barr Senate Judiciary Committee Hearing (CSPAN3) – Sen. Patrick Leahy Questioning

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SEN. PATRICK LEAHY: Attorney General, I'm somewhat troubled by your testimony here and in the other body. you appeared before the house appropriations on April 9th. you were asked about a media report that the Special Counsel's team is frustrated that your march 24th letter did not adequately portray the report's findings. you testified in response "no, i don't." you then said you suspected they would have preferred more information be released with the letter. now we know that contrary to what you said on April 9th, that on march the 27th, Robert Mueller wrote to you and expressed very specific concerns that your march 24th letter failed to capture, to quote Mr. Mueller, the context, substance, and nature of his report. and what Strzok me is he wrote that your letter threatened to undermine the Special Counsel. and assuring full public confidence in the outcome of the investigation. why did you testify on April 9th that you did not know the concerns expressed by Mueller's team but if you heard those directly before Mr. Mueller two weeks before?

ATTORNEY GENERAL WILLIAM BARR: as i said, i talked directly to Bob Mueller about his letter to mane specifically asked him what imPACT will are your concerns? are you concerned that the march 24th letter was misleading or inaccurate? and he said that he was not.

SEN. LEAHY: that wasn't my question.

AG BARR: I'm getting to the question which is the question from Chris, which was reports have emerged recently, press reports, that members of the Special Counsel's team are frustrated at some level with information included in your letter and they don't portray the counsel's findings.

SEN. LEAHY: you seem to have learned the filibuster rules better than Senators. why did you say you're not aware of concerns when weeks before your testimony Mr. Mueller expressed concerns to you. that is fairly simple.

AG BARR: the question was relating to unidentified members expressing frustration over the accuracy relating to findings. i don't know what that refers to at all. i talked directly to Bob Mueller, not members of his team. and even though i did not know what was being referred to, and Mueller never told me that the expression of the findings as inaccurate, but i did then volunteer that i thought they were talking about the desire to have more information put out, but it was not my purpose to put out more information.

SEN. LEAHY: i feel your answer is purposely misleading. and i think others do too. let me ask you another question. you said that the President is fully cooperating with the investigation, but his attorney told a defendant that he would be taken care of if he didn't cooperate, is there is a conflict in that?

AG BARR: can you repeat that?

SEN. LEAHY: they were told they would be taken care of if they did not cooperate. is there a conflict there? yes or no.

AG BARR: no. you think is fully cooperating to tell a former aide to rescue himself, shut down the investigation, and declare the President did nothing wrong? i don't think -- well obviously since i didn't find obstruction, i felt the evidence could not support --

SEN. LEAHY: I'm asking if that is fully cooperating. I'm not asking if that is obstruction, is that fully cooperating?

AG BARR: he fully cooperated.

SEN. LEAHY: so by instructing a former aide to rescuse himself, shut down the investigation, and that is not a crime?

AG BARR: why? where is that in the report?

SEN. LEAHY: volume two. The investigation was impaired to the extent and the President had done nothing wrong.

AG BARR: well, firstly asking Sessions to unrecuse himself we did not feel was wrong.

SEN. LEAHY: i don't know if that declares he did nothing wrong, but collusion -- is that fully cooperating? to say that?

AG BARR: well, i don't see any conflict wean that and fully cooperating with the investigation.

SEN. LEAHY: the President, of course, declared many times publicly in tweets and campaign rallies that he would testify, but he never did, did he?

AG BARR: not as far as i know.

SEN. LEAHY: i think you know whether or not he testified or not. As far as i know he didn't. And Mueller found his answers to be inaccurate, is that correct?

AG BARR: i think he wants additional but he never sought it.

SEN. LEAHY: and the President never testified?

AG BARR: the President never testified. Does the fact that Mr. Mueller found the Trump campaign receptive with offers of assistance from Russia, and they never reported it to the FBI.

AG BARR: what would they report to the FBI.

SEN. LEAHY: that they were receptive to offers of help from Russia.

AG BARR: the report says that they were expecting to benefit from whatever --

SEN. LEAHY: page 173, volume one, the investigation had multiple links between the Trump campaign officials and individuals tied to the Russian government. those links included Russian offers of assistance to the campaign, and the campaign was receptive to the offer and others were not.

AG BARR: i have to understand what that doesn't bother you at all. that refers to.

SEN. LEAHY: i have to give you a page from the report. i know my time is up. I'm making the Chairman nervous.

AG Barr Senate Judiciary Committee Hearing (CSPAN3) – Sen. John Cornyn Questioning

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SEN. JOHN CORNYN: the Chairman pointed out that after the Hillary Clinton e-mail investigation there was a number of -- and Mr. Comey's press come presence, -- conference, there was a number of members of the Senate that said that Comey should resign. or be fired. i believe you said that you concluded as a matter of law that the President has the right to fire executive branch employees, is that correct?

AG BARR: that's right.

SEN. CORNYN: in this place the President was relying, at least in part, by a recommendation by Rod Rosenstein arising out of the re critique of Mr. Comey's press conference. releasing information about secretary Clinton, and announcing that no reasonable prosecutor would bring charges against her, is that right?

AG BARR: that's right.

SEN. CORNYN: you started your career, i believe, in the negligence community and then moved on to the Department of Justice. and thank you for agreeing to serve again as Attorney General to help restore the department as an impartial arbiter of the law. i think that is very, very important that you and Director ray continue your efforts in that regard. I'm grateful to you for that. but i believe that we need to ask the question why didn't the Obama administration do more as early as 2014 in investigating Russian efforts to prepare to undermine and sew dissension in the 2016 election? Mr. Mueller's report does accumulate that the Russian government through the intelligence Agencies and their internet research, or IRA i think it is called, began as early as 2014. Began their efforts to do so, and we know they met with some success. is it any surprise to you based on your experience that the Russians would try to do everything they can to sow dis dissension in American political life?

AG BARR: no, i think the internet creates a lot more opportunities to have a, you know, to have that kind of covert effect. it is getting more and more dangerous. But the Russians have been at

this for a long anytime various different ways, but the point that you made about Bob Mueller's efforts on IRA, that is one of the things that Strzok me about the report. i think it is very impressive work they did in moving quickly to get into the IRA, and also the GRU folks, and i was thinking to myself, if that had been done in the beginning of 2016, we would have been a lot further along.

SEN. CORNYN: for example, we heard lot about the steel dossier, Mr. steel of course a former British intelligence officer hired to do opposition research by the Hillary Clinton campaign on her political add her adversaries including President Trump, or candidate Trump, at that time. how do we know that the steel dossier is not, et cetera, evidence of Russian disinformation campaign. knowing what we know now that the allegations are unverified? can we state with confidence that the steel dossier was not part of the Russian disinformation campaign?

AG BARR: no, i can't state that with confidence and that is one of the areas that I'm reviewing. I'm concerned about it, and i don't think it is entirely speculative.

SEN. CORNYN: we know that from published reports that the head of the CIA, Mr. Brennan, went to President Obama and brought his concerns about initial indications with Russian involvement in the campaign as early as late July 2016, and instead of doing more during the Obama administration to look into that to deter Russian activities that threatened the validity of our campaign in 2016, it appears to me that the Obama administration, the Justice Department, and the FBI decided to place their bets on Hillary Clinton and focus their efforts on investigating the Donald Trump campaign. as you have pointed out thanks to the Special Counsel, we now have confidence that no Americans colluded with the Russians in their efforts to undermine the person people. we now need to know I'm glad to hear what you're telling us about your inquiries, research, and investigation. we need to know what steps Obama, the FBI, the Department of Justice, what steps they took to undermine the political process and put a thumb on the scale in favor of one political candidate over the other, and that would be before and after the 2016 election. what is a defensive briefing that in a counter intelligence investigation?

AG BARR: you could have definite kinds of briefings. if you learn that somebody is being targeted by a hostile intelligence service, than one form of defensive briefing is to go and alert that person to the risks.

SEN. CORNYN: i think Attorney General Lynch said it is routine in counter intelligence investigations, would you agree with her?

AG BARR: yes.

SEN. CORNYN: do you know whether or not a defensive briefing was ever given to the Trump campaign by the FBI based on their counter-intelligence investigation. did they tell the President before January 2017 what the Russians were trying to do and advise him to tell people affiliated with his campaign to be on their guard and vigilant about Russian efforts to undermine public confidence in the election.

AG BARR: my understanding is that didn't happen.

SEN. CORNYN: that failure to provide a defensive briefing to the Trump campaign would be an extraordinary or notable failure, would you agree many.

AG BARR: i think one of the things that i can't fathom why it did not happen, if you're concerned about interference in the election, and you substantial people involved in the campaign, that were former US Attorneys, you had former US Attorneys there in the campaign, i don't understand why the Bureau would not have done and given a defensive briefing.

SEN. CORNYN: Thank you.

AG Barr Senate Judiciary Committee Hearing (CSPAN3) – Sen. Dick Durbin Questioning

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SEN. DICK DURBIN: thank you, Mr. Chairman and General Barr. I have been listening carefully to my Republican colleagues, and it seems they're going to coordinate a lock her up defense. This is not about the Mueller investigation, the Russian involvement, the Trump campaign and so forth, it is really about Hillary Clinton's e-mails. Finally question get down to the bottom line. Hillary Clinton's e-mails, questions have to be asked about Benghazi along the

way, travelgate, white swatwater, a lot of material they should be going through for this nap is unresponsive to the reality that the American people want to know. They paid \$25 million for the report. I respect Mr. Mueller and believe he came up with a sound report. I don't agree with all of it, but I find general Barr that some of the things you engaged in really leave me wondering what you believe your role is when it comes to something like this. listen to what, since it is in the record, let me read it and listen to what you received in a letter on march 27th from Bob Mueller, the letter did not fully capture the context, nature, and substance of the officer's work and conclusions. There is now public confusion about critical aspects about the results of our investigation. This threatens to undermine the essential purpose for which the department was appointed the Special Counsel. I cannot imagine that you got that letter and could not answer a Congressman directly about whether or not there was concerns on t the representations and findings, you said no, I don't know, what am I missing?

ATTORNEY GENERAL WILLIAM BARR: as I explained to Senator Leahy-

SEN. DURBIN: attorneys don't put anything in writing unless he really means it. You could not recall that when Congressman Chris asked you that a few months later.

AG BARR: the March 24th letter stated that Bob Mueller did not reach a conclusion on obstruction. And it had language about not exonerating the President. My view of events is that there was a lot of criticism of the Special Counsel for the ensuing few days, and on Thursday, I got this letter. And when I talked to the Special Counsel about the letter, my understanding was that his concern was not the accuracy of the statement of the findings in my letter, but that he wanted more out there to provide additional context to explain his reasoning and why he didn't reach a decision on obstruction.

SEN. DURBIN: I will just say this, Mr. Barr, if you got a letter from Mr. Mueller a few days after his letter it was clear he had some concerns. After a month's trial, they say well the verdict doesn't really capture my full cay or work. This doesn't capture everything, I'm not trying to capture everything, you're using the word summarize. The office of legal counsel's decision, you had some strong feelings about that and they were reflected in your Trump defense team.

AG BARR: did I discuss that?

SEN. DURBIN: you certainly discussed whether or not a President should cooperate with an investigation. You said at one point, in sum summarizing the findings that the President fully cooperated. And you said the President never submitted himself to a vital interview, a sit down interview under oath, not once, and that the questions, they were answered some 30 times his memory failed him. So to say the White House fully cooperated is generous. Whether or not he was restricted and what he could conclude because of the outstanding office of legal counsel opinion on the liability of a sitting President. You dismissed that. How do you explain on the first page of volume two, you said there was a lot to do with it. He could not reach a conclusion on obstruction of justice.

AG BARR: it was a reason, one of the backdrop factors that he cited as influencing his prudential judgement that he should not reach a decision which is different than citing the OLC saying that but for the OLC opinion, I would indict.

SEN. DURBIN: I'm going to stand by what he has written. The last point they want to make as well as is about don McGahn. If you read this section here on his experience, the President wanted him to date public they he was not asked to fire him. And if you are suggesting this was a dance with Rod Rosenstein, I think the President made it clear. He told Lester Holt that the reason to get rid of Comey is the Russian investigation. Over and over again this President was very explicit. and expository in style, let me ask you this in conclusion, my time is up, do you have any objections, can you think of an objection to why don McGahn should not come testify?

AG BARR: he is a close advisor to the President.

SEN. DURBIN: [MISSING TRANSCRIPT]

AG BARR: we have not waived the executive privilege?

SEN. DURBIN: are you saying, what about Bob Mueller, should he be allowed to publicly testify?

AG BARR: i already said i don't see a problem with Robert Mueller.

SEN. DURBIN: what about don McGahn.

AG BARR: I think he would be testifying on privileged matters.

AG Barr Senate Judiciary Committee Hearing (CSPAN3) – Sen. Mike Lee Questioning

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SEN. MIKE LEE: in classic decent, Justice Scalia remarked that nothing is so politically effective as the ability to charge that one's opponent and his associates are crooks. Nothing so effectively gives an appearance of validity to those charges as a Justice Department investigation. That observation has, I think, been born out time and time again in the past two years. Time and time again the President's political adversaries have exploited the Mueller probe. It's mere existence to spread baseless innuendo in an effort to undermine the legitimacy of the 2016 election, and the effectiveness of this administration. For example on January 25th 2019, speaker Nancy Pelosi asked what does Putin have on the President, politically, personally, or financially. Mr. Attorney General is there any evidence to suggest that Vladimir Putin "has something" on President Trump?

AG BARR: not that I'm aware of.

SEN. LEE: in 2019, former FBI Deputy Director Andrew McCabe said on national television, to the entire nation, that he think it's is possible that Donald Trump is a Russian Agent. Mr. Attorney General, is there any evidence that you're aware of suggesting even remotely that President Trump is a Russian agent?

AG BARR: not that I'm aware of.

SEN. LEE: Eric Swalwell said that he routinely acts on Russia's behalf, do you anything to back that up?

AG BARR: not that I'm aware of

SEN. LEE: we have heard that over and over again. In the media, we heard about the President's alleged collusion with Russia. But what we have heard is as baseless as any conspiracy theory that we have seen in politics. Anything that I can think of, but the purveyors of this conspiracy theory were members of the opposition party. That is concerning. From the beginning there was indications that the investigation was not always productive with the impartiality. Especially given the track record of excellence. The investigation into the Trump campaign began on July 31st 2016 after a foreign government contacted the FBI about comments made by George Papadopoulos. Is that accurate or was there other events that helped lead to this?

AG BARR: that is the account that has been given in the past as to how it got going.

SEN. LEE: you previously said that you think it is possible that the Trump investigation improperly spied on the Trump investigation. Is that what you in mind? Or are there other circumstances you in mind there?

AG BARR: many people seem to assume that the only intelligence collection that occurred a single confidential informant and a FISA warrant. I would like to know that is true, that seems fairly anemic if that was a counter intelligence effort.

SEN. LEE: was carter page under surveillance while he was working with the Trump administration?

AG BARR: I don't know.

SEN. LEE: was any other Trump campaign official under surveillance that time period to your knowledge?

AG BARR: these are the things that I need to look at. and I have to say that as I said before, you know the extent that there was any overreach, I believe, it was a few people in the upper echelons of the Bureau and the department, but those people are no longer there, and I'm working closely with Chris who I think has done a superb job at the Bureau, and we're working together on trying to reconstruct exactly what went down. One thing that people should know that the Bureau itself has been handicapped looking back because of the OIG investigation.

SEN. LEE: as we know, the FISA warrant for carter page was based largely on the so called steel dossier. In particular on a trip to Moscow to deliver a speech. first according to the warrant, he had a secret meeting, does the Mueller report confirm that Page met with him?

AG BARR: with me or?

SEN. LEE: General Sessions.

AG BARR: I want to say away from the FISA issue.

SEN. LEE: the warrant also says that page met with egor in order to discuss what is referred to as complaint against Hillary Clinton. Does the Mueller report confirm that?

AG BARR: I don't think so.

SEN. LEE: does it say that anyone spoke with him about Hillary Clinton?

AG BARR: I don't think so.

SEN. LEE: since the Mueller report is the gold standard of what we're discussing here, I'm glad you're looking into it, I encourage you to look into why the FBI used this false information. The public has a right to know what happened here. The US Department of Justice, the federal Bureau of investigation have a long history of success. The outcome of an investigation can depend on the whims of who might be assigned to it. They have a right not to believe that a particular investigation might be Strzok, might not be influenced by a political consideration, politically or otherwise.

AG Barr Senate Judiciary Committee Hearing (CSPAN3) – Sen. Sheldon Whitehouse Questioning

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SEN. SHELDON WHITEHOUSE: thank you, Chairman, you had Chairman Graham, and you used the words hardening our electoral infrastructure against foreign election interference. Is anonymous election funding an avenue new possible foreign election influence and interference?

ATTORNEY GENERAL WILLIAM BARR: yes.

SEN. WHITEHOUSE: let's turn to the march 27th later that you received and read March 28th, correct?

AG BARR: yes.

SEN. WHITEHOUSE: when did you have the conversation with Bob Mueller about that later that you have referenced?

AG BARR: i think on the 28th?

SEN. WHITEHOUSE: the same day you read it? When did you read the New York Times stories that made this evident?

AG BARR: i think it would have been yesterday, but I'm not sure.

SEN. WHITEHOUSE: when they asked you to ask for comment?

AG BARR: they didn't contact me.

SEN. WHITEHOUSE: contacted DOJ for comment?

AG BARR: I can't remember how it came up but someone mentioned it.

SEN. WHITEHOUSE: so you knew the letter would become public and that was probably yesterday?

AG BARR: I think so.

SEN. WHITEHOUSE: when did you decide to make that letter available to us in Congress?

AG BARR: this morning.

SEN. WHITEHOUSE: could you concede that you had an opportunity to make this letter public on April 4th when Rep. Crist asked you a very related question?

AG BARR: i don't know what you mean by related, I think it is a very different question.

SEN. WHITEHOUSE: the letter references enclosed documents and enclosed materials, right? are those the same as what you called the executive summaries that Mueller provided you? With this letter?

AG BARR: yes.

SEN. WHITEHOUSE: it is all the same document? When you talk about the executive summaries that Mueller provided you, they were the enclosed documents with that letter with which we have not been provided?

AG BARR: I think they were. You have been provided them. They're in the report. They're the summaries in the report.

SEN. WHITEHOUSE: it's the language of the report in the report. There is nothing else that he provided you there?

AG BARR: i think that's what he provided.

SEN. WHITEHOUSE: if there is anything else will you provide it to us, it is odd to be given a letter with no attachments that says it has attachments. Can we get that?

AG BARR: sure.

SEN. WHITEHOUSE: you agree it was not grand jury 6e or presented a risk to intelligence sources or methods or would interference ongoing investigations or were affected by executive privilege.

AG BARR: there was redactions in the executive summaries.

SEN. WHITEHOUSE: this is another hair splitting event.

AG BARR: I wasn't interested in summarizing the whole report, I wanted to state the bottom line conclusions. Describe the report meaning volume one --

SEN. WHITEHOUSE: you had four pages for a 400 page report.

AG BARR: I state in the letter that I'm stating it is principal conclusions. Let me also say that Bob Mueller is the equivalent of a US Attorney. He was exercising the powers of the Attorney General subsequent to the supervision of the Attorney General. His work concluded when he sent his report to the Attorney General. At that point it was my baby, and I was making a decision as to whether or not to make it public. And I effectively overRode the regulations, used discretion, to mean as far forward as I could to make that public and it was my decision how and when to make it public, not Bob Mueller's.

SEN. WHITEHOUSE: with respect to the OLC opinion that informed Bob Mueller's decision, do you agree that is merely an executive opinion and this under our constitution the decision of what the law is made by the judicial branch of the United States government.

AG BARR: I'm sorry could you --

SEN. WHITEHOUSE: with respect to the OLC's opinion, and the decision not to make a recommendation on obstruction, do you see that the law gets decided by the judicial branch of government?

AG BARR: yes.

SEN. WHITEHOUSE: is there any way for the OLC decision to be tested to see if it is correct or not.

AG BARR: none that comes to mind.

SEN. WHITEHOUSE: it could be wrong, could it not?

AG BARR: hypothetically it could be wrong. There are Rep. legal minds that disagree with that. Excuse me?

SEN. WHITEHOUSE: there are expert legal commentators and lawyers that disagree with that.

AG BARR: it is hard to find lawyers that will agree with anything.

SEN. WHITEHOUSE: because of the OLC opinion we have to give the President an extra benefit of the doubt because he is denied his day in court where he could himself. That seems like fallacy to me. If you are the President of the United States, you can either waive or readily override the OLC opinion and say I'm ready to go to trial. I want to exonerate myself, let's go.

AG BARR: how is this relevant to my diagnoses?

SEN. WHITEHOUSE: decisions?

AG BARR: it is relevant -- I assumed there was no OLC decision.

SEN. WHITEHOUSE: we have a report in front of us that says it influencing the outcome, and that it influenced the outcome because it deprived the President of his ability to have his day in court and my point to you is that he could easily have his day in court by waiving or overriding this OLC opinion that has no judicial basis. Correct?

AG BARR: well I don't think that there was anything to have a day in court on. i think that the government did not have a prosecutable case.

SEN. WHITEHOUSE: but part of -- Mueller didn't agree because he left that up to you. He said that he could neither confirm nor deny that there was a prosecutable case here. He left that to you and you said that you agree that the OLC opinion bears on it and it would unfair to put the President on the process of being indicted without prosecution.

AG BARR: you're not characterizing his thought process, it's in the report.

SEN. WHITEHOUSE: can I have a minute, I just want to nail down, you used the word spying about authorized DOJ investigative opportunities.

AG BARR: are you talking about my testimony in front of the house appropriations?

SEN. WHITEHOUSE: yes. In your entire care have you ever referred to authorized department investigative activities, officially or publicly, as spying? I'm not asking for private conversations.

AG BARR: I'm not going to change the use of the word spying. I don't think has any connotation at all. to me the question is always whether or not it is authorized and adequately predicated, spying, and I think spying is a good English word that in fact doesn't have synonyms because it is the broadest word to incorporate all forms of covert intelligence collections. I will not back off of the word spying, but I'm not suggesting -- I use it frequently as does the media.

SEN. WHITEHOUSE: when did you decide to use it? Did you use it off of the cuff, or did you go into the hearing intending to use it?

AG BARR: When the Congressman asked, do you want to change your language, I was actually thinking, like, what's the issue? I don't consider it a pejorative. Frankly, we went back and looked at press usage. Up until all the outrage a couple weeks ago, it's commonly used in the press to refer to authorized activities, such as referring to --

SEN. WHITEHOUSE: but it is not commonly used by the department. My time is up.

AG BARR: commonly used by me.

SEN. LINDSEY GRAHAM: thank you very much. We'll come back at ten till 1:00. Thank you.

AG Barr Senate Judiciary Committee Hearing (CSPAN3) – Sen. John Kennedy

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SEN. LINDSEY GRAHAM: Senator Feinstein, I've been told, is on the way. We'll go ahead and start, I think. The next questioner is a Republican, Senator Kennedy. Oh, yeah, is there something you wanted to say, Mr. Attorney General, about one of your statements?

AG BARR: just briefly, Mr. Chairman. Senator Cornyn asked me about defensive briefings before, and as I said, there were different kinds of them, and I was referring to the kind where you are told of a specific target. And I have been told at the break that a lesser kind of briefing, a security briefing that generally discusses, you know, general threats apparently was given to the campaign in August.

SEN. LINDSEY GRAHAM: Senator Kennedy.

SEN. KENNEDY: thank you, Mr. Chairman, and thanks to my colleagues for letting me go out of order. I promise to be as brief as possible. Mr. Chairman, Attorney General, thanks for coming today. Humans have a universal need, I think, to be listened to, to be understood and to be validated. I think we all share that. I have listened to the Mueller team, I validate them, but I want to be sure I understand them. Has Mr. Mueller or his team changed their conclusions?

AG BARR: you mean during the course of the investigation?

SEN. KENNEDY: no. today. It's clear, at least according to the press reports -- excuse me, general -- that at one point the Mueller team was unhappy. I think it had to do with letter. What matters to me, and I'll get to this in a moment, I want to know first, has the Mueller team changed its mind on its conclusions?

AG BARR: its conclusions as to what?

SEN. KENNEDY: as to the conclusion of conspirAcY.

AG BARR: not that I'm aware of.

SEN. KENNEDY: so the decision not to bring an indictment against the President for collusion conspirAcY with Russia has not changed?

AG BARR: no, it hasn't.

SEN. KENNEDY: and the conclusion not to bring an indictment against the President for obstruction of justice has not changed?

AG BARR: no.

SEN. KENNEDY: I take it from your testimony that the Mueller team was unhappy when you received the letter from Mr. Mueller.

AG BARR: I can't speak to the team as a whole --

SEN. KENNEDY: Mr. Mueller, then.

AG BARR: when I talked to Bob Mueller, he indicated he was concerned about the press coverage that had gone on the previous few days, and he felt that was to be remedied by putting out more information.

SEN. KENNEDY: okay. I understood you to say -- these are my words, not yours -- the first concern Mr. Mueller had, he felt like your letter wasn't nuanced enough.

AG BARR: correct.

SEN. KENNEDY: that problem has been solved, has it not?

AG BARR: it was sort of solved by putting out the whole report.

SEN KENNEDY: exactly.

AG BARR: that's why I think this whole thing is sort of mind-bendingly bizarre, because I made clear from the beginning that I was putting out the report, as much of the report as I could, and it was clear it was going to take three weeks or so, maybe four, to do that, and the question is what's the placeholder? And the place holder, in my judgment, was the simple statement of what the bottom line conclusions were. And I wasn't going to be in the business of feeding out more and more information as time went on to adjust to what the press was saying.

SEN. KENNEDY: and that's your call as Attorney General.

AG BARR: absolutely.

SEN. KENNEDY: that wouldn't be the call of a US attorney or a Special Counsel?

AG BARR: no, not at all.

SEN. KENNEDY: okay. Now, the second reason, I mentioned the nuance concern. The second reason that Mr. Mueller was concerned -- I don't want to say unhappy because I'm not trying to be pejorative -- I say concerned. He was concerned about press coverage.

AG BARR: he indicated -- he felt that what was inaccurate was the press coverage and what they were interpreting the March 24th letter to say.

SEN. KENNEDY: and what were you supposed to do about that?

AG: BARR: he wanted to put out the full executive summaries that are incorporated in the report, and I said to him I wasn't -- and by the way, those summaries, even when he sent them, apparently, they actually required later more redaction because of the intelligence community. So the fact is, we didn't have readily available summaries that had been fully vetted. But I made it clear to him that I was not in the business of putting out periodic summaries because a summary

would start a whole public debate. It's by definition underinclusive, and I thought what we should do is focus on getting the full report out as quickly as possible, which we did.

SEN. KENNEDY: and that's your call as Attorney General.

AG BARR: of course.

SEN. KENNEDY: okay. And the news coverage issue -- well, none of us can control what the news publishes or prints, except the media. But to the extent that an argument was made they didn't have the full report, that's a moot issue, too, now, isn't it?

AG BARR: yes.

SEN. KENNEDY: can you briefly go over with me one more time, I find it curious that the Mueller team spent all this time investigating obstruction of justice and then reached no conclusion. Tell me again briefly why Mr. Mueller told you reached no conclusion, or he couldn't make up his mind or whatever -- I'm not trying to put words in your mouth.

AG BARR: I really couldn't recapitulate it. We first discussed it March 5th. Edward Callaghan, the associate deputy, was with me, and we didn't really get a clear understanding of the reasoning. The report, I'm not sure exactly what the full line of reasoning is, and that's one of the reasons I didn't want to try to put words in Bob Mueller's mouth.

SEN. KENNEDY: but he did not choose to bring an indictment despite the reason?

AG BARR: right.

SEN. KENNEDY: I want to repeat what we talked about the last time you were here. This is one person's opinion. As I told you before, I think the FBI is the premier law enforcement agency in all of human history, and I believe that. I do think there were a handful of people, maybe some are still there, who decided in 2016 to act on their political beliefs. There were two investigations here. One was an investigation of Donald Trump. There was another investigation of Hillary Clinton. I'd like to know how that one started, too. And it would seem to me that we all have a duty, if not to the American people, to the FBI, to find out why these investigations were started, who started them and the evidence on which they were started. I would hope you will do that and get back to us. And there's another short way home here as well. All you got to do is release, the President can, release all the documents that the FBI and the Justice Department has pertaining to the 2016 election. Just release them instead of us going through this spin and innuendo and rumors. Let's just let the American people see them. And the final point I'll make, when you're investigating leaks at the Department of Justice and the FBI, I hope you will include the Mueller team as well. Thank you, Mr. Chairman.

AG Barr Senate Judiciary Committee Hearing (CSPAN3) – Sen. Ben Sasse Questioning

<http://mms.tveyes.com/transcript.asp?PlayClip=FALSE&DTSearch=TRUE&DateTime=05%2F01%2F2019+13%3A16%3A50&market=m1&StationID=1115>

SEN. BEN SASSE: I would like to go back to your opening statement at your confirmation, laying out what military intelligence had done in terms of hacking. I would also like to look at some oligarchs so close to Putin. Volume 2, pages 129 to 144, is largely about Alipaska. Can you tell me who he is and what his motives are?

AG BARR: I would rather not get into that in a public setting.

SEN. SASSE: Oligarch Alipaska possesses Russian diplomatic passport, he is an aluminum and metals billionaire and he's been investigated by the government and other allies for money laundering, he's been accused of threatening his business allies, he's been in bribery schemes, and he has many links to Russia organized crime. We can, in an open setting, at least agree that he's a bad dude. This is a bottom-feeding scum sucker, and he has absolutely no -- I'll take your laugh as agreement -- he has absolutely no alignment with the interests of the US people and our public. So the section of volume 1 that deals with nominally Paul Manafort but is really Alipaska, I would like you to help us have an American public 101 understanding of what is and isn't allowed. So Paul Manafort is hired by Alipaska ostensibly for things in Ukraine. But he is on the payroll of a Russian oligarch that has interests in line with the American government and the American people and interests of NATO. He's on the payroll. Is it permissible for someone to be

paid by someone who is basically an enemy of the United States, and then could that individual just volunteer and start to donate their time and talent and expertise to a campaign in the US? and one of the things painfully tragic about a hearing like this, I think the vast majority of the American people will tune it out, and those who take attention will think all you need to know is a bunch of people were pro-Trump before he became President and they stayed pro-Trump, and a bunch of people were anti-Trump. I think these 444 pages say a lot about the United States and our government and our public trust. I think it's not just about 2016. There are important questions about 2016. Chairman Graham summarized at the beginning how much money and time was available to the Special Counsel and his team to do their work, so there are a bunch of factual matters about 2016 that matter, but if one of the most important things we take away from this needs to be that we're going to be under attack again in 2020 and it isn't just going to be Russia who is pretty dang clunky about this stuff, but it more than likely will be China that is more sophisticated about this stuff. Can you tell us what is legal and illegal about foreign services being involved in American elections, and what should operatives know what's proper to take as help from foreign intelligence agencies?

AG BARR: that's a very broad topic, what is legal and illegal. Could you refine it a little bit? Are you talking about what kind of propaganda, that kind of thing, coming into the country?

SEN. SASSE: make up a country.

AG BARR: you can't put foreign money, obviously, into a campaign.

SEN. SASSE: could you -- could Russia-China, I'm making up a country, decide to come to the United States, make a database, by the way, the opioid hack of 2014 tells us they can make databases against American citizens. More than 20 people are already in the database of the communist party of China. Could they come in and build a database of all campaign operatives in the US and some foreign entity just decided to hire all of them and say, why don't you go ask volunteer for this campaign and you go and volunteer for that campaign? Can we have foreign agencies just volunteering on campaigns going forward? Is that legal?

AG BARR: if their time is paid for the purpose of participating in a campaign, I wouldn't think it's legal.

SEN. SASSE: But given how sleazy so much of this city is and so many people live on retainers of \$20, \$30 and \$40 a month, some Russian oligarch just decides to put American campaign personnel on payments and say, we may need you to lobby about something in the future. They've got views about pipe lines and national gas pipe pipelines, and by the way, you're someone who likes to advocate for certain campaigns and parties, go ahead and do what you want. Is that allowed under US law today?

AG BARR: it depends on the specific circumstances, the nature agreement, who the person is representing, are they representing the interests of a foreign government? Are they a foreign agent? Are they registered? You know, I mean, we could -- it's a slippery area and we could sit here all day and without specifics --

SEN. SASSE: I only have seven minutes. I don't get all day, but you're the chief law enforcement officer of the United States government, and I think it would be helpful for us to have a shared understanding as we head toward the 2020 election of what campaign operatives should well understand is beyond the pale. So if the Chinese government decides to hack into 2020 campaigns, I would hope there is clarity from the Department of Justice about whether or not Democratic Presidential campaigns and whether or not the Trump reelection campaign are allowed to say, hey, we're interested in this hacked material going forward. I think we need to have clarity about a question like that and someone on the judiciary committee, I think there are a bunch of counterintelligence investigations happening right now in the United States where campaigns don't really understand what the laws are, and I think we need a lot more clarity about it, because I'm nearly out of time. Let me give it to you in this version as a precise question. Under the Presidential transitions act, once you have a Democratic nominee for President and a Republican nominee for President, one of the things we do is we start to brief them in the event you would become the President-elect, you will need to know where we are in different national security issues. Should we be adding to the Presidential transition act counterintelligence briefings for campaigns as they become the nominee in a much more detailed way than the response you had about the Bureau's efforts when Senator Cornyn asked if defensive briefings were given? Should we, the Congress, be thinking very intentionally about authorizing the ability of the Bureau in a shared broader IC context but with the Bureau of security probably being the interface entity? Should nominees for the highest office in the land in 2020 be receiving regular counterintelligence briefings about the fact that intelligence agencies will be surrounding the people with the government, should they win?

AG BARR: absolutely, I think the danger from China, Russia and so forth is far more insidious than it has been in the past because of non-traditional collectors that they have operating in the United States. I think most people are unaware of how pervasive it is and what the risk level is, and I think it actually should go far beyond even campaigns. More people involved in government have to be educated on this.

SEN. SASSE: thank you. I'm at time, but I would love to work with you and the broader intelligence community on that more. I think there are a number of members of the intelligence committee who know what you're saying particularly about the Chinese government and their intent to encircle lots of people who are going to have influence in the future, and i think we, not just as a whole of government effort but a whole of society effort, have to become much more sophisticated about what intelligence agencies are planning for the future.

AG BARR: the pattern is whenever there is an election, foreign governments and their operatives frequently descend on the people they think could have a shot at winning. It's common and the most typical scenario is they do try to make contacts and so forth.

SEN. SASSE: and in a digital cyber era, you don't need a hooker anymore, bar and a hooker, and we need up to our game. Thank you very much.

AG Barr Senate Judiciary Committee Hearing (CSPAN3) – Sen. Amy Klobuchar Questioning

<http://mms.tveyes.com/transcript.asp?PlayClip=FALSE&DTSearch=TRUE&DateTime=05%2F01%2F2019+13%3A05%3A55&market=m1&StationID=1115>

SEN. AMY KLOBUCHAR: thank you, Mr. Chairman. Mr. Attorney General, I'm going to take us out of the weeds here because I think the American people deserve to know what happened in the election for the highest office of the land. And I'll just give my views very quickly and not ask you about these topics. I think your four-page letter was clearly a summary and that's why Director Mueller called it a summary. I think when Senator Van Holland and Rep. Crist asked you if the Special Counsel agreed with you under oath, you had to go out of your way not to at least mention the fact that he had sent you this letter, that you didn't mention it. And then finally I would say that we must hear from Director Mueller, because in response to some of my colleagues' questions, you have said that you didn't know what he meant or why he said it, and I believe we need to hear from him. I want to start first with Russia. Special Counsel Mueller's report found that the Russian government interfered in the 2016 Presidential election in a sweeping and systematic fashion. Later Director Wray has informed us that 2013 was a dress rehearsal for the big show in 2020. Director Coates, the President's intelligence adviser, has told us that the Russians are getting bolder. Yet for the last two years, Senator Langford and I, and a bipartisan bill with support for the ranking intelligence committee, have been trying to get the secure elections act passed. This would require backup paper ballots. If anyone gets federal

funding for an election, it would require audits, and it would require better cooperation. Yet the White House, just as we were on the verge of getting a markup in the rules committee getting it to the floor where I think we would get the vast majority of Senators, the White House made calls to stop this. Were you aware of that?

ATTORNEY GENERAL WILLIAM BARR: no.

SEN. KLOBUCHAR: okay, well, that happened. What I would like to know from you as our nation's chief law enforcement officer if you will work with Senator Langford and I to get this bill done. Otherwise we will not have any clout to get backup paper ballots if something goes wrong in this election.

AG BARR: I will work with you to enhance the security of our election, and I'll take a look at what you're proposing. I'm not familiar with it.

SEN. KLOBUCHAR: okay, well, it is the bipartisan bill. It has Senator Burr and Senator Warner, support from Senator Graham was on the bill, and the leads are Langford and myself. And it had significant support in the house as well. The GRU, the Russian intelligence agency, targeted the state and local agencies along with private firms that are responsible for electronic polling and voter registration. The GRU accessed voter information and installed malware on a voter technology's network. I understand they will brief Senator DeSantis to gain access to Florida election data. Will you commit to the FBI providing a briefing to all Senators on this?

AG BARR: just on the Florida situation?

SEN. KLOBUCHAR: on the entire Russia situation. Including the Florida-

AG BARR: sure. Situation. Sure.

SEN. KLOBUCHAR: that will be helpful. Again, Senator Langford and I are trying to get our bill passed. And I think if everyone hears about this, it may help. Also according to the report, the IRA purchased over 3500 ads on Facebook to undermine our democracy. as the Chairman has point out, contrary to what we heard from a high ranking fi not just a few Facebook ads. I am pleased that the Chairman will vote for the honest ads act. Will you help us try to at least change our election laws so we can show where the money is coming from and who is paying for these ads so people have access to these ads?

AG BARR: in concept, yes.

SEN. KLOBUCHAR: very good. Thank you. We need that support. Now let's go to something i noted in the opening. You talked about how the two major concerns at your nomination hearing were about the report and about making the report public. There was a third concern, and it was something i raised, and that was your views on obstruction. I asked you if a President or any person convincing a witness to change testimony would be obstruction of justice, and you said yes. The report found that Michael Cohen's testimony to the house before it that the President repeatedly implied that Cohen's family members had committed crimes. Do you consider that evidence to be an attempt to convince a witness to change testimony?

AG BARR: no. I don't think that that could pass muster. Those public statements he was making could pass muster as subordination of perjury.

SEN. KLOBUCHAR: but this is a man in the highest office, in the most powerful job in our country, and he is basically -- I'm trying to think how someone would react, any of my colleagues here, if the President of the United States is implying getting out there that your family members have committed a crime. So you don't consider that any attempt to change testimony?

AG BARR: well, you have two different things. You have the question of whether it's an obstructive act, and then also whether or not it is a corrupt intent. I don't think general public statements like that have -- we could show that they would have sufficiently probable effect to constitution --

SEN. KLOBUCHAR: let's go to some private statements. The report found that the President's personal counsel told Paul Manafort that he would be, quote, taken care of. This is in volume 2 at pages 122 to 124. That you don't consider obstruction of justice?

AG BARR: no, not standing alone. On both the same reasons, no.

SEN. KLOBUCHAR: I think that is my point here.

AG BARR: what?

SEN. KLOBUCHAR: you look at the totality of the evidence, that's what I learned when I was in law school. You look at the totality of the evidence and the pattern here. Look at this. The report found that the President's personal counsel told Michael Cohen that if he stayed on message about the Trump Tower Moscow project, the President had his back. That's volume 2, page 140.

AG BARR: right, but I think the counsel acknowledged that it's unclear whether he was reflecting the President's statements on that.

SEN. KLOBUCHAR: the report found that after Manafort was convicted, the President himself called him a brave man for refusing to break.

AG BARR: yes. and that is not obstruction because the President's -- the evidence -- I think what the President's lawyers would say if this were ever actually joined, is that the President's statements about flipping are quite clear and expressed and uniformly the same, which is by flipping, he meant succumbing to pressure on unrelated cases to lie and compose in order to get lenient treatment on other cases. That is not -- it's a discouraging flipping in that sense is not obstruction.

SEN. KLOBUCHAR: look at the pattern here. The report found that after Cohen's residence and office were searched by the FBI, the President told Cohen to hang in there and stay strong. The

court found that after national security adviser Michael Flynn resigned, the President made public positive comments about him, and then when he cooperated, he changed his tune. During your confirmation hearing, I asked you whether a President deliberately impairing the integrity or availability of evidence would be obstruction, and you responded yes. And this is a different take on Senator Feinstein's question. Would causing McGahn, the White House counsel, to create a false record when the President asked -- ordered him to -- when McGahn, he told him to deny reports, right? He tells McGahn, deny reports that the President ordered him to have the counsel fired. If you don't see that as obstruction in directing him to change testimony, do you think that would create a false record to impair the integrity of evidence?

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AG BARR: the evidence would not be sufficient to establish any of the three elements there. First, it's not sufficient to show an obstructive act because it is unclear whether the President knew that to be false. In fact, the President's focus on the fact that I never told you to fire McGahn -- did I ever say "fire"? I never told you to fire McGahn.

SEN. KLOBUCHAR: I'm getting to something that it's about impairing the evidence. I see it as different.

AG BARR: it's hard to establish the nexus to the proceeding, because he already had testified to the Special Counsel. He had given his evidence. As the report itself says, there is evidence that the President actually thought and believed that "the times" article was wrong. That's evidence on the President's side of the ledger that he actually thought it was wrong and was asking for its correction. It is also possible, the report says, that the President's intent was directed at the publicity and the press. The government has to prove things beyond a reasonable doubt, and as the report shows, there is ample evidence on the other side of the ledger that would prevent the government from establishing that.

SEN. KLOBUCHAR: again, I look at the totality of the evidence, and when you look at it, it is a pattern, and that is different than having one incident. Thank you, Mr. Chairman.

AG Barr Senate Judiciary Committee Hearing (CSPAN3) – Sen. Chris Coons Questioning

<http://mms.tveyes.com/transcript.asp?PlayClip=FALSE&DTSearch=TRUE&DateTime=05%2F01%2F2019+13%3A25%3A31&market=m1&StationID=1115>

SEN. CHRIS COONS: thank you, Mr. Chairman. The Special Counsel was appointed first to investigate Russia's attack on our 20 election and potential coordination with the Trump campaign, and I'm glad the Chairman started this hearing by recognizing we needed to focus on that demonstrable assault on our democracy to and to protect our government going forward, and I look forward to working with you on the bills, but we need to work with you, Mr. Attorney General, and the President to make sure there is not hacking into our 2020 election. What I think is unacceptable action on the part of the President is trying to fire the Special Counsel without cause. I think a bill protecting the Special Counsel is something worth doing for future Special Counsels. We were told by our colleagues there was nothing to worry about because the President wasn't going to fire the Special Counsel, but I was particularly Strzok by some reports in the second volume that the President attempted to do exactly that. and I frankly, Mr. Attorney General, have concerns that your march 24 letter obscured that conduct, and as a result worked to protect the President for several weeks rather than give the full truth to the American people as I now believe Special Counsel Mueller was urging you to do as reflected in the letter we just received today. So I'm going to ask you some questions about the report, but the bottom line is I think we need to hear more about the Special Counsel's work from the Special Counsel. According to Special Counsel Mueller's report, in June of 2017, President Trump called White House counsel McGahn and directed him to have the Special Counsel removed. And I quote, and this is about page 85, 86. McGahn called the President at home twice and on both occasions directed him to call Rosenstein and say that Mueller had conflicts and could no longer serve as Special Counsel. There were no credible conflicts. McGahn testified that he had shared that these conflicts were silly, were not real and Chris Christy advised that there was no good basis to fire the Special Counsel. In one call the President said, call Rod. Tell Rod there are conflicts with the Special Counsel. Quote, Mueller has to go. And I assume he didn't mean go to Cleveland or go to Seattle, he meant go, be fired. Call me back when you do it. I think the President's demands to fire Mueller without cause are alarming and unacceptable. And Mr. Attorney General, not one bit of what i just described was in your March 24th letter to this committee, was it?

ATTORNEY GENERAL WILLIAM BARR: no.

SEN. COONS: but it was in the summaries that were offered to you by Special Counsel Mueller and his team which you chose not to release, is that correct?

AG BARR: they were in complete form in the final report which i was striving to make public and which I did make public.

SEN. COONS: which I respect and appreciate. But a critical three weeks passed between when you delivered the letter with the focus on the principal conclusions and when we ultimately got the redacted report. And what I take from the letter to you --

AG BARR: why are they critical?

SEN. COONS: I would think the volume 2 summary would have revealed to the general public a whole range of inappropriate actions of the President and his core team. I'll go to a second episode that I think is important. On February 5 of 2018, after a week when the story broke publicly, the Special Counsel investigating the President, the President demand that McGahn create a false record saying the President never elected to fire the Special Counsel. The President wasn't looking for a press statement here, he wasn't looking to correct the record, and he wanted a fraudulent record for White House records, a letter that wasn't true. McGahn refused to do it. Again, there is nothing about the President's request to create a false record in your March 24th letter, is there?

AG BARR: well, that's your characterization of it, and I've been through it a couple of times. i think it would be difficult for the government to prove that beyond reasonable doubt. i think there are very plausible alternative explanations. But what I was trying to get out was the final report and have one issuance of the complete report. I made it clear in the March 24th letter that Bob Mueller didn't make a decision but that he felt he couldn't exonerate the President.

SEN. COONS: that's right.

AG BARR: I wasn't hiding that Mueller was presenting both sides of all the evidence, but he was not making a call but he felt he could not exonerate the President. Then I briefly described the process we went through to make a judgment internal and to the Department of Justice. As I say, from the public interest standpoint, I felt there should be only one thing issued and it should be the complete report, as complete as it could be.

SEN. COONS: and I know we differ in our conclusions about what that meant, but my concern is that that gave President Trump and his folks more than three weeks of an open field to say, I

was completely exonerated, when had you released the summaries of the first and second volume, we would have been more motivated than ever based on the first volume to work cooperatively to protect our next election and more concerned than ever about misdeeds, about inappropriate actions by the President and by some of his core team as a result of the summary of the second volume. And at the end of the day, you've had a number of exchanges with colleagues where you've said, I can't tell you why Mueller chose not to charge. I want to hear that from Bob Mueller. I think we should hear from Special Counsel Mueller. Let me move on to a point that Senator Sasse was just asking but what I think is worth revisiting, about the intelligence role in our elections. Russians had dirt on Hillary Clinton, the Russians had a direct contact to Donald Trump Jr. and offered to give dirt about his father's opponent. Donald Trump Jr. said, I love it, and invited the campaign Chairman and the President's son-in-law campaign Chairman to get it.

AG BARR: who did you say offered it?

SEN. COONS: in the second instance Russians made an offer to Donald Trump. I have 30 seconds. Let me get to a question if I could. Going forward, what if a foreign adversary, let's now say North Korea, offers a Presidential candidate dirt on a competitor in 2020? Do you agree with me the campaign should immediately contact the FBI? If a foreign intelligence service, a Rep. of a foreign government says we have dirt on your opponent, should they say, I love it, let's meet or contact the FBI?

AG BARR: if a foreign intelligence service does, yes.

SEN. COONS: here's my core concern. The President ordered the White House counsel to have Special Counsel Mueller fired. He fabricated evidence to cover it up. And whether or not you could make a criminal charge of this, it is unacceptable. And everyone who said we didn't have to worry about President Trump firing the Special Counsel was flat out wrong. The Russians offered the Trump campaign dirt on Hillary Clinton and the Trump campaign never reported that to the FBI. Instead they tried to conceal the meeting and misled the American people. I think we have to work on a bipartisan basis going forward to protect our elections from a repeat on this and we need leadership from our President. You announced you had cleared the President 25 days before the public could read the Mueller report for themselves. I think it's no wonder Special Counsel Mueller thought your four-page letter created public confusion about critical aspects of the results of the investigation and that that threatened to undermine the central purpose for which he was appointed. I think we need to hear from Special Counsel Mueller, I think we need to hear from Bob McGahn, and I think we need to figure out why you are supervising cases that have come from the Mueller investigation and why you have been

referred. This body has a central role in oversight that I believe we need to exercise given your recent record. Thank you, Mr. Chairman.

AG Barr Senate Judiciary Committee Hearing (CSPAN3) – Sen. Josh Hawley Questioning

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SEN. JOSH HAWLEY: thank you, Mr. Chairman. I appreciate your candor calling what happened in 2016 what it is, which is spying on the Trump campaign and spying on the President of the United States. Let's talk a little more about spying. Counterintelligence investigations like the one we now know the FBI launched against candidate Trump and President Trump, those are designed to thwart spying and sabotage, is that correct?

AG BARR: that's correct.

SEN. HAWLEY: to your knowledge has the FBI ever launch aid counterintelligence investigation of another President that you're aware of?

AG BARR: not to my knowledge.

SEN. HAWLEY: so it's safe to say that to your knowledge this move was completely unprecedented?

AG BARR: to my knowledge.

SEN. HAWLEY: would it be unusual in your experience and to your knowledge for FBI agents to hide the existence and results of an investigation, such an investigation, from their superiors?

AG BARR: did you say, would it be typical?

SEN. HAWLEY: no, would it be unusual?

AG BARR: very unusual.

SEN. HAWLEY: and that indeed what press reports suggest happened here. When FBI officials hide investigations from superiors, is there anybody to hold them accountable? What happens in that instance?

AG BARR: there is no accountability.

SEN. HAWLEY: have you looked into the decision by the FBI to why have they launched a counterintelligence investigation?

AG BARR: I am looking into it and I have looked into it.

SEN. HAWLEY: and you will -- will you commit to telling us what you find as a result of your own review and investigation?

AG BARR: well, at the end of the day when I form conclusions, I intend to share it.

SEN. HAWLEY: I'll take that as a yes. Let me ask you about the 25th amendment, if I might, for just a moment. We know that former acting Director of the FBI, Andy McCabe, he publicly confirmed that he contemplated forcing the President from office using the 25th amendment. To your knowledge have FBI officials ever contemplated forcing any other President from office against their will using that provision?

AG BARR: not to my knowledge.

SEN. HAWLEY: the 25th amendment contemplates the Vice President taking over for the President when the President is unable to act. Would you agree that that text contemplates physical ailments like incaPACitations?

AG BARR: yes.

SEN. HAWLEY: would you agree that discussions within the FBI of forcing the President out of office for political reasons gives the public at best reason to question what the FBI is doing and to fear that there may be abuses of power in that organization?

AG BARR: I think it gives reason to be concerned about those particular individuals that were involved. I don't attribute it to the organization.

SEN. HAWLEY: speaking of particular individuals who were involved, I have to say I've listened to this testimony all day today, and to me maybe the most shocking thing I've heard is this. The Chairman read it earlier. August 26, 2016 -- this is a text message from Peter Strzok, a top counterintelligence investigator, who we know started this against the President of the United States. Peter Strzok said, I just went to a southern Virginia Walmart. I could smell the Trump support. In my view, do you want to know what's really going on here? Do you want to know why the counterintelligence investigation really happened? Do you want to know why we're all sitting here today? that's why, right there's because an unelected bureaucrat, an unelected official in this government who clearly has open disdain, if not outright hatred for Trump voters like the people of my state, for instance. I could smell the Trump support? Then tried to overturn the results of a Democratic election. That's what's really gone on here. That's the story. That's why we're here today. I cannot believe that a top official of this government with the kind of power that these people had would try to exercise their own prejudices, and that's what this is, it's open, blatant prejudice, would try to use that in order to overturn a Democratic election. And to my mind, that's the real crisis here, and it is a crisis. If there is not accountability, if this can go on in the United States of America, my goodness, we don't have a democracy anymore. i look forward to hearing the results of your investigation and I look forward to this committee continuing its constitutional responsibility to find out what is going on here and making sure the will of the people is vindicated and established. Thank you, Mr. Chairman.

AG Barr Senate Judiciary Committee Hearing (CSPAN3) – Sen. Joni Ernst Questioning

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SEN. JONI ERNST: thank you, Mr. Chairman, and thank you, Attorney General Barr for being here today and visiting with all of us. The Special Counsel's investigation and all of the ripples that came from the 2016 Presidential election have really permeated the country. There is great interest in this. As I'm touring the 99 counties of Iowa, I am asked about this at town halls and other interactions with my constituents just as much as any other issue at hand. And I'm sure many of the other Senators here have had this same experience. I'd like to start today by visiting with you about the actions of Russia during the 2016 Presidential election. I think that's where a lot of us would like to see the focus go. We need to focus on what happened in the 2016 election. And then look ahead and make sure we are safeguarding our practices. I think it is natural to think of acts of aggression by a foreign state in terms of bullets, in terms of bombs, that's what we typically thought of, as acts of aggression. After all, up until just recent day, acts of aggression, or warfare has been a symmetrical operation by a foreign adversary. In the past, it has been practiced by boots on the ground or various bombing campaigns. But that's not what we are facing today. And I do believe what we saw from Russia was an act of aggression. Other adversarial foreign states, not just Russia, but I think a number of colleagues have mentioned China as well, perhaps North Korea, Iran, we could go on and on, and not only do they practice direct hostile military action, just as Russia did in Ukraine, with its illegal annexation of Crimea, but as was detailed in the Special Counsel's report, they seek to influence the elections of our free states through cyber means. And it is an objective thought that Russia attempted to influence our election. We know that, folks. All of us admit to that. We see the evidence that Russia tried to influence our election. The hacks, the disinformation, and social media cyber-attacks by Russia were done with the intent to sow discord among the American people. Russia will show no hesitation. They haven't in the past and they won't in the future in using these types of acts of aggression in an attempt to undermine our elections process and our way of life, and it doesn't matter if the attack is coming from the end of a barrel of a gun or the click of a mouse. We have to get to the bottom of it. And so General Barr, the past two years, we've been talking about this investigation, in terms of what happened, and now, we have the opportunity to decide how to do better. So the Special Counsel's report is the end of the road, I think many have stated that, the end of the road, when it comes to the question of the Trump administration's intent, but it is just the beginning of the conversation on how we counter Russia and other foreign adversaries, in their attempts to undermine our republic. So if we can talk about that 2016 Presidential election, do you see vulnerabilities or weaknesses that existed at that time that left us open to foreign aggression, foreign influence, in the election system, and then how do we move forward through the Department of Justice, in making sure we're shoring up some of those avenues of approach of our foreign adversaries?

AG BARR: yes, the FBI has a very robust program, the foreign influence task force, which is focused on this problem. And is working to counter-act and prepare for the kinds of interference that we saw, have seen. And it is a very dynamic program. I've been briefed on it by Chris Wray and I'm very impressed with what they're up to. I think that the way I view this general problem is there has always been efforts by Russia and other hostile countries to influence American elections and public opinion, but it was more easily detectable and it was sort of a cruder operation in the past, and what we have now is with technology and the Democratization of information, the danger is far more insidious. and it enables not only them getting into effectively our whole communications system here in the United States, and I'm just, I mean just the way we communicate with each other, and to our business systems and our infrastructure, but it also allows them to do exactly what we've seen, which is, because of our robust first amendment freedoms, they're able to come in, and pretend they're Americans, and affect the dialogue and the social dynamics in the United States in a way that they've never been able to do before. And it's a huge challenge to deal with it. But I think the intelligence community is responding to the challenge and the threat. I think, I had this discussion with Bob Mueller on March 5, when he was briefing me on his work, and discussing lessons learned, what he has seen in and dismantling the threats that he was able to detect and how we can start using that approach across the board.

SEN. ERNST: so I see we've accomplished a lot through our federal agencies and through the Department of Justice then. Are we able to work with different social media giants, other private organizations to help counter some of this? do you see that they're actually stepping up to this challenge, taking this on, and that they are pushing back as well against what they might determine as a foreign adversary?

AG BARR: yes, I think the private companies are stepping up their game, and being more responsible in addressing it.

SEN. ERNST: I think that's important. I'm sorry, go ahead, please. I think it's important that we really focus on why we're here today and that is because we did see Russian influence in our 2016 Presidential election. What we need to make sure is many of your other colleagues have noted is that this doesn't happen to us again. And that we are aware. and as a public, we are aware of what has been happening, not just in our own elections process here in the United States, but to many of our allies around the globe as well, in making sure that we are adequately pushing back against that, and even overmatching in making sure that we keep that type of influence out of our election cycle. So I appreciate your time today. Thank you very much, General Barr.

AG Barr Senate Judiciary Committee Hearing (CSPAN3) – Sen. Richard Blumenthal Questioning

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SEN. RICHARD BLUMENTHAL: thank you, Mr. Chairman. Thank you, Attorney General Barr for being here today. You've been very adroit and agile in your response to questions here, but I think history will judge you harshly and maybe a bit unfairly because you seem to have been the designated fall guy for this report. And think that conclusion is inescapable in light of the four-page summary and the press conference you did on the day it was released knowing that you had in hand a letter from the Special Counsel saying that he felt that you mischaracterized his report. and you were asked by one of my colleagues, Senator Van Holland, whether you know -- whether you knew that Bob Mueller supported your conclusion, and you said, I don't know whether Bob Mueller supported my conclusion. You were asked by Rep. Crist --

ATTORNEY GENERAL WILLIAM BARR: excuse me, Senator. That conclusion was not related to my description of the findings in the March 24th letter. That conclusion refers to my conclusion on the obstruction cases. So it's a different conclusion.

SEN. BLUMENTHAL: it was exactly the same word, conclusions, that was used by Special Counsel Mueller. on the obstruction issue, on page 8 and 182 of the report, I don't know if you have it in front of you, the Special Counsel specifically said, at the same time, I'm quoting, if we had confidence after a thorough investigation of the facts that the President clearly did not commit obstruction of justice we would so state. He said it again at page 182, and yet in your summary and in the press conference that you did, you, in effect, cleared the President on both so-called collusion --

AG BARR: the difference is I used the proper standard. That statement you just read is actually a very strange statement for a prosecutor --

SEN. BLUMENTHAL: for four of the specific obstruction episodes, Robert Mueller concluded that there was substantial evidence on the three necessary elements of obstruction, on --

AG BARR: you're a prosecutor --

SEN. BLUMENTHAL: I have to finish my question.

AG BARR: you haven't let me finish my answer.

SEN. BLUMENTHAL: well, let me just finish the question.

SEN. LINDSEY GRAHAM: we can do both.

SEN. BLUMENTHAL: you ignored in that press conference and in the summary that Robert Mueller found substantial evidence, and it's in the report, and we have a chart that shows the element of that crime. Intent, interference with an ongoing investigation, and the obstructive act. so i think that your credibility is undermined within the department, in this committee, and with the American people, and I want to ask you whether on those remaining investigations, the 12 to 14 investigations, whether you have had any communication with anyone in the White House.

AG BARR: no.

SEN. BLUMENTHAL: and will you give us an ironclad commitment that you will in no way --

AG BARR: I'm not sure of the laundry list of investigations, but I certainly haven't talked the substance or been directed to do anything on any of the cases.

SEN. BLUMENTHAL: well, let me give you an opportunity to clarify. Have you had any conversations with anyone in the White House about those ongoing investigations that were spawned or spun off by --?

AG BARR: I don't recall having any substantive discussion on the investigation.

SEN. BLUMENTHAL: have you had any non-substantive discussion?

AG BARR: it's possible a name of a case was mentioned.

SEN. BLUMENTHAL: and have you provided information about any of those ongoing investigations? Any information whatsoever.

AG BARR: I don't recall, no.

SEN. BLUMENTHAL: you don't recall?

AG BARR: I don't recall providing any.

SEN. BLUMENTHAL: wouldn't you recall whether you gave information to somebody in the White House about an ongoing criminal investigation in the Southern District of New York or the Eastern District of New York or the Eastern District of Virginia or the Department of Justice?

AG BARR: I just don't recall giving substance of a case.

SEN. BLUMENTHAL: is there anything that would refresh your recollection?

AG BARR: possibly looking over a list of cases.

SEN. BLUMENTHAL: you know what those discussions are. We discussed them at your confirmation hearing, correct?

AG BARR: I think there were 12 or 18 cases, right?

SEN. BLUMENTHAL: you don't know what those investigations are?

AG BARR: I do generally, but I can't remember each --

SEN. BLUMENTHAL: let me ask you one last time. You can't recall whether you have discussed those cases with anyone in the White House, including the President of the United States.

AG BARR: my recollection is I have not discussed those.

SEN. BLUMENTHAL: but you don't know for sure.

AG BARR: very sure that I did not discuss the substance of any.

SEN. BLUMENTHAL: have you recused yourself from those investigations?

AG BARR: no.

SEN. BLUMENTHAL: let me ask you about a couple of quotes from the President. since a number of my colleagues have raised the Russia investigation, and these are from the report, untruths recited by the report from the President in December of 2016 when President Trump was asked about the intelligence community's conclusion that Russia interfered in our election to boost Trump's chances. He said he had, quote, no idea if it's Russia, China or somebody. It could be somebody sitting in a bed someplace.

SEN. GRAHAM: a 400-pound person.

SEN. BLUMENTHAL: Mr. Chairman?

SEN. GRAHAM: a 400-pound person sitting on a bed.

SEN. BLUMENTHAL: that isn't what the President said. He referred to it as somebody. He also, at helsinki, denied Russian attacks in 2016 on our election. Another lie. Two days after Trump was elected, the Russian officials told the press that the Russian government had maintained contacts with Trump's, quote, immediate entourage, end quote, during the campaign. When President Trump was asked about it, he said, quote, there was no communication between the campaign and any foreign entity during the campaign. That's at page 21 of volume 2. The first quote i gave you was from page 21 of volume 2. The President initially denied playing any role in shaping his son's statement to the press about the now-infamous June 9 meeting. The Mueller report established that the President dictated a misleading statement about that meeting through his communications Director, hope hicks. That's at page 101 and 102 of volume 2. After news organizations reported that the President ordered McGahn, Mr. McGahn, to have the Special Counsel removed, the President publicly disputed these accounts. The Mueller report establishes that, quote, substantial evidence supports the conclusion that the President, in fact, directed McGahn to call Rosenstein to have the Special Counsel removed. That's at volume 2, page 88. In your view did President Trump on those occasions and others recite is in the report, lie to the American people?

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AG BARR: I'm not in the business of determining when lies are told to the American people. I'm in the business of determining whether a crime has been committed.

SEN. BLUMENTHAL: so he may have lied, --

AG BARR: but I'd like an opportunity to answer some of these questions, okay? You started by citing this thing in volume 2 about how the report says that they could not be sure that they could clearly say that he did not violate the law. As you know, that's not the standard we use in the criminal justice system. It's presumed that someone is innocent and the government has to prove that they clearly violated the law. We're not in the business of exoneration, we're not in the business of proving they didn't violate the law.

SEN. BLUMENTHAL: I found that whole thing that you exonerated him in your press conference and in the four-page summary.

AG BARR: how did that start? I didn't hear the beginning of that question.

SEN. BLUMENTHAL: you in effect exonerated or cleared the President --

AG BARR: no, I didn't exonerate. I said we did not believe there was sufficient evidence to establish an obstruction, a defense which is the job of the Justice Department. And the job of the Justice Department is now over. That determines whether or not there is a crime. The report is now in the hands of the American people. Everyone can decide for themselves. There is an election in 18 months. That's a very Democratic process. But we're out of it. We have to stop using the criminal justice process as a political weapon.

SEN. BLUMENTHAL: my time has expired. I apologize, Mr. Chairman, but I would just say that the four-page letter and the press conference that you did left the clear impression, and it's been repeated again and again, that you cleared the President.

AG Barr Senate Judiciary Committee Hearing (CSPAN3) – Sen. Mazie Hirono Questioning

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SEN. MAZIE HIRONO: thank you, Mr. Chairman. Mr. Barr, the American people know you are no different from Rudy Giuliani or Kellyanne Conway, or any of the other people who sacrifice their once decent reputation for the liar who sits in the oval office. You once turned down a job offer from Donald Trump to represent him as his private attorney. At your confirmation hearing you told Senator Feinstein, quote, the job of Attorney General is not the same as representing quote the President so you know the difference but you've chosen to be the President's lawyer and side with him over the interest of the American people.

To start with, you should never have been involved in supervising the Robert Mueller investigation. You wrote a 19-page unsolicited memo, which you admit was not based on any fact, attacking the premise of half of the investigation. And you also should have Deputy Attorney General Rod Rosenstein recuse himself. He was not just a witness to some of the President's obstructive behavior, we now know he was in frequent personal contact of the President, a subject of the investigation. You should have left it to then, once the report was career officials. Delivered by the Special Counsel, you delayed its release for more than two weeks and let the President's personal lawyers look at it before you agreed to let public or the Congress see it. During the time you substituted your own political judgment for the Special Counsel's legal conclusions in a four page letter to Congress and now we know thanks to a free press that Mr. Mueller wrote your letter, objecting to your so-called summary. When you called Mueller to discuss his letter, the reports are that he thought your summary was giving the press, Congress, and the public a misleading impression of his work. He asked you to release the report summaries to correct the misimpression you created but you refused. When you finally did decide to release the report over a Congressional recess and on the eve of two major religious holidays, you called a press conference, to once again try to clear Donald Trump before anyone had a chance to read the Special Counsel's report, and come to their own conclusions. But when we read the report, we knew Robert Mueller's concerns were valid. And that your version of events was false.

You used every advantage of your office to create the impression that the President was cleared of misconduct. You selectively quoted fragments from the Special Counsel's report, taking some of the most important statements out of context, and ignoring the rest. You put the power and authority of the office of the Attorney General and the Department of Justice, behind a public relations effort to help Donald Trump protect himself. Finally, you lied to Congress. You told Representative Charlie Crist that you didn't know what objectives Mueller's team might be the March so-called summary. You told Senator Chris Van Holland that you didn't know if Senator Mueller supported your conclusions but you knew you lied and now, we know. A lot of respect to nonpartisan legal experts and elected officials were surprised by your efforts to protect the President. But I wasn't surprised. You did exactly what I thought you'd do, that's why I voted

against your confirmation. I expected you would try to protect the President. And indeed, you did. In 1989, this isn't something you hadn't done before. in 1989, when you refused to show Congress an OLC opinion that led to the arrest of Manual Anothera, in 1993, when you recommended pardons for the subjects of the Iran-contra scandal and last year when you wrote the 19-page memo saying Donald Trump, as President, can't be guilty of obstruction of justice, and then didn't recuse yourself from the matter. From the beginning, you're addressing an audience of one. That person being Donald Trump. that's why before the bombshell news of yesterday evening, 11 of my Senate colleagues and I called on the Department of Justice inspector general, and office of professional responsibility, to investigate the way you have handled the Mueller report. I wanted them to determine whether your actions complied with the department's policies and practices, and whether you have demonstrated sufficient impartiality to continue to oversee the 14 other criminal matters that the Special Counsel referred to in other part, to other parts of the Department of Justice. But now, we know more about your deep involvement in trying to cover up for Donald Trump. Being Attorney General of the United States is a sacred trust. You have betrayed that trust. America deserves better. So I have some questions for you. Is the White House exerts any influence on your decision, whether to allow Special Counsel Mueller to testify in Congress and when?

ATTORNEY GENERAL WILLIAM BARR: no.

SEN. HIRONO: now, you've been clear today that you don't think that any of the ten episodes of possible obstruction that the Special Counsel outlined is a crime. I disagree. But you seem to think that if it's not a crime, then there's no problem. Nothing to see here. Nothing to worry about. So with apologies to Adam Schiff, do you think all of the things that President Trump did are okay? Are they what the President of the United States should be doing? For example, do you think it's okay for a President to fire an FBI director to stop him from investigating links between his campaign and Russia? It may not be a crime, but do you think it's okay?

AG BARR: well, I think the report is clear, that --

SEN. HIRONO: no I'm not talking about the report.

AG BARR: well I'm talking about --

SEN. HIRONO: I'm asking you. This is not a crime. But do you think it is okay for the President to do what he did, to fire the Special Counsel -- if you think it's okay --

AG BARR: I don't think the evidence supports the proposition.

SEN. HIRONO: so I guess you think it's okay.

AG BARR: to stop the investigation.

SEN. HIRONO: do you think it is okay for a President to ask his White House counsel to lie?

AG BARR: well, I'm willing to talk about what's criminal.

SEN. HIRONO: no, we've already acknowledged that you think it was not a crime. I'm just asking whether you think it is okay. Even if it is not a crime, do you think it's okay for the President to ask his White House counsel to lie?

AG BARR: which --

SEN. HIRONO: if you're going to go back to -- you're telling me it is okay. Let me ask you the last question that I have in 17 seconds. Do you think it is okay for a President to offer pardons to people who don't testify against him, to threaten the family of someone who does? Is that okay?

AG BARR: when did he, well, pardon --

SEN. HIRONO: I think you know what I'm talking about. Please, please, Mr. Attorney General, you know, give us some credit for knowing what the hell is going on around here with you.

SEN. LINDSEY GRAHAM: not really. To this line of questioning. Listen, you've slandered this man.

AG BARR: what I sort of want to know, how did we get to this point?

SEN. HIRONO: I do not think that I'm slandering anyone. All I can say, Mr. Chairman, I am done, thank you very much.

SEN. GRAHAM: and you slandered this man, from top to bottom, so if you want more of this, you're not going to get it, if you want to ask him questions, you can.

SEN. HIRONO: you certainly have your opinion and I have mine.

AG Barr Senate Judiciary Committee Hearing (CSPAN3) – Sen. Cory Booker Questioning

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SEN. CORY BOOKER: thank you, Mr. Chairman. Mr. Barr, as I take a step back at this, I just really think we're at a very sobering moment in American history, that there is a considerable amount going on when you actually take time and read this whole report, that shows that we're sort of at a crossroad, and I fear that we're descend nag a new normal that is dangerous for our democracy on a number of levels. and I fear unfortunately and I hope we have a chance to discuss this, that you have not only put your own credibility into question, but seem to be giving sanction to behavior through the language you used in that press conference you held, the language you used in your summary that stimulated Mueller to write such a strong rebuking letter, i fear that you are adding normalcy to a point where we should be sounding alarms, as opposed to saying that there is nothing to see here. and so one, this 448-page report that has a deep litany of lies and deceit and misconduct, of the President of the United States instructing

people to lie around to be deceitful, evidence of people trying to cover up behavior that on its face is morally wrong, whatever the legal standard is, I found it, number one, to, by saying that this kind of obstructive conduct was acceptable, not only acceptable but your sentence literally saying that the American people should be grateful for it, that is the beginning of normalization that I want to explore. But the second thing I want to explore, we'll explore this, but I want to make my two statements at the top. One that is problematic. and general, the second problem I have is you seem to be excusing a campaign that literally had hundreds of contacts with a foreign adversary that I think there's a conclusion amongst on a bipartisan conclusion, that there was a failure to even report those contacts, that we engaged in behaviors that folks knew that were wrong, that they tried to actively hide, they seem to capitalize, seemed to capitalize on this foreign interference, I mean in our country, we know it is illegal for a campaign and wrong for a campaign to share polling data with an American super-PAC, but we have here documented a level of coordination with a foreign adversary sharing polling data. And we're seeming to be, and your conduct seems to be trying to normalize that behavior and that's why I think we're in such a serious moment that is eroding the cultures of this democracy, and the security of this democracy, so let's just get into some of this specifically. You said, quote, we know that the Russian operatives who perpetrated these schemes did not have the cooperation of President Trump or the Trump campaign. That is something that all Americans can and should be grateful to have confirmed. The things I just mentioned, a willingness to meet with Russian operatives in order to capitalize on information, I don't think that is something that should be grateful. I find your choice of words alarming. I think it calls into question your objectivity. When you look at the actual context of the report. And so should the American people really be grateful that a candidate for President sought to benefit from material and information that was stolen by a foreign power in an effort to influence an election?

ATTORNEY GENERAL WILLIAM BARR: well, I'm not sure what you mean by seek to benefit. There's no indication that they engaged in either the conspiracy to act, or that they engaged in any action with respect to the dissemination that was criminal.

SEN. BOOKER: well, again, sir, you're using the word conspiracy which is a legal term, and at the press conference, you used President Trump's word obstruction, over and over again --

AG BARR: what is a legal term--

SEN. BOOKER: you pulled into his words. And I'm asking you specifically, I'm sorry, collusion was the word I was looking for. You used the word no collusion over and over again. And you said the American people should be grateful that the President sought to benefit from material and information. But you know that he did seek to benefit from that material. Donald Trump Jr.

in his own email seemed to celebrate that he might have access to information from a foreign adversary. Is that correct? Is that something the American people should be grateful for?

AG BARR: apparently according to the report he was, yes, apparently, he was interested in seeing what this Russian woman had in the way of quote --

SEN. BOOKER: and did not report it as I think everything who is in politics knows it is something you should do. Should the American people be grateful in the face of an attack of our democracy by a foreign adversary that the President of the United States made several documented attempts to thwart an investigation into the links of his campaign and Russia? And you used that word grateful again. That the American people should be grateful. Is that something should be grateful for?

AG BARR: I'm not sure what you're talking about.

SEN. BOOKER: sir, I'm talking about the attempts this President made, that Mueller pointed to at least ten attempts to thwart an investigation into the links between his campaign and Russia. Be grateful for those ten well-documented attempts by Mueller?

AG BARR: you are talking about the obstruction part of the report?

SEN. BOOKER: I'm talking about the second volume. Let me continue, should the American people be grateful that Trump had more than 215 documented contacts between Russian-linked operatives and then lied about them and tried to hide them. Is that something the American people should be grateful for? Any President. This one or any down the road?

AG BARR: as I mentioned earlier, during a campaign, foreign governments make, and foreign citizens, frequently make a lot of attempts to contact different campaigns. If we were right now, to go and look at for example, Hillary Clinton's campaign during the same time frame --

SEN. BOOKER: sir, I did.

AG BARR: you would see a lot of foreign governments like the Chinese trying to establish --

SEN. BOOKER: and that's I guess what I'm trying to say to you, we right now have a new norm until our country. We have a document that shows over 200 attempts, connections between a Presidential campaign and a foreign adversary, sharing information that would be illegal if you did it with a super-PAC, we know that --

AG BARR: what information was shared?

SEN. BOOKER: polling data was shared here. It is in the report. I can cite you the page.

AG BARR: with who?

SEN. BOOKER: and I guess my point is your willingness to seem to brush over this and using words like the American people should be grateful with what is in the report, nobody should be grateful, misleading, inappropriate action after inappropriate action that is clear, and then on top of that, at a time we all recognize that we had a foreign power trying to undermine our election, you the chief law enforcement officer, not only undermines your own credibility as an independent actor, when there's ongoing investigations still, using the word, the President's own words, having been criticized by Mueller himself, but the challenge we now have is that we are going into an area where you can't even be willing to be in the least bit critical in your summarizations. I believe it calls into question your credibility and again, my time is up.

AG Barr Senate Judiciary Committee Hearing (CSPAN3) – Sen. Marsha Blackburn Questioning

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SEN. MARSHA BLACKBURN: thank you, Mr. Chairman. And thank you, General Barr, for being here today. We really appreciate your time. I want to talk with you just a little bit about some of your bottom line conclusions because I think there's one that we need to kind of circle back to. A little bit. and as I've listened to a lot of the conversation here today, one of the things we've not discussed is what seems to be the culture at DOJ and the FBI, and I know there are a lot of good people that work there, and we're grateful for their service, but every organization has a culture, and whether it's a corporate culture, or a church, or a school, or whatever, and what seems to have happened, at the FBI, is there is a seedy cynical political culture within a group that developed. And these individuals collectively seem to think that they could work within the power of their joshes, and their roles, with the federal government, there was an elitism and an arrogance there, and it speaks to a very unhealthy work culture within that agency. And I will tell you this. When I talk to Tennesseans, they talk a lot about what they want to see with the Department of Justice and the FBI post all of this. And restoration of trust in the integrity. And accountability. And really in Tennessee, they will talk to me about four things. They talk a lot about health care, jobs in the economy, they are going to talk about getting federal judges confirmed, and about reigning in government and holding it accountable. And there has been a lot of hysteria. This is something that grew within the ranks of the FBI. What are you doing, and what is your plan for rebuilding that trust and integrity so that the American people can say, when the FBI does its job, when the DOJ does its job, we know that is a job done right?

AG BARR: I don't think there is a bad culture in the FBI, and i don't think the problems that manifested themselves during the 2016 election are endemic to the institution. i think the FBI is doing its job. I mean just this recent case out in California, where they interdicted this would-be bomber, they do great work and the country every day, and I agree with Senator Kennedy who said, you know, it's the premiere law enforcement institution in the world. I believe that, and I say to the extent there was overreach, I don't want to judge people's motives and come to a conclusion on that, but to the extent there was overreach, what we have to be concerned about is, you know, a few people at top, getting it into their heads that they know better than the American people.

SEN. BLACKBURN: and that is the problem. And that is what we hope that you are addressing. let's go back to, this because to repeat, to the report, to produce it, I think that Mr. Mueller assembled what would be called a dream team, 19 all-star lawyers, a Watergate prosecutor, a deputy solicitor general, a fluent Russian speaker, who clerked for two supreme court justices, former head of the Enron investigative task force, chief of the public corruption unit in the Manhattan US attorney's office, federal prosecutors who have taken down mob bosses, the mafia, and ISIS terrorists. Do you consider these lawyers to be the best and the brightest in the field?

AG BARR: not necessarily.

SEN. BLACKBURN: are they the warriors you would want on your side in the courtroom?

AG BARR: I mean, you know, there are a lot of great lawyers in the Department of Justice. He assembled a very competent team.

SEN. BLACKBURN: are they meticulous investigators? Who will hunt down every witness and every piece of evidence?

AG BARR: I think they are tenacious investigators.

SEN. BLACKBURN: are they devoted to finding the truth?

AG BARR: yes.

SEN. BLACKBURN: are they masters at taking down hardened criminals, foreign and domestic?

AG BARR: yes.

SEN. BLACKBURN: if there were evidence to warn a recommendation for collusion charges against the President, do you believe the Special Counsel team would have found it?

AG BARR: yes.

SEN. BLACKBURN: and if there were evidence to warrant your recommendation for obstruction of justice charges against the President, double the Mueller team, do you believe the Mueller team would have found it?

AG BARR: I think they had an exhausted, they canvassed the evidence exhaustively, they didn't reach a decision on it, but the question just been asking, raises a point I wanted to say when Senator Hirono was talking is how did we get to the point here where the evidence is now that the President was falsely accused of colluding with the Russians, and accused of being treasonist, and accused of being a Russian agent, and the evidence now that was without a basis, and two years of his administration have been dominated by the allegations that have now been proven false, and you know, to listen to some of the rhetoric, you would think that the Mueller report had found the opposite.

SEN. BLACKBURN: and you know, Mr. Attorney General, I will tell you that is what Tennesseans say, they say how did we get here? How is there this allowance, and acceptedness of saying that's okay? Because it's not. And people want to see government held accountable. They want agencies to act with accountability. To the American people. And they don't want to ever see this happen again. It doesn't matter if a candidate is a Democrat, a Republican, or an independent. They never want to see this happen again. Because they know that this was pointed at using the power that they had to try to tilt an election, or to achieve a different outcome, and the American people want equal justice, they want respect for the rule of law, and they want fairness from the system. i have one other question, dealing with social media. Tennessee Republican Party had a ten underscored GOP account set up by the Russians. I think as we look at social media, either they were willing to turn a blind eye and allow these accounts to go up, because they knew they were being paid in rubles, of these accounts, and/or there was just negligence. So my hope is that with all of the bad actor state, whether it is Russia or Iran or North Korea, or China, that you all have a game plan for dealing with these platforms in a way that you're willing to rein them in for the 2020 election. I yield back.

AG Barr Senate Judiciary Committee Hearing (CSPAN3) – Sen. Tom Tillis Questioning

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SEN TOM TILLIS: thank you, Mr. Chairman. General Barr, thank you for being here. in the last sentence on page one of your four-page memo, it states that the Special Counsel issued more than 2800 subpoena, executed nearly 500 search warrants, obtained more than 230 orders for communication records, issued almost 50 orders authorizing the use of pen registers, made 13

requests of foreign ghosts for evidence, and interviewed approximately 500 people. That seems like a pretty extensive investigation to me. It took about 22 months, right?

AG BARR: right.

SEN. TILLIS: and it was summarized in a little over 400-page document, volume two was just under two 2 00 pages, as I recall, I have read volume two word for word and I've read most of volume one. the new normal that seems to be created here even after all of this investigation and you haven't found any conduct worthy of indictment, that you can just bounce back for political reasons and indictment somebody. That's a rhetorical statement, or question, not a statement. now, I want to go back to the other part that I find interesting here, the New York Times already issued a headline that says Mueller pushed in letter for Barr to release the report's summary. So now the narrative, because I've had a lot of people in the press coming out and the narrative is, well doesn't this undermine the Attorney General because Mueller wanted the executive summaries issued? Now, I want to go back to what you said in your opening statement. you said that, I believe, using your words, the body politic was, it was unrestful, you had gotten the report, you didn't get the 6 e information, you had to do the redacting, you into it would take time, it would have been helpful if you had gotten that when the report was transmitted to you and it took however long it took. Issued the summary, you used the analogy of announcing the verdict, and waiting for the transcript. Did you ever at any point say, you know what I really want to do is issue this letter and let the news media play with it for three or four weeks and then we'll get the redacted version out? Did that ever cross your mind?

AG BARR: no, we were pushing to --

SEN TILLIS: to get the report out as soon as possible.

AG BARR: as soon as possible.

SEN. TILLIS: at any point in time when the President had the opportunity to issue their own advice on redactions or assert executive privilege, over the course of the weeks that you were doing the review of the report, did you ever get advice from the President, or from anybody in the White House, to assert executive privilege, or to redact any portion of the document?

AG BARR: no.

SEN. TILLIS: none. And so the narrative between the letter and the redaction process was, we're going to get a report that's 80% redacted. Now, would you give me the numbers again, on the version that's available to the leadership of Congress, the numbers again? I think you said one-tenth of 1%. We're skipping over volume one and we're spending time on volume two. Did I hear you say that the legislative leaders have access to all but one-tenth of 1% of the entire report?

AG BARR: approximately, yes.

SEN. TILLIS: so guys, you can go out and spin this any way you want to but the data is there. There was no underlying crime. And there was insufficient evidence to indict the President on obstruction of justice. You said something else that's interesting to me in the report about that we found no evidence that was sufficient to indict. But then they went on to say nor can we exonerate him. When is the Special Counsel in the business of exonerating a subject in an investigation?

AG BARR: they're not.

SEN. TILLIS: why would somebody put that something like that in the report?

AG BARR: I don't know.

SEN. TILLIS: it would follow that that's uncommon, and you would have not have put that in the context of the report you produced. Is that a statement?

AG BARR: that's a fair statement but i did put in a sense about not exoneration.

SEN. TILLIS: I think the thing that frustrates me, number one I should have started by saying this the vast majority of people in the Justice Department and the FBI are extraordinary people. The chair is with, starting with Strzok and Page and everybody else leading up to the investigation, I hope they're being investigated. I have a question for you. The scope of the OIG, where does, do you understand or do you know what the scope of that report will be? Will it be purely on this investigation? Or would it extend also to other acts it may have in some way influenced this investigation?

AG BARR: well I don't want to be too specific. I talked to Mike Horowitz a few weeks ago about it and it is focused on the FISA and the basis of the FISA and the handling of the FISA applications, but by necessity it looks back a little bit earlier than that. The people I have helping me with my review will be working very closely with Mr. Horowitz.

SEN. TILLIS: now, I want to go back again, because we have other people talking, I'm sure it is going to come up again, I am clear in this report there was no underlying crime. Is that correct?

AG BARR: yes. I think that's the conclusion of the report.

SEN. TILLIS: and it was insufficient evidence, or insufficient evidence to assert that the President obstructed justice. And a lot of that evidence was in the public eye because we talked about tweets and public statements and a number of other things that were trying to use to assert as evidence for obstruction of justice. it seems odd to me that people on this committee that pound and pound over and over again that you're innocent until proven guilty, with the extent of this report, with the number of resource, nearly \$30 million, when the facts don't lead to the outcome that you want, the one that the marketing department wanted to use this as a political tool for the next 20 months, it seems odd to me that we go down the path of saying that, well, in spite of all of the work, we're going to indict him anyway, and if we can't indict him, then we're going to impugn your integrity and call you a liar. I find that behavior on this committee despicable. Thank you.

AG Barr Senate Judiciary Committee Hearing (CSPAN3) – Sen. Mike Crapo Questioning

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SEN. MIKE CRAPO: thank you. Attorney General Barr, I know you've gone through almost everything that could have been asked so far today and I will go over a few things that you have already talked about but I appreciate your willingness to get into it with me. first I want to talk about the letter of march 27 that has been talked a lot about from Mr. Mueller, first, can you tell me, who released that letter to the public?

ATTORNEY GENERAL WILLIAM BARR: who released it to whom?

SEN. CRAPO: yes. How did it get released? Was that a decision you made to release that letter?

AG BARR: I think the department provided it this morning.

SEN. CRAPO: excuse me, I mean to the Washington Post how did the Washington Post get the letter?

AG BARR: I don't know.

SEN. CRAPO: that's what I thought. So let's talk about the letter for a moment. You indicated that --

AG BARR: I assume the Washington Post got it from the Department of Justice.

SEN. CRAPO: well, I think we needed that out. But we can get into that later. If you're not aware, then let's move on to other aspects of the issue. you indicated that, you did not feel you needed to release as much as Mr. Mueller thought you needed to release at the outset, you gave a sum riff the conclusions, and he apparently wanted to see a, the summaries of each session that he had put together released, correct?

AG BARR: yes.

SEN. CRAPO: could you go over again the reason why you responded to him when he asked you to release portions of the report, before you released it, in its entirety?

AG BARR: yes. this was on the conversation on Thursday, the day I got his letter, and I said that I didn't want to put out, it was already several days after we had received the report, and I had put out the four-page letter on Sunday, and I said I don't want to put out summaries of the report. That would trigger all kinds of frenzy about what was said in the summaries, and then when more information comes out, it would recalibrate to, that and I said I just want to put it out one time, everything together. And I told him that was the game plan. And I just think it is important-

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SEN. CRAPO: all right. To point that out again. Because there has been a lot of spin about the letter and what it was that was being requested and what your response to that was.

AG BARR: right.

SEN. CRAPO: I think it was important to help that get out again and get clarified. The reason I ask who released the letter is because there have been a lot of releases of documents from the FBI that were basically leaks, and I was just curious as to whether that letter was a leak. I'm not asking you to --

AG BARR: I think what happened, I'll have my people jump me if I'm wrong on this, but I think the fact, I mean the information about Mueller's were leaked and I think some news organizations were starting to ask about that.

SEN. CRAPO: and so then the letter --

AG BARR: and in that context, I think the letter was provided. Is that accurate?

SEN. CRAPO: so there were leaks at least about the concerns, and the conversations that you had had?

AG BARR: yes.

SEN. CRAPO: that gets back to the broader question of leaks that I want to get into now and you have had a number of people, Senators have asked you about, the perceived bias of the FBI, and I heard your responses earlier, that you believe the culture at the FBI is strong and solid. And I agree with that. I do believe, however, that it's been pretty clearly shown in a number of different ways that there are some individuals at the FBI, at high levels, who, in the past few years, have not been holding up the standards of the FBI that the American people expect of them. I'm sure you're familiar with the report of the DOJ's inspector general, Michael Horowitz, where he looked at bias in the FBI. And in fact, he found it. And he indicated in a hearing in this room, before us, that he did in fact, find it. There was bias at the FBI. but he said that he wasn't able to prove that the bias affected the employees' work product, because, in questions that I asked him, he said I found that there was clearly bias, but in order to prove whether that affected the work output of those who were biased, I had to ask them whether it impacted it, and they of course said no, and I didn't have other evidence to prove otherwise. This gets back to a conversation you had earlier about whether the FBI's business, or whether his business was to prove a negative, or whether it was to find some actionable conduct. My reason in going through this with you is that I want to get at what we can do, well, first of all, whether you agree that there is a problem of bias in the FBI, in some parts, or in some individuals at the FBI, and whether you are undertaking activities to address that.

AG BARR: well, you know, I, you mean political bias?

SEN. CRAPO: yes. Whether there is political bias, which is resulting in biased conduct by FBI agents --

AG BARR: I haven't seen that since I've been there. I think that Chris Wray, the new director, has changed out the people who were there before, and brought in, not brought in from outside, but promoted, and developed new leadership team that I think is doing a great job, and I think

he's focused on ensuring that the bureau isn't biased and that any of the problems from before are addressed.

SEN. CRAPO: do you believe it is inappropriate conduct for an FBI employee to leak politically sensitive information to the public for purposes of impacting political --

AG BARR: yes.

SEN. CRAPO: -- discussion.

AG BARR: yes. And I think some leaks, some leaks are maybe for political purposes, i think probably more leaks are because people handling a case don't like what their superiors or supervisors are doing, and they leak it in order to control people up the chain.

SEN. CRAPO: and I understand you have type of conduct under way. Some investigations into that

AG BARR: yes.

SEN. CRAPO: just another couple of quick questions. when did the DOJ and the FBI, if you know, when did the DOJ and the FBI know that the democratic party paid for Christopher Steele's dossier, which then served as the foundation for the carter page FISA application?

AG BARR: i don't know the answer to that.

SEN. CRAPO: are you to determine that?

AG BARR: yes.

SEN. CRAPO: and then lastly, did the Department of Justice, the FBI, and other federal agencies engage in investigative activities before an official investigation was launched in July, 2016?

AG BARR: I don't know the answer to that, but that's one of the --

SEN. CRAPO: you're also investigating that?

AG BARR: yes.

SEN. CRAPO: all right, thank you very much, Attorney General.

AG Barr Senate Judiciary Committee Hearing (CSPAN3) – Sen. Ted Cruz Questioning

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SEN. TED CRUZ: thank you Mr. Chairman. General Barr, thank you for your testimony. And let me start by just saying thank you. You've had an extraordinarily successful legal career, you didn't have to take this job. and you stepped forward and answered the call yet again, knowing full well that you would be subject to the kind of slanderous treatment, the Kavanaugh treatment that we have seen, of Senators impugning your integrity, and I for one am grateful that you answered that call, and are leading the Department of Justice, both with integrity and fidelity to the law, that is what the nation rightly expects of our Attorney General, and I believe you are performing that very ably. I think this hearing today has been quite revealing to anyone watching it. Although perhaps not for the reasons some of the democratic Senators intended. One thing that's revealed in in the discussion and questions that came up, a word that occurred almost none at all is the word Russia. For two and a half years we heard democratic Senators going on and on and on about Russia collusion, we heard journalists, going on and on and on about Russia collusion. Alleging among other things, some using extreme rhetoric, calling the President a traitor, we heard very little of that in this hearing today. Instead, the principal attack that the

democratic Senators have marshalled upon you, concerns this march 27th letter from Robert Mueller, and it's an attack that I want people to understand just how revealing it is. If this is their whole argument, they ain't got nothing. So their argument is as follows. Let me see if I understand it correctly. You initially, when you received the Mueller report, released to congress and the public a four-page summary of the conclusions. Then, on March 27, Mr. Mueller asked you to release an additional 19 pages. The introduction and summary that he had drafted. And indeed, in the letter, what he says is, quote, I am requesting that you provide these materials to congress, and authorize their public release at this time. And the reason he says is that it is to fully capture the context, nature and substance of the office's work and conclusion. So you did not release those 19 pages at that time. Instead, a couple of weeks later, you released 448 pages, the entire report, which includes those 19 pages, do I have that time line correct?

ATTORNEY GENERAL WILLIAM BARR: that's right.

SEN. CRUZ: so their entire argument is, general Barr, you suppressed the 19 pages that are entirely public, that we have, that we can read, that they know every word of it, and their complaint is it was delayed a few weeks. And that was because of your decision not to release the report piecemeal but rather to release those 19 pages, along with the entire 448 pages produced by the Special Counsel.

AG BARR: yes.

SEN. CRUZ: if that is their argument, I have to say that is an exceptionally weak argument. because if you're hiding something, I'll tell you right now, general Barr, you're doing a very lousy job of hiding, it because the thing they are suggesting you hid, you released to congress and the American people, and so if anyone wants to know what is in those 19 pages that are being so breathlessly, Bob Mueller said release the 19 pages, you did, you did it a couple of weeks later, but we can read every word of the 19 page, along with the full report. In your judgment, was the Mueller report thorough?

AG BARR: yes.

SEN. CRUZ: did they expand enormous time, energy, and resources, investigating and producing that report?

AG BARR: yes.

SEN. CRUZ: and the Mueller report concluded flat out, on the question of Russian collusion, the evidence does not support criminal charges.

AG BARR: that's --

[MISSING TRANSCRIPT]

SEN. CRUZ: and a half years have magically disappeared, instead the complaint is the 19 pages that we can all read that is entirely public could have been released a few weeks earlier, oh, the calamity. Let me shift to a different topic, a topic that has been addressed already quite a bit. I believe the Department of Justice, under the Obama administration, was profoundly politicized. And was weaponized to go after political opponents of the President. If that is the case, would you agree that politicizing the Department of Justice and weaponizing it to go after your political opponents is an abuse of power?

AG BARR: I think it is an abuse of power regardless of who does it.

SEN. CRUZ: of course.

AG BARR: yes.

SEN. CRUZ: to the best of your knowledge, when did surveillance of the Trump campaign begin?

AG BARR: the position today appears to be it began in July, but I do not know the answer to the question.

SEN. CRUZ: it is an unusual thing, is it not, for the Department of Justice to be investigating a candidate for President, particularly a candidate from the opposing party of the party in power?

AG BARR: yes.

SEN. CRUZ: do we know if the Obama administration investigated any other candidates running for President?

AG BARR: I don't know.

SEN. CRUZ: do we know if they wire tapped --

AG BARR: well, I guess they were investigating Hillary Clinton for the email, the email --

SEN. CRUZ: do we know if there were wiretaps?

AG BARR: I don't know.

SEN. CRUZ: do we know if there were efforts to send investigators in wearing a wire?

AG BARR: I don't know.

SEN. CRUZ: so general Barr, I would urge, you have had remarkable transparency, you promised this committee you would with regard to the Mueller report, you promised this committees and the American people you would release the Mueller report publicly, you have released it, anyone can read, it it's right there. I appreciate that transparency. I would ask you to bring that same transparency to this line of questioning about whether and the extent to which the previous administration politicized the Department of Justice, targeted their political rivals and used law enforcement and intelligence assets surveil them

SEN. LINDSEY GRAHAM: thank you. So that's the end of the first round. We have votes, I think, at 3:00. What I would like to do is just -- can you go for a few more minutes here? You're okay?

AG BARR: uh-huh.

SEN. GRAHAM: you're all right?

AG BARR: yes.

SEN. GRAHAM: good. Senator Leahy, you're next. We'll do three-minute second rounds.

AG Barr Senate Judiciary Committee Hearing (CSPAN3) – Sen. Patrick Leahy Questioning (Round 2)

<http://mms.tveyes.com/transcript.asp?PlayClip=FALSE&DTSearch=TRUE&DateTime=05%2F01%2F2019+14%3A50%3A37&market=m1&StationID=1115>

SEN. PATRICK LEAHY: Senator Feinstein noted she felt the FBI would be derelict in duty if it did not investigate after hearing from Australia. Not the Trump administration, but Australia. The Trump campaign knew about the democratic e-mails before the victims do. and they were told the Russians could assist in a campaign with the stolen e-mails. The FBI was right to look into it. That resulted, of course, in 37 indictments. Let me ask you, Mr. Barr. In your letter, you claim that the lack of evidence of the underlying crime bears on whether the President had the

requisite intent to commit obstruction of justice. Well, there are numerous reasons. One, somebody might interfere with investigations. Most critically, an interference may prevent the discovery of an underlying crime. So interfering, you might not know if there is a crime. But the Special Counsel did uncover evidence of underlying crimes here, including one that directly implicated the President. didn't we learn, due to the Special Counsel's investigation, that Donald Trump is known as individual one in the Southern District of New York, directing hush payments as part of a criminal scheme to violate campaign finance laws? That matter was discovered by the Special Counsel, referred to the Southern District of New York, is that correct?

ATTORNEY GENERAL WILLIAM BARR: yes.

SEN. LEAHY: thank you. And we have the Mueller report referencing a dozen ongoing investigations stemming from the Special Counsel's investigation. Will you commit that you will not interfere with those investigations?

AG BARR: can you say --

SEN. LEAHY: will you commit that you will not interfere with the dozen ongoing investigations?

AG BARR: I will supervise those investigations as Attorney General.

SEN. LEAHY: will you let them reach natural conclusions without interference from the white house? Let me put it that way.

AG BARR: yes.

SEN. LEAHY: thank you.

AG BARR: as I said when I was up for confirmation, part of my responsibility is to make sure there is no political interference in cases.

SEN. LEAHY: well, and you identified a number of things. And that's why I'm double checking. In the appropriations committee I asked you whether Mr. Mueller expressed any expectation or interest in leaving the obstruction decision to congress. And you testified he didn't say that to you. Actually, you said he didn't say that to me.

AG BARR: right.

SEN. LEAHY: but then he has numerous references in his report to congress playing a role in deciding whether the President committed obstruction of justice. So I know you testified many times, but that --

AG BARR: well --

SEN. LEAHY: it was not correct.

AG BARR: that's not correct -- I think it is correct. I don't -- he has not said that he conducted the investigation in order to turn it over to congress. That would be very inappropriate. That's not what the Justice Department does.

SEN. LEAHY: he included numerous references with the report to playing a role in deciding whether the President committed obstruction of justice. So I know you testified many times, but that --

AG BARR: well --

SEN. LEAHY: it was not correct.

AG BARR: that's not correct -- I think it is correct. I don't -- he has not said that he conducted the investigation in order to turn it over to congress. That would be very inappropriate. That's not what the Justice Department does.

SEN. LEAHY: he included numerous references with the report to congress playing a role in it. Volume 2, page 8 includes congress may apply obstruction laws with the President's corrupt exercise of off office in accordance with our constitutional system of justice.

AG BARR: yeah, I don't think Bob Mueller was suggesting that the next step here was for him to turn this stuff over for -- to Congress to act upon. That's not why we conduct grand jury investigations.

SEN. LEAHY: and President Trump, am I correct, in my early statements, never allowed anybody to interview him directly under oath, is that correct?

AG BARR: I think that's correct.

SEN. LEAHY: even though he said he was ready to testify. Thank you.

AG BARR: well -- could I --

SEN. LINDSEY GRAHAM: sure.

AG BARR: a point you raised about the absence of an -- underlying crime. One point I was trying to make earlier is, the absence of an underlying crime doesn't necessarily mean that there would be other motives for obstruction. Although it gets a little bit harder to prove and more

speculative as to what those motives might be. but the point i was trying to make earlier is that in this situation of the President who has constitutional authority to supervise proceedings, if, in fact, a proceeding was not well-founded, if it was a groundless proceeding, if it was based on false allegations, the President does not have to sit there constitutionally and allow it to run its course. The President could terminate that proceeding and it would not be a corrupt intent, because he was being falsely accused. And he would be worried about the impact on his administration. That's important, because most of the obstruction claims that are being made here or episodes do involve the exercise of the President's constitutional authority. And we now know that he was being falsely accused.

SEN. LEAHY: i don't agree with that. but that's okay.

AG Barr Senate Judiciary Committee Hearing (CSPAN3) – Sen. Dick Durbin Questioning (Round 2)

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SEN. DICK DURBIN: general Mueller, I have two questions. If you don't mind. The Mueller -- pardon me. General Barr. I have two questions. The Mueller report describes the reasons why the FBI opened a counterintelligence investigation in July 2016 into Russian election interference. There have been many references as to why they would do such a thing. but that date, the democratic national committee server had been hacked and Russians deemed responsible. Some of the stolen e-mails had been released by WikiLeaks. A foreign government, the Australian government, had told our FBI that Trump foreign policy aide George Papadopoulos said he had been contacted by a person on Russia's behalf by releasing information damaging to Hillary Clinton. That was all in the Mueller report. Do you believe that it was an appropriate predicate for opening a counterintelligence investigation to determine whether Russia had targeted people in the Trump campaign to offer hacked information that might impact a Presidential election?

ATTORNEY GENERAL WILLIAM BARR: I would have to see exactly what the report was from downer, the Australian downer, and exactly what he quoted Papadopoulos as saying. but from what you just read, I'm not sure what the correlation was between the Russians having dirt and jumping to the conclusion that that suggested foreknowledge of the hacking.

SEN. DURBIN: according to Mr. Mueller and his report, this involvement of Trump foreign policy aides George Papadopoulos had something to do with their conclusion. I'd like to ask you a separate issue. It's been reported that on April 16th, you received a waiver to participate in the investigation and litigation of the so-called 1mdb matter. This is an investigation into a Malaysian company for alleged money laundering. According to news reports as part of this investigation, US attorney's office for the Eastern District of New York is investigating whether a Malaysian national illegally donated to the Trump inaugural committee with money 1MDB. You sought a waiver to participate in this matter, even though your former law firm, Kirkland and Ellis, represents an entity involved in the investigation. Namely Goldman Sachs. How many waivers have you received to allow you to participate in matters or investigations involving Trump businesses, the Trump campaign or the Trump inaugural committee?

AG BARR: none.

SEN. DURBIN: you did seek a waiver in this case?

AG BARR: actually, the impetus, as I recall, and people should jump me if I'm wrong. But it didn't come from me. I was asked to seek a waiver in this case.

SEN. DURBIN: do you see the problem if the issue is whether or not a money laundering operation in Malaysia is sending money to the Trump inaugural committee. That as Attorney General of the United States, you may not want to involve yourself in this?

AG BARR: well, no, I don't. I don't. Because I was not involved with the inaugural --

SEN. DURBIN: why would you seek a waiver, then, to participate in this?

AG BARR: the waiver was -- I guess the conflict was not because of any relationship I had to the inaugural committee, which I didn't.

SEN. DURBIN: no, it's to Goldman Sachs. Your former client.

AG BARR: no, it's -- Kirkland Ellis, the law firm.

SEN. DURBIN: right. And their client, Goldman Sachs. I just don't understand why you would touch that hot stove.

AG BARR: well -- that's a good --

SEN. DURBIN: you sought the waiver. That's why I'm asking the question.

AG BARR: the criminal division actually asked me to get a waiver because of the importance of this investigation overall. I was requested by the criminal division. i didn't seek it -- the impetus did not come from me.

SEN. DURBIN: and who would that be that made that recommendation to you?

AG BARR: I am told it was the criminal division.

SEN. DURBIN: Mr. Bencowski?

AG BARR: right. Yeah. He was the head of the criminal division, but before -- apparently they discussed it with the career ethics official, and they made the recommendation.

SEN. DURBIN: thank you.

SEN. LINDSEY GRAHAM: Senator Whitehouse.

AG Barr Senate Judiciary Committee Hearing (CSPAN3) – Sen. Sheldon Whitehouse Questioning (Round 2)

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SEN. SHELDON WHITEHOUSE: Mr. Chairman, Mr. Barr, a couple of timing questions. You said that on March 5th, Mr. Mueller came to you and said that he was going to not make a decision on obstruction, leave that to you.

ATTORNEY GENERAL WILLIAM BARR: he didn't say he was leaving it to me.

SEN. WHITEHOUSE: that he was not going to make an obstruction.

AG BARR: right.

SEN. WHITEHOUSE: on March 24th, you sent out a letter describing your decision. Somewhere between March 5th and March 24th, you made that decision. When was that?

AG BARR: we started talking about it on March 5th. And there had already been a lot of discussions prior to March 5th involving the deputy, the principle associate deputy and the office of legal counsel that had dealings with the Special Counsel's office. So they had knowledge of a number of the episodes and some of the thinking of the Special Counsel's office. So right after march 5th, we started discussing what the implications of this were, and how we would --

SEN. WHITEHOUSE: and you made the decision when?

AG BARR: probably on Sunday, the 24th.

SEN. WHITEHOUSE: that's the day the letter came out.

AG BARR: yes.

SEN. WHITEHOUSE: you didn't make the decision until the letter came out?

AG BARR: no.

SEN. WHITEHOUSE: you must have told somebody how to write the letter. You couldn't -- when did you actually decide that there was no obstruction?

AG BARR: the 24th.

SEN. WHITEHOUSE: okay. When did you get the first draft of the Mueller report?

AG BARR: the first -- it wasn't a draft. We got the final.

SEN. WHITEHOUSE: the first version of it that you saw.

AG BARR: well, the only version of it I saw.

SEN. WHITEHOUSE: okay, the only version.

AG BARR: the 22nd.

SEN. WHITEHOUSE: The 22nd. You told Senator Harris that you made your decision on the obstruction charge -- you and Rosenstein, based on the Mueller report. Do I correctly infer you made that decision then between the 22nd and the 24th?

AG BARR: well, we had had a lot of discussions about it before the 2nd, but the final decision was made on the 24th. We had

SEN. WHITEHOUSE: until the 22nd.

AG BARR: OLC had done a lot of thinking about these issues even before the -- we got the report. And even before March 5th. They had been in regular contact. The Department had been in regular contact with Mueller's people, and understood, you know --

SEN. WHITEHOUSE: the OLC was looking into the Mueller investigation while it was going on, and witting of the evidence that they were gathering on obstruction. Before you saw the Mueller --

AG BARR: my understanding -- I wasn't there. Okay? But my understanding is that the deputy and the -- what we call the principle associate deputy, were in regular contact with the Mueller's team. And were getting briefings on evidence and some of their thinking and some of the issues.

SEN. WHITEHOUSE: did they know enough to know --

AG BARR: OLC was brought into some of those discussions.

SEN. WHITEHOUSE: did they know enough to know it might need to be redacted before it they saw the 3/22 report?

AG BARR: no. the problem we had, we could not identify the 6e material when the report came over. We needed the help of Bob Mueller's

SEN. WHITEHOUSE: you have not yet said it was mentioned at this OLC --

AG BARR: I don't think -- well, it was not at the brown bag lunch, no.

SEN. WHITEHOUSE: my time is up.

AG Barr Senate Judiciary Committee Hearing (CSPAN3) – Sen. Amy Klobuchar Questioning (Round 2)

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SEN. AMY KLOBUCHAR: thank you. Mr. Attorney General, on April 27th, President Trump stated, Mueller, I assume, for \$35 million, he checked my taxes and he checked my financials. Is that accurate? Did the Special Counsel review the President's taxes and the President Trump organization's financial statements?

ATTORNEY GENERAL WILLIAM BARR: I don't know.

SEN. KLOBUCHAR: can you find out if I ask later in a written question?

AG BARR: I -- yes. Or you could ask Bob Mueller when he comes here.

SEN. KLOBUCHAR: okay. Well, I'll do that too. But I think I'll also ask you. And then obviously we would want to see them as underlying information. During my earlier questions, we went through a number of actions by the President that the Special Counsel looked into. My point was that we should be looking into the totality of the evidence and the pattern that the report develops. On page 13 of volume 2, the Special Counsel instructs that we do something similar. The report says, and this is a quote, circumstantial evidence that illuminates intent may include a pattern of potentially obstructive acts. On this the report cites three US cases. US v Frankowser, do you agree that obstruction law allows for intent to be informed by a perp of potentially obstructive acts?

AG BARR: well, intent eventually has to be established by proof beyond a reasonable doubt. Some inferences can be drawn from circumstantial evidence that can contribute to an overall determination of proof beyond a reasonable doubt. That's one of the problems with this whole approach that's suggested in the Special Counsel's report, which is, it is trying to determine the subjective intent of a facially lawful act, and it permits a lot of selectivity on the part of the prosecutors and it's been shot down in a number of other contexts. So one of the reasons that we are very skeptical of this approach is that in --

SEN. KLOBUCHAR: you mean you and director Mueller or you -- the Justice Department?

AG BARR: the Justice Department. Is that -- in this kind of situation where you have a facially innocent act and, you know, it's authorized by the constitution --

SEN. KLOBUCHAR: okay. I just --

AG BARR: it's hard to establish beyond a reasonable doubt that it's corrupt.

SEN. KLOBUCHAR: okay. I just want to get in just a few more questions like Senator Whitehouse did. At your confirmation hearing, you testified that in the absence of a violation of a statute, the President would be accountable politically for abusing the pardon power. How do

you reconcile your suggestion that political accountability is available when the administration is refusing to comply with subpoenas and asserting executive privilege to stand in the way of that very accountability?

AG BARR: as to a pardon?

SEN. KLOBUCHAR: no. this was about in your confirmation hearing, you said, "in the absence of a violation of a statute, the President would be, quote, accountable politically, end quote, for abusing the pardon power if he did."

AG BARR: but your question really is abusing pot abusing not just the pardon power, is that what you're saying?

SEN. KLOBUCHAR: it's hard to evaluate.

AG BARR: Presidents have been held accountable before as have other office holders.

SEN. KLOBUCHAR: are the details consistent with his oath of office and the requirement in the constitution that he take care that the laws be faithful executed?

AG BARR: is what consistent with that?

SEN. KLOBUCHAR: I said, are the President's actions detailed in the report consistent with his oath of office and the requirement in the constitution that he take care that the laws be faithfully executed?

AG BARR: well, the evidence in the report is conflicting and there's different evidence. And they don't -- they don't come to a determination as to how they're coming down on it.

SEN. KLOBUCHAR: so you made that decision.

AG BARR: yes. And as you know --

SEN. LINDSEY GRAHAM: all right. We've got --

SEN. KLOBUCHAR: okay.

SEN. GRAHAM: two minutes left. Senator Blumenthal.

AG Barr Senate Judiciary Committee Hearing (CSPAN3) – Sen. Richard Blumenthal Questioning (Round 2)

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SEN. RICHARD BLUMENTHAL: thank you, Mr. Chairman. Attorney General Barr, I wonder if you could tell us about the conversation between yourself and Bob Mueller shortly after your summary was issued. He called you?

ATTORNEY GENERAL WILLIAM BARR: no, I called him.

SEN. BLUMENTHAL: what prompted you to call him?

AG BARR: the letter.

SEN. BLUMENTHAL: your letter. Or his letter?

AG BARR: his letter.

SEN. BLUMENTHAL: his letter. So you called him.

AG BARR: yeah.

SEN. BLUMENTHAL: and how long did the conversation last?

AG BARR: I don't know. Maybe 10, 15 minutes. There were multiple witnesses in the room. It was on a speakerphone.

SEN. BLUMENTHAL: who was in the room?

AG BARR: among others, the Deputy Attorney General was in the room.

SEN. BLUMENTHAL: anyone else?

AG BARR: several other people who had been working on the project.

SEN. BLUMENTHAL: members of your staff?

AG BARR: yes. And the deputy staff.

SEN. BLUMENTHAL: and as best you can recall, in the language that was used, who -- who said what to whom?

AG BARR: I said, bob, what's with the letter? You know? Why don't you just pick up the phone and call me if there's an issue? And he said that they were concerned about the way the media was playing this. And felt that it was important to get out the summaries, which they felt would put their work in proper context. And avoid some of the confusion that was emerging. And I asked him if he felt that my letter was misleading or inaccurate. And he said no, that the press -- he felt that the press coverage was -- and it was -- and that a complete -- a more complete picture of his thoughts and the context and so forth would deal with that. And I suggested that I would rather just get the whole report out than just putting out stuff piecemeal. But I said I would think about it some more. and the next day I put out a letter that made it clear that no one should read the march 24th letter as a summary of the overall report, and that a full account of Bob Mueller's thinking was going to be in the report and everyone would have access to --

SEN. BLUMENTHAL: but there's nothing in Robert Mueller's letter to you about the press. His complaint to you is about your characterization of the report. Correct?

AG BARR: well, the letter speaks for itself.

SEN. BLUMENTHAL: it does. And, in fact, in response to your question, why not just pick up the phone -- this letter was an extraordinary act. A career prosecutor rebuking the Attorney General of the United States, memorialized in writing, right? I know of no other instance of that happening. Do you?

AG BARR: I don't consider bob at this stage a career prosecutor. He's had a career as a prosecutor.

SEN. BLUMENTHAL: well, he's a very eminent prosecutor.

AG BARR: he was the head of the FBI for 12 years.

SEN. BLUMENTHAL: he's a career -- he's a law enforcement professional.

AG BARR: right.

SEN. BLUMENTHAL: yep. I know of no other in answer instance --

AG BARR: but he was also political appointee with me at the Department of Justice. I don't -- you know, the letter is a bit snitty and I think it was probably written by one of his staff people.

SEN. BLUMENTHAL: did you make a memorandum of your conversation?

AG BARR: huh?

SEN. BLUMENTHAL: did you make a memorandum?

AG BARR: no, I didn't -- what?

SEN. BLUMENTHAL: did anyone, either you or anyone on your staff, memorialize your conversation with Robert Mueller?

AG BARR: yes.

SEN. BLUMENTHAL: who did that?

AG BARR: there were notes taken of the call.

SEN. BLUMENTHAL: may we have those notes?

AG BARR: no.

SEN. BLUMENTHAL: why not? Why should you have them?

SEN. LINDSEY GRAHAM: I'll tell you. We've got to end this. But I'm going to write a letter to Mr. Mueller, and I'm going to ask him, is there anything you said about that conversation he disagrees with. And if there is, he'll come and tell us.

AG BARR: right.

SEN. GRAHAM: so the hearing is now over. And -- Mr. Blumenthal, Mr. Mueller will have a chance to relay if the conversation is accurate. I'll give him a chance to correct anything you said that he finds misleading or inaccurate. And that will be it.

AG BARR: okay.

SEN. GRAHAM: five seconds.

SEN. MIKE LEE: Attorney General Barr, I just want to thank you for your service to our country and especially today I want to thank you for your civility and your composure. Amidst what has been a needlessly and unfairly hostile environment, your professionalism has been remarkable. I'm grateful. Thank you.

AG BARR: thank you.

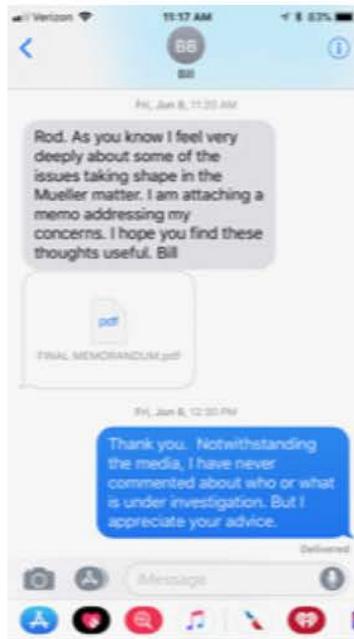
SEN. GRAHAM: from my point of view, it's pretty interesting and it got off in a ditch effort now and then. But generally the committee did pretty good and this is what democracy is all about. Thank you for being our Attorney General.

AG BARR: thank you, Mr. Chairman.

Rosenstein, Rod (ODAG)

From: Rosenstein, Rod (ODAG)
Sent: Tuesday, June 19, 2018 11:21 AM
To: O'Callaghan, Edward C. (ODAG); Schools, Scott (ODAG)
Subject: FINAL MEMORANDUM.pdf
Attachments: image1.png; ATT00001.txt; FINAL MEMORANDUM.pdf; ATT00002.txt

This was unsolicited. I am passing it on for any appropriate consideration:



MEMORANDUM

8 June 2018

To: Deputy Attorney General Rod Rosenstein
Assistant Attorney General Steve Engel

From: Bill Barr

Re: Mueller's "Obstruction" Theory

I am writing as a former official deeply concerned with the institutions of the Presidency and the Department of Justice. I realize that I am in the dark about many facts, but I hope my views may be useful.

It appears Mueller's team is investigating a possible case of "obstruction" by the President predicated substantially on his expression of hope that the Comey could eventually "let...go" of its investigation of Flynn and his action in firing Comey. In pursuit of this obstruction theory, it appears that Mueller's team is demanding that the President submit to interrogation about these incidents, using the threat of subpoenas to coerce his submission.

Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction. Apart from whether Mueller a strong enough factual basis for doing so, Mueller's obstruction theory is fatally misconceived. As I understand it, his theory is premised on a novel and legally insupportable reading of the law. Moreover, in my view, if credited by the Department, it would have grave consequences far beyond the immediate confines of this case and would do lasting damage to the Presidency and to the administration of law within the Executive branch.

As things stand, obstruction laws do not criminalize just any act that can influence a "proceeding." Rather they are concerned with acts intended to have a *particular kind* of impact. A "proceeding" is a formalized process for finding the truth. In general, obstruction laws are meant to protect proceedings from actions designed subvert the integrity of their truth-finding function through compromising the honesty of decision-makers (*e.g.*, judge, jury) or impairing the integrity or availability of evidence testimonial, documentary, or physical. Thus, obstruction laws prohibit a range of "bad acts" such as tampering with a witness or juror; or destroying, altering, or falsifying evidence all of which are inherently wrongful because, by their very nature, they are directed at depriving the proceeding of honest decision-makers or access to full and accurate evidence. In general, then, the *actus reus* of an obstruction offense is the inherently subversive "bad act" of impairing the integrity of a decision-maker or evidence. The requisite *mens rea* is simply intending the wrongful impairment that inexorably flows from the act.

Obviously, the President and any other official can commit obstruction in this classic sense of sabotaging a proceeding's truth-finding function. Thus, for example, if a President knowingly destroys or alters evidence, suborns perjury, or induces a witness to change testimony, or commits

any act deliberately impairing the integrity or availability of evidence, then he, like anyone else, commits the crime of obstruction. Indeed, the acts of obstruction alleged against Presidents Nixon and Clinton in their respective impeachments were all such “bad acts” involving the impairment of evidence. Enforcing these laws against the President in no way infringes on the President’s plenary power over law enforcement because exercising this discretion — such as his complete authority to start or stop a law enforcement proceeding — does not involve commission of any of these inherently wrongful, subversive acts.

The President, as far as I know, is not being accused of engaging in any wrongful act of evidence impairment. Instead, Mueller is proposing an unprecedented expansion of obstruction laws so as to reach facially-lawful actions taken by the President in exercising the discretion vested in him by the Constitution. It appears Mueller is relying on 18 U.S.C. §1512, which generally prohibits acts undermining the integrity of evidence or preventing its production. Section 1512 is relevant here because, unlike other obstruction statutes, it does not require that a proceeding be actually “pending” at the time of an obstruction, but only that a defendant have in mind an anticipated proceeding. Because there were seemingly no relevant proceedings pending when the President allegedly engaged in the alleged obstruction, I believe that Mueller’s team is considering the “residual clause” in Section 1512 subsection (c)(2) as the potential basis for an obstruction case. Subsection (c) reads:

(c) Whoever corruptly-- (1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object’s integrity or availability for use in an official proceeding; or (2) *otherwise* obstructs, influences, or impedes any official proceeding, or attempts to do so [is guilty of the crime of obstruction]. [emphasis added].

As I understand the theory, Mueller proposes to give clause (c)(2), which previously has been *exclusively* confined to acts of evidence impairment, a new unbounded interpretation. First, by reading clause (c)(2) in isolation, and glossing over key terms, he construes the clause as a free-standing, all-encompassing provision prohibiting *any act* influencing a proceeding if done with an improper motive. Second, in a further unprecedented step, Mueller would apply this sweeping prohibition to facially-lawful acts taken by public officials exercising of their discretionary powers if those acts influence a proceeding. Thus, under this theory, simply by exercising his Constitutional discretion in a facially-lawful way — for example, by removing or appointing an official; using his prosecutorial discretion to give direction on a case; or using his pardoning power — a President can be accused of committing a crime based solely on his subjective state of mind. As a result, any discretionary act by a President that influences a proceeding can become the subject of a criminal grand jury investigation, probing whether the President acted with an improper motive.

If embraced by the Department, this theory would have potentially disastrous implications, not just for the Presidency, but for the Executive branch as a whole and for the Department in particular. While Mueller’s focus is the President’s discretionary actions, his theory would apply to *all exercises of prosecutorial discretion* by the President’s subordinates, from the Attorney General down to the most junior line prosecutor. Simply by giving direction on a case, or class of

cases, an official opens himself to the charge that he has acted with an “improper” motive and thus becomes subject to a criminal investigation. Moreover, the challenge to Comey’s removal shows that not just prosecutorial decisions are at issue. Any personnel or management decisions taken by an official charged with supervising and conducting litigation and enforcement matters in the Executive branch can become grist for the criminal mill based solely on the official’s subjective state of mind. All that is needed is a claim that a supervisor is acting with an improper purpose and any act arguably constraining a case — such as removing a U.S. Attorney -- could be cast as a crime of obstruction.

It is inconceivable to me that the Department could accept Mueller’s interpretation of §1512(c)(2). It is untenable as a matter of law and cannot provide a legitimate basis for interrogating the President. I know you will agree that, if a DOJ investigation is going to take down a democratically-elected President, it is imperative to the health of our system and to our national cohesion that any claim of wrongdoing is solidly based on evidence of a *real* crime — not a debatable one. It is time to travel well-worn paths; not to veer into novel, unsettled or contested areas of the law; and not to indulge the fancies by overly-zealous prosecutors.

As elaborated on below, Mueller’s theory should be rejected for the following reasons:

First, the sweeping interpretation being proposed for § 1512’s residual clause is contrary to the statute’s plain meaning and would directly contravene the Department’s longstanding and consistent position that generally-worded statutes like § 1512 cannot be applied to the President’s exercise of his constitutional powers in the absence of a “clear statement” in the statute that such an application was intended.

Second, Mueller’s premise that, whenever an investigation touches on the President’s own conduct, it is inherently “corrupt” under § 1512 for the President to influence that matter is insupportable. In granting plenary law enforcement powers to the President, the Constitution places no such limit on the President’s supervisory authority. Moreover, such a limitation cannot be reconciled with the Department’s longstanding position that the “conflict of interest” laws do not, and cannot, apply to the President, since to apply them would impermissibly “disempower” the President from supervising a class of cases that the Constitution grants him the authority to supervise.

Third, defining facially-lawful exercises of Executive discretion as potential crimes, based solely on subjective motive, would violate Article II of the Constitution by impermissibly burdening the exercise of core discretionary powers within the Executive branch.

Fourth, even if one were to indulge Mueller’s obstruction theory, in the particular circumstances here, the President’s motive in removing Comey and commenting on Flynn could not have been “corrupt” unless the President and his campaign were actually guilty of illegal collusion. Because the obstruction claim is entirely dependent on first finding collusion, Mueller should not be permitted to interrogate the President about obstruction until he has enough evidence to establish collusion.

I. The Statute’s Plain Meaning, and “the Clear Statement” Rule Long Adhered To By the Department, Preclude Its Application to Facially-Lawful Exercises of the President’s Constitutional Discretion.

The unbounded construction Mueller would give §1512’s residual clause is contrary to the provision’s text, structure, and legislative history. By its terms, §1512 focuses exclusively on actions that subvert the truth-finding function of a proceeding by impairing the availability or integrity of evidence—testimonial, documentary, or physical. Thus, §1512 proscribes a litany of specifically-defined acts of obstruction, including killing a witness, threatening a witness to prevent or alter testimony, destroying or altering documentary or physical evidence, and harassing a witness to hinder testimony. All of these enumerated acts are “obstructive” in precisely the same way—they interfere with a proceeding’s ability to gather complete and reliable evidence.

The question here is whether the phrase “or corruptly otherwise obstructs” in clause (c)(2) is divorced from the litany of the specific prohibitions in § 1512, and is thus a free-standing, all-encompassing prohibition reaching *any* act that influences a proceeding, or whether the clause’s prohibition against “otherwise” obstructing is somehow tied to, and limited by, the character of all the other forms of obstruction listed in the statute. I think it is clear that use of the word “otherwise” in the residual clause expressly links the clause to the forms of obstruction specifically defined elsewhere in the provision. Unless it serves that purpose, the word “otherwise” does no work at all and is mere surplusage. Mueller’s interpretation of the residual clause as covering *any and all acts* that influence a proceeding reads the word “otherwise” out of the statute altogether. But any proper interpretation of the clause must give effect to the word “otherwise;” it must do some work.

As the Supreme Court has suggested, *Begay v. United States*, 553 U.S. 137, 142-143 (2008), when Congress enumerates various specific acts constituting a crime and then follows that enumeration with a residual clause, introduced with the words “or otherwise,” then the more general action referred to immediately after the word “otherwise” is most naturally understood to cover acts that cause a *similar kind* of result as the preceding listed examples, but cause those results in a *different manner*. In other words, the specific examples enumerated prior to the residual clause are typically read as refining or limiting in some way the broader catch-all term used in the residual clause. *See also Yates v. United States*, 135 S.Ct. 1074, 1085-87 (2015). As the *Begay* Court observed, if Congress meant the residual clause to be so all-encompassing that it subsumes all the preceding enumerated examples, “it is hard to see why it would have needed to include the examples at all.” 553 U.S. at 142; *see McDonnell v. United States*, 136 S.Ct. 2355, 2369 (2016). An example suffices to make the point: If a statute prohibits “slapping, punching, kicking, biting, gouging eyes, or otherwise hurting” another person, the word “hurting” in the residual clause would naturally be understood as referring to the same *kind* of physical injury inflicted by the enumerated acts, but inflicted in a different way—*i.e.*, pulling hair. It normally would not be understood as referring to any kind of “hurting,” such as hurting another’s feelings, or hurting another’s economic interests.

Consequently, under the statute’s plain language and structure, the most natural and plausible reading of 1512(c)(2) is that it covers acts that have the *same kind of obstructive impact* as the listed forms of obstruction—*i.e.*, impairing the availability or integrity of evidence—but cause this impairment in a different way than the enumerated actions do. Under this construction,

then, the “catch all” language in clause (c)(2) encompasses any conduct, even if not specifically described in 1512, that is directed at undermining a proceeding’s truth-finding function through actions impairing the integrity and availability of evidence. Indeed, this is how the residual clause has been applied. From a quick review of the cases, it appears all the cases have involved attempts to interfere with, or render false, the evidence that would become available to a proceeding. Even the more esoteric applications of clause (c)(2) have been directed against attempts to prevent the flow of evidence to a proceeding. *E.g.*, *United States v. Volpendesto*, 746 F.3d 273 (7th Cir. 2014)(soliciting tips from corrupt cops to evade surveillance); *United States v. Phillips*, 583 F.3d 1261 (10th Cir. 2009)(disclosing identity of undercover agent to subject of grand jury drug investigation). As far as I can tell, no case has ever treated as an “obstruction” an official’s exercise of prosecutorial discretion or an official’s management or personnel actions collaterally affecting a proceeding.

Further, reading the residual clause as an all-encompassing proscription cannot be reconciled either with the other subsections of § 1512, or with the other obstruction provisions in Title 18 that must be read *in pari passu* with those in § 1512. Given Mueller’s sweeping interpretation, clause (c)(2) would render all the specific terms in clause (c)(1) surplusage; moreover, it would swallow up all the specific prohibitions in the remainder of § 1512 -- subsections (a), (b), and (d). More than that, it would subsume virtually all other obstruction provisions in Title 18. For example, it would supervene the omnibus clause in § 1503, applicable to pending judicial proceedings, as well as the omnibus clause in § 1505, applicable to pending proceedings before agencies and Congress. Construing the residual clause in § 1512(c)(2) as supplanting these provisions would eliminate the restrictions Congress built into those provisions -- *i.e.*, the requirement that a proceeding be “pending” -- and would supplant the lower penalties in those provisions with the substantially higher penalties in § 1512(c). It is not too much of an exaggeration to say that, if § 1512(c)(2) can be read as broadly as being proposed, then virtually all Federal obstruction law could be reduced to this single clause.

Needless to say, it is highly implausible that such a revolution in obstruction law was intended, or would have gone unmentioned upon, when (c)(2) was enacted. On the contrary, the legislative history makes plain that Congress had a more focused purpose when it enacted (c)(2). That subsection was enacted in 2002 as part of the Sarbanes-Oxley Act. That statute was prompted by Enron's massive accounting fraud and revelations that the company's outside auditor, Arthur Andersen, had systematically destroyed potentially incriminating documents. Subsection (c) was added to Section 1512 explicitly as a “loophole” closer meant to address the fact that the existing section 1512(b) covers document destruction only where a defendant has induced another person to do it and does not address document destruction carried out by a defendant directly.

As reported to the Senate, the Corporate Fraud Accountability Act was expressly designed to “clarify and close loopholes in the existing criminal laws relating to the destruction or fabrication of evidence and the preservation of financial and audit records.” S. Rep. No. 107-146, at 14-15. Section 1512(c) did not exist as part of the original proposal. See S. 2010, 107th Cong. (2002). Instead, it was later introduced as an amendment by Senator Trent Lott in July 2002. 148 Cong. Rec. S6542 (daily ed. July 10, 2002). Senator Lott explained that, by adding new § 1512(c), his proposed amendment:

would enact stronger laws against *document shredding*. Current law prohibits obstruction of justice by a defendant acting alone, but only if a proceeding is pending and a subpoena has been issued for the evidence that has been destroyed or altered [T]his section would allow the Government to charge obstruction against individuals who acted alone, even if the tampering took place prior to the issuance of a grand jury subpoena. I think this is something we need to make clear so we do not have a repeat of what we saw with the Enron matter earlier this year.

Id. at S6545 (statement of Sen. Lott) (emphasis supplied). Senator Orrin Hatch, in support of Senator Lott's amendment, explained that it would “close [] [the] loophole” created by the available obstruction statutes and hold criminally liable a person who, acting alone, destroys documents. Id. at S6550 (statement of Sen. Hatch). The legislative history thus confirms that § 1512(c) was not intended as a sweeping provision supplanting wide swathes of obstruction law, but rather as a targeted gap-filler designed to strengthen prohibitions on the impairment of evidence.

Not only is an all-encompassing reading of § 1512(c)(2) contrary to the language and manifest purpose of the statute, but it is precluded by a fundamental canon of statutory construction applicable to statutes of this sort. Statutes must be construed with reference to the constitutional framework within which they operate. *E.g.*, *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991). Reading § 1512(c)(2) broadly to criminalize the President’s facially-lawful exercises of his removal authority and his prosecutorial discretion, based on probing his subjective state of mind for evidence of an “improper” motive, would obviously intrude deeply into core areas of the President’s constitutional powers. It is well-settled that statutes that do not *expressly* apply to the President must be construed as not applying to the President if such application would involve a possible conflict with the President's constitutional prerogatives. *See, e.g.*, *Franklin v. Massachusetts*, 505 U.S. 788, 801 (1992). OLC has long rigorously enforced this “clear statement” rule to limit the reach of broadly worded statutes so as to prevent undue intrusion into the President’s exercise of his Constitutional discretion.

As OLC has explained, the “clear statement” rule has two sources. First, it arises from the long-recognized "cardinal principle" of statutory interpretation that statutes be construed to avoid raising serious constitutional questions. Second, the rule exists to protect the “usual constitutional balance” between the branches contemplated by the Framers by "requir[ing] an express statement by Congress before assuming it intended" to impinge upon Presidential authority. *Franklin*, 505 U.S. at 801; *see, e.g.*, *Application of 28 U.S.C. §458 to Presidential Appointments of Federal Judges*, 19 Op. O.L.C. 350 (1995).

This clear statement rule has been applied frequently by the Supreme Court as well as the Executive branch with respect to statutes that might otherwise, if one were to ignore the constitutional context, be susceptible of an application that would affect the President's constitutional prerogatives. For instance, in *Franklin* the Court was called upon to determine whether the Administrative Procedure Act ("APA"), 5 U.S.C §§ 701-706, authorized "abuse of discretion" review of final actions by the President. Even though the statute defined reviewable action in a way that facially could include the President, and did not list the President among the express exceptions to the APA, Justice O'Connor wrote for the Court:

[t]he President is not [expressly] excluded from the APA's purview, but he is not explicitly included, either. Out of respect for the separation of powers and the unique constitutional position of the President, we find that textual silence is not enough to subject the President to the provisions of the APA. We would require an express statement by Congress before assuming it intended the President's performance of his statutory duties to be reviewed for abuse of discretion.

505 U.S. at 800-01. To amplify, she continued, "[a]s the APA does not expressly allow review of the President's actions, we must presume that his actions are not subject to its requirements." *Id.* at 801.

Similarly, in *Public Citizen v. United States Dep't of Justice*, 491 U.S. 440 (1989), the Court held that the Federal Advisory Committee Act ("FACA"), 5 U.S.C. app. § 2, does not apply to the judicial recommendation panels of the American Bar Association because interpreting the statute as applying to them would raise serious constitutional questions relating to the President's constitutional appointment power. By its terms, FACA applied to any advisory committee used by an agency "in the interest of obtaining advice or recommendations for the President." 5 U.S.C. app. § 3(2)(c). While acknowledging that a "straightforward reading" of the statute's language would seem to require its application to the ABA committee, *Public Citizen*, 491 U.S. at 453, the Court held that such a reading was precluded by the "cardinal principle" that a statute be interpreted to avoid serious constitutional question." *Id.* at 465-67. Notably, the majority stated, "[o]ur reluctance to decide constitutional issues is especially great where, as here, they concern the relative powers of coordinate branches of government," and "[t]hat construing FACA to apply to the Justice Department's consultations with the ABA Committee would present formidable constitutional difficulties is undeniable." *Id.* at 466.

The Office of Legal Counsel has consistently "adhered to a plain statement rule: statutes that do not expressly apply to the President must be construed as not applying to the President, where applying the statute to the President would pose a significant question regarding the President's constitutional prerogatives." *E.g., The Constitutional Separation of Powers Between the President and Congress*, __ Op. O.L.C. 124, 178 (1996); *Application of 28 U.S.C. §458 to Presidential Appointments of Federal Judges*, 19 Op. O.L.C. 350 (1995).

The Department has applied this principle to broadly-worded criminal statutes, like the one at issue here. Thus, in a closely analogous context, the Department has long held that the conflict-of-interest statute, 18 U.S.C § 208, does not apply to the President. That statute prohibits any "officer or employee of the executive branch" from "participat[ing] personally and substantially" in any particular matter in which he or she has a personal financial interest. *Id.* In the leading opinion on the matter, then-Deputy Attorney General Laurence Silberman determined that the legislative history disclosed no intention to cover the President and doing so would raise "serious questions as to the constitutionality" of the statute, because the effect of applying the statute to the President would "disempower" the President from performing his constitutionally-prescribed functions as to certain matters. See *Memorandum for Richard T. Burrell, Office of the President*,

from Laurence H. Silberman, Deputy Attorney General, *Re: Conflict of Interest Problems Arising out of the President's Nomination of Nelson A. Rockefeller to be Vice President under the Twenty-Fifth Amendment to the Constitution* at 2, 5 (Aug. 28, 1974).

Similarly, OLC opined that the Anti-Lobbying Act, 18 U.S.C. § 1913, does not apply fully against the President. *See Constraints Imposed by 18 U.S.C. § 1913 on Lobbying Efforts*, 13 Op. O.L.C. 300, 304-06 (1989). The Anti-Lobbying Act prohibits any appropriated funds from being "used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress." 18 U.S.C. § 1913. The statute provided an exception for communications by executive branch officers and employees if the communication was made pursuant to a request by a member of Congress or was a request to Congress for legislation or appropriations. OLC concluded that applying the Act as broadly as its terms would otherwise allow would raise serious constitutional questions as an infringement of the President's Recommendations Clause power.

In addition to the "clear statement" rule, other canons of statutory construction preclude giving the residual clause in § 1512(c)(2) the unbounded scope proposed by Mueller's obstruction theory. As elaborated on in the ensuing section, to read the residual clause as extending beyond evidence impairment, and to apply it to any that "corruptly" affects a proceeding, would raise serious Due Process issues. Once divorced from the concrete standard of evidence impairment, the residual clause defines neither the crime's *actus reus* (what conduct amounts to obstruction) nor its *mens rea* (what state of mind is "corrupt") "with sufficient definiteness that ordinary people can understand what conduct is prohibited," or "in a manner that does not encourage arbitrary and discriminatory enforcement." *See e.g. McDonnell v. United States*, 136 S.Ct. at 2373. This vagueness defect becomes even more pronounced when the statute is applied to a wide range of public officials whose normal duties involve the exercise of prosecutorial discretion and the conduct and management of official proceedings. The "cardinal rule" that a statute be interpreted to avoid serious constitutional questions mandates rejection of the sweeping interpretation of the residual clause proposed by Mueller.

Even if the statute's plain meaning, fortified by the "clear statement" rule, were not dispositive, the fact that § 1512 is a criminal statute dictates a narrower reading than Mueller's all-encompassing interpretation. Even if the scope of § 1512(c)(2) were ambiguous, under the "rule of lenity," that ambiguity must be resolved against the Government's broader reading. *See, e.g., United States v. Granderson*, 511 U.S. 39, 54 (1994) ("In these circumstances -- where text, structure, and history fail to establish that the Government's position is unambiguously correct -- we apply the rule of lenity and resolve the ambiguity in [the defendant's] favor.")

In sum, the sweeping construction of § 1512(c)'s residual clause posited by Mueller's obstruction theory is novel and extravagant. It is contrary to the statute's plain language, structure, and legislative history. Such a broad reading would contravene the "clear statement" rule of statutory construction, which the Department has rigorously adhered to in interpreting statutes, like this one, that would otherwise intrude on Executive authority. By its terms, § 1512 is intended to protect the truth-finding function of a proceeding by prohibiting acts that would impair the availability or integrity of evidence. The cases applying the "residual clause" have fallen within this scope. The clause has never before been applied to facially-lawful discretionary acts of

Executive branch official. Mueller's overly-aggressive use of the obstruction laws should not be embraced by the Department and cannot support interrogation of the President to evaluate his subjective state of mind.

II. Applying §1512(c)(2) to Review Facially-Lawful Exercises of the President's Removal Authority and Prosecutorial Discretion Would Impermissibly Infringe on the President's Constitutional Authority and the Functioning of the Executive Branch.

This case implicates at least two broad discretionary powers vested by the Constitution exclusively in the President. First, in removing Comey as director of the FBI there is no question that the President was exercising one of his core authorities under the Constitution. Because the President has Constitutional responsibility for seeing that the laws are faithfully executed, it is settled that he has "illimitable" discretion to remove principal officers carrying out his Executive functions. *See Free Enterprise Fund v. Public Company Accounting Oversight Board*, 130 S.Ct. 3138, 3152 (2010); *Myers v. United States*, 272 U.S. 52 (1926). Similarly, in commenting to Comey about Flynn's situation to the extent it is taken as the President having placed his thumb on the scale in favor of lenity the President was plainly within his plenary discretion over the prosecution function. The Constitution vests *all Federal law enforcement power*, and hence prosecutorial discretion, in the President. The President's discretion in these areas has long been considered "absolute," and his decisions exercising this discretion are presumed to be regular and are generally deemed non-reviewable. *See, e.g., United States v. Armstrong*, 517 U.S. 456, 464 (1996); *United States v. Nixon*, 418 U.S. 683, 693 (1974); *see generally* S. Prakash, The Chief Prosecutor, 73 *Geo. Wash. L. Rev.* 521 (2005)

The central problem with Mueller's interpretation of §1512(c)(2) is that, instead of applying the statute to inherently wrongful acts of evidence impairment, he would now define the *actus reus* of obstruction as *any act*, including facially lawful acts, that influence a proceeding. However, the Constitution vests plenary authority over law enforcement proceedings in the President, and therefore one of the President's core constitutional authorities is precisely to make decisions "influencing" proceedings. In addition, the Constitution vests other discretionary powers in the President that can have a collateral influence on proceedings including the power of appointment, removal, and pardon. The crux of Mueller's position is that, whenever the President exercises any of these discretionary powers and thereby "influences" a proceeding, he has completed the *actus reus* of the crime of obstruction. To establish guilt, all that remains is evaluation of the President's state of mind to divine whether he acted with a "corrupt" motive.

Construed in this manner, §1512(c)(2) would violate Article II of the Constitution in at least two respects:

First, Mueller's premise appears to be that, when a proceeding is looking into the President's own conduct, it would be "corrupt" within the meaning of §1512(c)(2) for the President to attempt to influence that proceeding. In other words, Mueller seems to be claiming that the obstruction statute effectively walls off the President from exercising Constitutional powers over cases in which his own conduct is being scrutinized. This premise is clearly wrong constitutionally. Nor can it be

reconciled with the Department's longstanding position that the "conflict of interest" laws do not, and cannot, apply to the President, since to apply them would impermissibly "disempower" the President from supervising a class of cases that the Constitution grants him the authority to supervise. Under the Constitution, the President's authority over law enforcement matters is necessarily all-encompassing, and Congress may not excise certain matters from the scope of his responsibilities. The Framers' plan contemplates that the President's law enforcement powers extend to all matters, including those in which he had a personal stake, and that the proper mechanism for policing the President's faithful exercise of that discretion is the political process that is, the People, acting either directly, or through their elected representatives in Congress.

Second, quite apart from this misbegotten effort to "disempower" the President from acting on matters in which he has an interest, defining facially-lawful exercises of Executive discretion as potential crimes, based solely on the President's subjective motive, would violate Article II of the Constitution by impermissibly burdening the exercise of core discretionary powers within the Executive branch. The prospect of criminal liability based solely on the official's state of mind, coupled with the indefinite standards of "improper motive" and "obstruction," would cast a pall over a wide range of Executive decision-making, chill the exercise of discretion, and expose to intrusive and free-ranging examination of the President's (and his subordinate's) subjective state of mind in exercising that discretion.

A. Section 1512(c)(2) May Not "Disempower" the President from Exercising His Law Enforcement Authority Over a Particular Class of Matters.

As discussed further below, a fatal flaw in Mueller's interpretation of §1512(c)(2) is that, while defining obstruction solely as acting "corruptly," Mueller offers no definition of what "corruptly" means. It appears, however, that Mueller has in mind particular circumstances that he feels may give rise to possible "corruptness" in the current matter. His tacit premise appears to be that, when an investigation is looking into the President's own conduct, it would be "corrupt" for the President to attempt to influence that investigation.

On a superficial level, this outlook is unsurprising: at first blush it accords with the old Roman maxim that a man should not be the judge in his own case and, because "conflict-of-interest" laws apply to all the President's subordinates, DOJ prosecutors are steeped in the notion that it is illegal for an official to touch a case in which he has a personal stake. But constitutionally, as applied to the President, this mindset is entirely misconceived: there is no *legal* prohibition as opposed a political constraint -- against the President's acting on a matter in which he has a personal stake.

The Constitution itself places no limit on the President's authority to act on matters which concern him or his own conduct. On the contrary, the Constitution's grant of law enforcement power to the President is plenary. Constitutionally, it is wrong to conceive of the President as simply the highest officer within the Executive branch hierarchy. He alone *is* the Executive branch. As such, he is the sole repository of *all Executive powers* conferred by the Constitution. Thus, the full measure of law enforcement authority is placed in the President's hands, and no limit is placed on the kinds of cases subject to his control and supervision. While the President has subordinates --the Attorney General and DOJ lawyers -- who exercise prosecutorial discretion on

his behalf, they are merely “his hand,” *Ponzi v. Fessenden*, 258 U.S. 254, 262 (1922) the discretion they exercise is the President’s discretion, and their decisions are legitimate precisely because they remain under his supervision, and he is still responsible and politically accountable for them.

Nor does any statute purport to restrict the President’s authority over matters in which he has an interest. On the contrary, in 1974, the Department concluded that the conflict-of interest-laws cannot be construed as applying to the President, expressing “serious doubt as to the constitutionality” of a statute that sought “to disempower” the President from acting over particular matters. *Letter to Honorable Howard W. Cannon from Acting Attorney General Laurence H. Silberman*, dated September 20, 1974; and *Memorandum for Richard T. Burrell, Office of the President, from Laurence H. Silberman, Deputy Attorney General, Re: Conflict of Interest Problems Arising out of the President's Nomination of Nelson A. Rockefeller to be Vice President under the Twenty-Fifth Amendment to the Constitution* at 2, 5 (Aug. 28, 1974). As far as I am aware, this is the only instance in which it has previously been suggested that a statute places a class of law enforcement cases “off limits” to the President’s supervision based on his personal interest in the matters. The Department rejected that suggestion on the ground that Congress could not “disempower” the President from exercising his supervisory authority over such matters. For all the same reasons, Congress could not make it a crime for the President to exercise supervisory authority over cases in which his own conduct might be at issue.

The illimitable nature of the President’s law enforcement discretion stems not just from the Constitution’s plenary grant of those powers to the President, but also from the “unitary” character of the Executive branch itself. Because the President alone constitutes the Executive branch, the President cannot “recuse” himself. Just as Congress could not *en masse* recuse itself, leaving no source of the Legislative power, the President cannot take a holiday from his responsibilities. It is in the very nature of discretionary power that ultimate authority for making the choice must be vested in some final decision-maker. At the end of the day, there truly must be a desk at which “the buck stops.” In the Executive, final responsibility must rest with the President. Thus, the President, “though able to delegate duties to others, cannot delegate ultimate responsibility or *the active obligation to supervise that goes with it.*” *Free Enterprise Fund v. Public Co. Acctg. Oversight Bd.*, 130 S. Ct. 3138, 3154 (2010) (*quoting Clinton v. Jones*, 520 U.S. 681, 712-713 (1997) (Breyer, J., concurring in judgment)) (emphasis added).

In framing a Constitution that entrusts broad discretion to the President, the Framers chose the means they thought best to police the exercise of that discretion. The Framers’ idea was that, by placing all discretionary law enforcement authority in the hands of a single “Chief Magistrate” elected by all the People, and by making him politically accountable for all exercises of that discretion by himself or his agents, they were providing the best way of ensuring the “faithful exercise” of these powers. Every four years the people as a whole make a solemn national decision as to the person whom they trust to make these prudential judgments. In the interim, the people’s representatives stand watch and have the tools to oversee, discipline, and, if they deem appropriate, remove the President from office. Thus, 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 Framers' idea of political accountability has proven remarkably successful, far more so than the disastrous experimentation with an "independent" counsel statute, which both parties agreed to purge from our system. By and large, fear of political retribution has ensured that, when confronted with serious allegations of misconduct within an Administration, Presidents have felt it necessary to take practical steps to assure the people that matters will be pursued with integrity. But the measures that Presidents have adopted are voluntary, dictated by political prudence, and adapted to the situation; they are not legally compelled. Moreover, Congress has usually been quick to respond to allegations of wrongdoing in the Executive and has shown itself more than willing to conduct investigations into such allegations. The fact that President is answerable for any abuses of discretion and is ultimately subject to the judgment of Congress through the impeachment process means that the President is *not* the judge in his own cause. *See Nixon v. Harlow*, 457 U.S. 731, 757-58 n.41 (1982) ("The remedy of impeachment demonstrates that the President remains accountable under law for his misdeeds in office.")

Mueller's core premise -- that the President acts "corruptly" if he attempts to influence a proceeding in which his own conduct is being scrutinized -- is untenable. Because the Constitution, and the Department's own rulings, envision that the President may exercise his supervisory authority over cases dealing with his own interests, the President transgresses no legal limitation when he does so. For that reason, the President's exercise of supervisory authority over such a case does not amount to "corruption." It may be in some cases politically unwise; but it is not a crime. Moreover, it cannot be presumed that any decision the President reaches in a case in which he is interested is "improperly" affected by that personal interest. Implicit in the Constitution's grant of authority over such cases, and in the Department's position that the President cannot be "disempowered" from acting in such cases, is the recognition that Presidents have the capacity to decide such matters based on the public's long-term interest.

In today's world, Presidents are frequently accused of wrongdoing. Let us say that an outgoing administration -- say, an incumbent U.S. Attorney -- launches a "investigation" of an incoming President. The new President knows it is bogus, is being conducted by political opponents, and is damaging his ability to establish his new Administration and to address urgent matters on behalf of the Nation. It would neither be "corrupt" nor a crime for the new President to terminate the matter and leave any further investigation to Congress. There is no legal principle that would insulate the matter from the President's supervisory authority and mandate that he passively submit while a bogus investigation runs its course.

At the end of the day, I believe Mueller's team would have to concede that a President does not act "corruptly" simply by acting on -- even terminating -- a matter that relates to his own conduct. But I suspect they would take the only logical fallback position from that -- namely, that it would be "corrupt" if the President had actually engaged in unlawful conduct and then blocked an investigation to "cover up" the wrongdoing. In other words, the notion would be that, if an investigation was bogus, the President ultimately had legitimate grounds for exercising his supervisory powers to stop the matter. Conversely, if the President had really engaged in wrongdoing, a decision to stop the case would have been a corrupt cover up. But, in the latter case, the predicate for finding any corruption would be first finding that the President had engaged in the wrongdoing he was allegedly trying to cover up. Under the particular circumstances here, the

issue of obstruction only becomes ripe after the alleged collusion by the President or his campaign is established first. While the distinct crime of obstruction can frequently be committed even if the underlying crime under investigation is never established, that is true only where the obstruction is an act that is wrongful in itself -- such as threatening a witness, or destroying evidence. But here, the only basis for ascribing “wrongfulness” (*i.e.*, an improper motive) to the President’s actions is the claim that he was attempting to block the uncovering of wrongdoing by himself or his campaign. Until Mueller can show that there was unlawful collusion, he cannot show that the President had an improper “cover up” motive.

For reasons discussed below, I do not subscribe to this notion. But here it is largely an academic question. Either the President and his campaign engaged in illegal collusion or they did not. If they did, then the issue of “obstruction” is a sideshow. However, if they did not, then the cover up theory is untenable. And, at a practical level, in the absence of some wrongful act of evidence destruction, the Department would have no business pursuing the President where it cannot show any collusion. Mueller should get on with the task at hand and reach a conclusion on collusion. In the meantime, pursuing a novel obstruction theory against the President is not only premature but because it forces resolution of numerous constitutional issues grossly irresponsible.

B. Using Obstruction Laws to Review the President’s Motives for Making Facially-Lawful Discretionary Decisions Impermissibly Infringes on the President’s Constitutional Powers.

The crux of Mueller’s claim here is that, when the President performs a facially-lawful discretionary action that influences a proceeding, he may be criminally investigated to determine whether he acted with an improper motive. It is hard to imagine a more invasive encroachment on Executive authority.

1. The Constitution Vests Discretion in the President To Decide Whether To Prosecute Cases or To Remove Principal Executive Officers, and Those Decisions are Not Reviewable.

The authority to decide whether or not to bring prosecutions, as well as the authority to appoint and remove principal Executive officers, and to grant pardons, are quintessentially Executive in character and among the discretionary powers vested exclusively in the President by the Constitution. When the President exercises these discretionary powers, it is presumed he does so lawfully, and his decisions are generally non-reviewable.

The principle of non-reviewability inheres in the very reason for vesting these powers in the President in the first place. In governing any society certain choices must be made that cannot be determined by tidy legal standards but require prudential judgment. The imperative is that there must be some ultimate decision-maker who has the final, authoritative say -- at whose desk the “buck” truly does stop. Any system whereby other officials, not empowered to make the decision themselves, are permitted to review the “final” decision for “improper motives” is antithetical both to the exercise of discretion and its finality. And, even if review can censor a particular choice, it leaves unaddressed the fact that a choice still remains to be made, and the reviewers have no power to make it. The prospect of review itself undermines discretion. *Wayte v. United States*, 470 U. S.

598, 607- 608 (1985); *cf. Franklin v. Massachusetts*, 505 U.S. at 801. But any regime that proposes to review and *punish* decision-makers for “improper motives” ends up doing more harm than good by chilling the exercise of discretion, “dampen[ing] the ardor of all but the most resolute ... in the unflinching discharge of their duties.” *Gregoire v. Biddle*, 177 F. 2d 579, 581 (2d Cir. 1949)(Learned Hand). In the end, the prospect of punishment chills the exercise of discretion over a far broader range of decisions than the supposedly improper decision being remedied. *McDonnell*, 136 S.Ct. at 2373.

For these reasons, the law has erected an array of protections designed to prevent, or strictly limit, review of the exercise of the Executive discretionary powers. *See, e.g., Nixon v. Fitzgerald*, 457 US 731,749 (1982) (the President’s unique discretionary powers require that he have absolute immunity from civil suit for his official acts). An especially strong set of rules has been put in place to insulate those who exercise prosecutorial discretion from second-guessing and the possibility of punishment. *See, e.g., Imbler v. Pachtman*, 424 U. S. 409 (1976); *Yaselli v. Goff*, 275 U. S. 503 (1927), *aff’g* 12 F. 2d 396 (2d Cir. 1926). Thus, “it is entirely clear that the refusal to prosecute cannot be the subject of judicial review.” *See, e.g., ICC v. Brotherhood of Locomotive Engineers*, 482 U.S. 270, 283 (1987); *United States v. Cox*, 342 F.2d 167, 171-72 (5th Cir. 1965) (The U.S. Attorney’s decision not to prosecute even where there is probable cause is “a matter of executive discretion which cannot be coerced or reviewed by the courts.”); *see also Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

Even when there is a prosecutorial decision to proceed with a case, the law generally precludes review or, in the narrow circumstances where review is permitted, limits the extent to which the decision-makers’ subjective motivations may be examined. Thus, a prosecutor’s decision to bring a case is generally protected from civil liability by absolute immunity, even if the prosecutor had a malicious motive. *Yaselli v. Goff*, 275 U. S. 503 (1927), *aff’g* 12 F. 2d 396 (2d Cir. 1926). Even where some review is permitted, absent a claim of selective prosecution based on an impermissible classification, a court ordinarily will not look into the prosecutor’s real motivations for bringing the case as long as probable cause existed to support prosecution. *See Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978). Further, even when there is a claim of selective prosecution based on an impermissible classification, courts do not permit the probing of the prosecutor’s subjective state of mind until the plaintiff has first produced objective evidence that the policy under which he has been prosecuted had a discriminatory effect. *United States v. Armstrong*, 517 U.S. 456 (1996). The same considerations undergird the Department’s current position in *Hawaii v. Trump*, where the Solicitor General is arguing that, in reviewing the President’s travel ban, a court may not look into the President’s subjective motivations when the government has stated a facially legitimate basis for the decision. (*SG’s Merits Brief* at 61).

In short, the President’s exercise of its Constitutional discretion is not subject to review for “improper motivations” by lesser officials or by the courts. The judiciary has no authority “to enquire how the executive, or executive officers, perform duties in which they have a discretion. Questions, in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made” in the courts. *Marbury v. Madison*, 1 *Cranch* (5 U.S.) 137, 170 (1803).

2. *Threatening criminal liability for facially-lawful exercises of discretion, based solely on the subjective motive, would impermissibly burden the exercise of core Constitutional powers within the Executive branch.*

Mueller is effectively proposing to use the criminal obstruction law as a means of reviewing discretionary acts taken by the President when those acts influence a proceeding. Mueller gets to this point in three steps. First, instead of confining §1512(c)(2) to inherently wrongful acts of evidence impairment, he would now define the *actus reus* of obstruction as *any act* that influences a proceeding. Second, he would include within that category the official discretionary actions taken by the President or other public officials carrying out their Constitutional duties, including their authority to control all law enforcement matters. The net effect of this is that, once the President or any subordinate takes any action that influences a proceeding, he has completed the *actus reus* of the crime of obstruction. To establish guilt, all that remains is evaluation of the President's or official's subjective state of mind to divine whether he acted with an improper motive.

Wielding §1512(c)(2) in this way preempts the Framers' plan of political accountability and violate Article II of the Constitution by impermissibly burdening the exercise of the core discretionary powers within the Executive branch. The prospect of criminal prosecution based solely on the President's state of mind, coupled with the indefinite standards of "improper motive" and "obstruction," would cast a pall over a wide range of Executive decision-making, chill the exercise of discretion, and expose to intrusive and free-ranging examination the President's (or his subordinate's) subjective state of mind in exercising that discretion

Any system that threatens to punish discretionary actions based on subjective motivation naturally has a substantial chilling effect on the exercise of discretion. But Mueller's proposed regime would mount an especially onerous and unprecedented intrusion on Executive authority. The sanction that is being threatened for improperly-motivated actions is the most severe possible personal criminal liability. Inevitably, the prospect of being accused of criminal conduct, and possibly being investigated for such, would cause officials "to shrink" from making potentially controversial decisions and sap the vigor with which they perform their duties. *McDonnell v. United States*, 136 S.Ct. at 2372-73.

Further, the chilling effect is especially powerful where, as here, liability turns solely on the official's subjective state of mind. Because charges of official misconduct based on improper motive are "easy to allege and hard to disprove," *Hartman v. Moore*, 547 U.S. 250, 257-58 (2006), Mueller's regime substantially increases the likelihood of meritless claims, accompanied by the all the risks of defending against them. Moreover, the review contemplated here would be far more intrusive since it does not turn on an objective standard such as the presence in the record of a reasonable basis for the decision but rather requires probing to determine the President's actual subjective state of mind in reaching a decision. As the Supreme Court has observed, *Harlow v. Fitzgerald*, 457 U.S. 800, 816-17 (1982), even when faced only with civil liability, such an inquiry is especially disruptive:

[I]t now is clear that substantial costs attend the litigation of the subjective good faith of government officials. Not only are there the general costs of

subjecting officials to the risks of trial distraction of officials from their governmental duties, inhibition of discretionary action, and deterrence of able people from public service. There are special costs to "subjective" inquiries of this kind. ...[T]he judgments surrounding discretionary action almost inevitably are influenced by the decisionmaker's experiences, values, and emotions. These variables ...frame a background in which there often is no clear end to the relevant evidence. Judicial inquiry into subjective motivation therefore may entail broad-ranging discovery Inquiries of this kind can be peculiarly disruptive of effective government.

Moreover, the encroachment on the Executive function is especially broad due to the wide range of actors and actions potentially covered. Because Mueller defines the *actus reus* of obstruction as any act that influences a proceeding, he is including not just exercises of prosecutorial discretion directly deciding whether a case will proceed or not, but also exercises of any other Presidential power that might collaterally affect a proceeding, such as a removal, appointment, or grant of pardon. And, while Mueller's immediate target is the President's exercise of his discretionary powers, his obstruction theory reaches all exercises of prosecutorial discretion by the President's subordinates, from the Attorney General, down the most junior line prosecutor. It also necessarily applies to all personnel, management, and operational decision by those who are responsible for supervising and conducting litigation and enforcement matters -- civil, criminal or administrative -- on the President's behalf.

A fatal flaw with Mueller's regime and one that greatly exacerbates its chilling effect -- is that, while Mueller would criminalize any act "corruptly" influencing a proceeding, Mueller can offer no definition of "corruptly." What is the circumstance that would make an attempt by the President to influence a proceeding "corrupt?" Mueller would construe "corruptly" as referring to one's purpose in seeking to influence a proceeding. But Mueller provides no standard for determining what motives are legal and what motives are illegal. Is an attempt to influence a proceeding based on political motivations "corrupt?" Is an attempt based on self-interest? Based on personal career considerations? Based on partisan considerations? On friendship or personal affinity? Due process requires that the elements of a crime be defined "with sufficient definiteness that ordinary people can understand what conduct is prohibited," or "in a manner that does not encourage arbitrary and discriminatory enforcement." See *McDonnell*, 136 S.Ct. at 2373. This, Mueller's construction of §1512(c)(2) utterly fails to do.

It is worth pausing on the word "corruptly," because courts have evinced a lot of confusion over it. It is an adverb, modifying the verbs "influence," "impede," etc. But few courts have deigned to analyze its precise adverbial mission. Does it refer to "how" the influence is accomplished *i.e.*, the means used to influence? Or does it refer to the ultimate purpose behind the attempt to influence? As an original matter, I think it was clearly used to describe the means used to influence. As the D.C. Circuit persuasively suggested, the word was likely used in its 19th century transitive sense, connoting the turning (or corrupting) of something from good and fit for its purpose into something bad and unfit for its purpose hence, "corrupting" a magistrate; or "corrupting" evidence. *United States v. Poindexter*, 951 F.2d 369 (D.C. Cir.1991). Understood this way, the ideas behind the obstruction laws come more clearly into focus. The thing that is

corrupt is the means being used to influence the proceeding. They are inherently wrong because they involve the corruption of decision-makers or evidence. The culpable intent does not relate to the actor's ultimate motive for using the corrupt means. The culpable state of mind is merely the intent that the corrupt means bring about their immediate purpose, which is to sabotage the proceeding's truth-finding function. The actor's ultimate purpose is irrelevant because the means, and their immediate purpose, are dishonest and malign. Further, if the actor uses lawful means of influencing a proceeding such as asserting an evidentiary privilege, or bringing public opinion pressure to bear on the prosecutors then his ultimate motives are likewise irrelevant. See *Arthur Anderson*, 544 U.S. at 703-707. Even if the actor is guilty of a crime and his only reason for acting is to escape justice, his use of lawful means to impede or influence a proceeding are perfectly legitimate.

Courts have gotten themselves into a box whenever they have suggested that "corruptly" is not confined to the use of wrongful means, but can also refer to someone's ultimate motive for using lawful means to influence a proceeding. The problem, however, is that, as the courts have consistently recognized, there is nothing inherently wrong with attempting to influence or impede a proceeding. Both the guilty and innocent have the right to use lawful means to do that. What is the motive that would make the use of lawful means to influence a proceeding "corrupt?" Courts have been thrown back on listing "synonyms" like "depraved, wicked, or bad." But that begs the question. What is depraved the means or the motive? If the latter, what makes the motive depraved if the means are within one's legal rights? Fortunately for the courts, the cases invariably involve evidence impairment, and so, after stumbling around, they get to a workable conclusion. Congress has also taken this route. *Poindexter* struck down the omnibus clause of §1505 on the grounds that, as the sole definition of obstruction, the word "corruptly" was unconstitutionally vague. 951 F.2d at 377-86. Tellingly, when Congress sought to "clarify" the meaning of "corruptly" in the wake of *Poindexter*, it settled on even more vague language "acting with an improper motive" and then proceeded to qualify this definition further by adding, "including making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information." 18 U.S.C. §1515(b). The fact that Congress could not define "corruptly" except through a laundry list of acts of evidence impairment strongly confirms that, in the obstruction context, the word has no intrinsic meaning apart from its transitive sense of compromising the honesty of a decision-maker or impairing evidence.

At the end of the day then, as long as §1512 is read as it was intended to be read *i.e.*, as prohibiting actions designed to sabotage a proceeding's access to complete and accurate evidence -- the term "corruptly" derives meaning from that context. But once the word "corruptly" is deracinated from that context, it becomes essentially meaningless as a standard. While Mueller's failure to define "corruptly" would be a Due Process violation in itself, his application of that "shapeless" prohibition on public officials engaged in the discharge of their duties impermissibly encroach on the Executive function by "cast[ing] the pall of potential prosecution" over a broad range of lawful exercises of Executive discretion. *McDonnell*, 136 S.Ct. at 2373-74.

The chilling effect is magnified still further because Mueller's approach fails to define the kind of impact an action must have to be considered an "obstruction." As long as the concept of obstruction is tied to evidence impairment, the nature of the actions being prohibited is discernable. But once taken out of this context, how does one differentiate between an unobjectionable

“influence” and an illegal “obstruction?” The actions being alleged as obstructions in this case illustrate the point. Assuming *arguendo* that the President had motives such that, under Mueller’s theory, any direct order by him to terminate the investigation would be considered an obstruction, what action short of that would be impermissible? The removal of Comey is presumably being investigated as “obstructive” due to some *collateral* impact it could have on a proceeding. But removing an agency head does not have the natural and foreseeable consequence of obstructing any proceeding being handled by that agency. How does one gauge whether the collateral effects of one’s actions could impermissibly affect a proceeding?

The same problem exists regarding the President’s comments about Flynn. Even if the President’s motives were such that, under Mueller’s theory, he could not have ordered termination of an investigation, to what extent do comments short of that constitute obstruction? On their face, the President’s comments to Comey about Flynn seem unobjectionable. He made the accurate observation that Flynn’s call with the Russian Ambassador was perfectly proper and made the point that Flynn, who had now suffered public humiliation from losing his job, was a good man. Based on this, he expressed the “hope” that Comey could “see his way clear” to let the matter go. The formulation that Comey “see his way clear,” explicitly leaves the decision with Comey. Most normal subordinates would not have found these comments obstructive. Would a superior’s questioning the legal merit of a case be obstructive? Would pointing out some consequences of the subordinate’s position be obstructive? Is something really an “obstruction” if it merely is pressure acting upon a prosecutor’s psyche? Is the obstructiveness of pressure gauged objectively or by how a subordinate subjectively apprehends it?

The practical implications of Mueller’s approach, especially in light of its “shapeless” concept of obstruction, are astounding. DOJ lawyers are always making decisions that invite the allegation that they are improperly concluding or constraining an investigation. And these allegations are frequently accompanied by a claim that the official is acting based on some nefarious motive. Under the theory now being advanced, any claim that an exercise of prosecutorial discretion was improperly motivated could legitimately be presented as a potential criminal obstruction. The claim would be made that, unless the subjective motivations of the decision maker are thoroughly explored through a grand jury investigation, the putative “improper motive” could not be ruled out.

In an increasingly partisan environment, these concerns are by no means trivial. For decades, the Department has been routinely attacked both for its failure to pursue certain matters and for its decisions to move forward on others. Especially when a house of Congress is held by an opposing party, the Department is almost constantly being accused of deliberately scuttling enforcement in a particular class of cases, usually involving the environmental laws. There are claims that cases are not being brought, or are being brought, to appease an Administration’s political constituency, or that the Department is failing to investigate a matter in order to cover up its own wrongdoing, or to protect the Administration. Department is bombarded with requests to name a special counsel to pursue this or that matter, and it is frequently claimed that his reluctance to do so is based on an improper motive. When a supervisor intervenes in a case, directing a course of action different from the one preferred by the subordinate, not infrequently there is a tendency for the subordinate to ascribe some nefarious motive. And when personnel changes are made as

for example, removing a U.S. Attorney there are sometimes claims that the move was intended to truncate some investigation.

While these controversies have heretofore been waged largely on the field of political combat, Mueller's sweeping obstruction theory would now open the way for the "criminalization" of these disputes. Predictably, challenges to the Department's decisions will be accompanied by claims that the Attorney General, or other supervisory officials, are "obstructing" justice because their directions are improperly motivated. Whenever the slightest colorable claim of a possible "improper motive" is advanced, there will be calls for a criminal investigation into possible "obstruction." The prospect of being accused of criminal conduct, and possibly being investigated for such, would inevitably cause officials "to shrink" from making potentially controversial decisions.

O'Callaghan, Edward C. (ODAG)

From: O'Callaghan, Edward C. (ODAG)
Sent: Monday, April 1, 2019 7:25 PM
To: Rosenstein, Rod (ODAG); Weinsheimer, Bradley (ODAG); Ellis, Corey F. (ODAG); Peterson, Andrew (ODAG)
Subject: FW: Letter to AG Barr
Attachments: 4.1.2019 Letter to William Barr + appendix.pdf

Edward C. O'Callaghan
202-514-2105

From: Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>
Sent: Monday, April 1, 2019 7:20 PM
To: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Rabbitt, Brian (OAG) <brrabbitt@jmd.usdoj.gov>
Cc: Lasseter, David F. (OLA) <dlasseter@jmd.usdoj.gov>; Hankey, Mary Blanche (OLA) <mhankey@jmd.usdoj.gov>; Escalona, Prim F. (OLA) <pfescalona@jmd.usdoj.gov>
Subject: FW: Letter to AG Barr

Making everyone aware of this new letter. SB

From: Hiller, Aaron <(b) (6)>
Sent: Monday, April 1, 2019 6:43 PM
To: Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>
Subject: FW: Letter to AG Barr

FYI.

From: McElvein, Elizabeth <(b) (6)>
Sent: Monday, April 1, 2019 6:39 PM
To: 'David.F.Lasseter@usdoj.gov' <David.F.Lasseter@usdoj.gov>; 'doj.correspondence@usdoj.gov' <doj.correspondence@usdoj.gov>
Cc: Hiller, Aaron <(b) (6)> Hariharan, Arya <(b) (6)>
Subject: Letter to AG Barr

Attached, please find a letter to Attorney General Barr.

Regards,

Elizabeth H. McElvein
Professional Staff
Committee on the Judiciary
House of Representatives
202-226-(b) (6)

Congress of the United States
Washington, DC 20515

April 1, 2019

The Honorable William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Barr:

On March 25, 2019, we sent you a letter requesting that you produce to Congress the full report of Special Counsel Robert S. Mueller III and its underlying evidence by Tuesday, April 2, 2019. “To the extent you believe the applicable law limits your ability” to produce the entire report, we urged that you “begin the process of consultation with us immediately” to resolve those issues without delay.¹ On Wednesday, April 3, 2019, the House Judiciary Committee plans to begin the process of authorizing subpoenas for the report and underlying evidence and materials. While we hope to avoid resort to compulsory process, if the Department is unwilling to produce the report to Congress in unredacted form, then we will have little choice but to take such action.

As Chairman Nadler explained in his phone conversation with you on March 27, Congress requires a complete and unedited copy of the Special Counsel’s report, as well as access to the evidence and materials underlying that report. During your confirmation hearing in January, you stated that your “goal will be to provide as much transparency as I can consistent with the law.” As such, if the Department believes it is unable to produce any of these materials in full due to rules governing grand jury secrecy, it should seek leave from the district court to produce those materials to Congress—as it has done in analogous situations in the past. To the extent you believe any other types of redactions are necessary, we again urge you to engage in an

¹ Letter from Chairpersons Jerrold Nadler, H Comm. on the Judiciary, Elijah Cummings H. Comm. on Oversight & Reform, Adam Schiff, H. Perm. Select. Comm. on Intelligence, Maxine Waters, H. Comm. on Fin. Servs., Richard Neal, House Comm. on Ways & Means, and Eliot Engel, H. Comm. on Foreign Affairs, to Att’y Gen. William P. Barr (Mar. 25, 2019). *See also* Letter from Chairpersons Jerrold Nadler, H Comm. on the Judiciary, Elijah Cummings H. Comm. on Oversight & Reform, Adam Schiff, H. Perm. Select. Comm. on Intelligence, Maxine Waters, H. Comm. on Fin. Servs., Richard Neal, House Comm. on Ways & Means, and Eliot Engel, H. Comm. on Foreign Affairs, to Att’y Gen. William P. Barr, informing him of their expectation that he will make Special Counsel Robert Mueller’s report public “without delay and to the maximum extent permitted by law” (Feb. 22, 2019).

immediate consultation to address and alleviate any concerns you have about providing that information to Congress.²

We also reiterate our request that you appear before the Judiciary Committee as soon as possible—not in a month, as you have offered, but now, so that you can explain your decisions to first provide Congress with your characterization of the Mueller report as opposed to the report itself; to initiate a redaction process that withholds critical information from Congress; and to assume for yourself final authority over matters within Congress’s constitutional purview. In addition, as Chairman Nadler also requested on his call with you, we ask for your commitment to refrain from interfering with Special Counsel Mueller testifying before the Judiciary Committee—and before any other relevant committees—after the report has been released regarding his investigation and findings.

Congress is, as a matter of law, entitled to each of the categories of information you proposed to redact from the Special Counsel’s report in your March 29 letter.³ In the attached appendix we provide a more complete legal analysis of each of the potential redaction categories your letter identified. We expect the Department will take all necessary steps without further delay—including seeking leave from the court to disclose the limited portions of the report that may involve grand jury materials—in order to satisfy your promise of transparency and to allow Congress to fulfill its own constitutional responsibilities.⁴

Full release of the report to Congress is consistent with both congressional intent and the interests of the American public. On March 14, 2019, by a vote of 420-0, the House unanimously passed H. Con. Res. 24, a resolution calling for “the full release” of the Special Counsel’s report to Congress, as well as the public release of the Special Counsel’s report except to the extent the disclosure of “any portion thereof is expressly prohibited by law.” The American people have also consistently and overwhelmingly supported release of the full report. The President himself has likewise called for its release in full.

The allegations at the center of Special Counsel Mueller’s investigation strike at the core of our democracy. Congress urgently needs his full, unredacted report and its underlying evidence in order to fulfill its constitutional role, including its legislative, appropriations, and

² Congress is authorized by law and equipped to receive and examine the U.S. government’s most sensitive materials and information. The Department of Justice and the Federal Bureau of Investigation have long provided to relevant congressional committees sensitive law enforcement and investigatory information and records in complete and unredacted form, including those involving classified information, that are not provided to the general public.

³ Letter from Att’y Gen. William P. Barr to Chairman Lindsey Graham, S. Comm. on the Judiciary, and Chairman Jerrold Nadler, H. Comm. on the Judiciary (Mar. 29, 2019).

⁴ At a minimum, the Department should produce a detailed log of each redaction and the reasons supporting it in order to facilitate the accommodation process and to provide sufficient clarity for Congress to evaluate the Department’s claims.

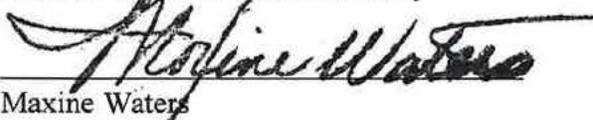
oversight responsibilities. Congress can and has historically been provided with sensitive, unredacted, and classified material that cannot be provided to the general public. In addition, the American people deserve to be fully informed about these issues of extraordinary public interest, and therefore need to see the report and findings in Special Counsel Mueller's own words to the fullest extent possible.

For all these reasons, we hope you will produce to Congress an unredacted report and underlying materials to avoid the need for compulsory process.

Sincerely,



Jerrold Nadler
Chairman
House Committee on the Judiciary



Maxine Waters
Chairwoman
House Committee on Financial Services



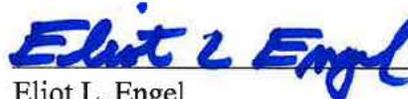
Elijah E. Cummings
Chairman
House Committee on Oversight and Reform



Richard E. Neal
Chairman
House Committee on Ways and Means



Adam Schiff
Chairman
House Permanent Select Committee on Intelligence



Eliot L. Engel
Chairman
House Committee on Foreign Affairs

Appendix:
The Department of Justice Must Produce the Full Mueller Report

Congress urgently needs the full Special Counsel’s report and the underlying evidence in order to fulfill its Article I constitutional functions, including its legislative, appropriations, and oversight responsibilities. Moreover, there is no basis for withholding from Congress the four categories of information described by the Attorney General in his March 29 letter to the House and Senate Judiciary Committees.¹

1. Congress Urgently Requires the Full Report and the Evidence

The Attorney General’s March 24 letter indicates that the Special Counsel found that President Trump may have criminally obstructed the Department’s investigation of Russia’s interference in the 2016 election and related matters.² The Special Counsel pointedly stated that the evidence the investigation uncovered “does not exonerate” the President of obstruction, and includes potentially criminal acts not yet known to the public.³ It is difficult to overstate the seriousness of those actions if, in the wake of an attack by a hostile nation against our democracy, President Trump’s response was to seek to undermine the investigation rather than take action against the perpetrators.

The longer the delay in obtaining this information, the more harm will accrue to Congress’s independent duty to investigate misconduct by the President and to assure public confidence in the integrity and independence of federal law enforcement operations. These are not only matters of addressing the harm that has occurred; they are urgent ongoing concerns. As has been publicly reported and referenced in the March 24 letter, multiple open investigations referred by the Special Counsel to other U.S. Attorneys’ offices may implicate the President or his campaign, transition, inauguration, or businesses. These critically important inquiries could be compromised if the President is seeking to interfere with them. Among other things, Congress has considered and continues to consider legislation to protect the integrity of these type of investigations against precisely the sorts of interference in which the President appears to have engaged.⁴

¹ Letter from Att’y Gen. William P. Barr to Chairman Lindsey Graham, S. Comm. on the Judiciary, and Chairman Jerrold Nadler, H. Comm. on the Judiciary (Mar. 29, 2019).

² Letter from Att’y Gen. William P. Barr to Chairman Lindsey Graham and Ranking Member Dianne Feinstein, S. Comm. on the Judiciary, and Chairman Jerrold Nadler and Ranking Member Doug Collins, H. Comm. on the Judiciary (Mar. 24, 2019) (hereinafter “March 24 Letter”).

³ March 24 Letter at 3 (the report “addresses a number of actions by the President—*most of which* have been the subject of public reporting”) (emphasis added).

⁴ See H.R. 197 and S. 71, Special Counsel Independence and Integrity Act, 116th Cong (2019); see also H.R. 1357, Special Counsel Reporting Act, 116th Cong. (2019); H.R. 1627, Abuse of Pardon Prevention Act, 116th Cong. (2019); H.R. 1348, Presidential Pardon Transparency Act, 116th Cong. (2019).

Moreover, the Judiciary Committee is engaged in an ongoing investigation of whether the President has undermined the rule of law, including by compromising the integrity of the Justice Department. Other committees are engaged in investigations related to whether the President, his associates, or members of his administration have engaged in other corrupt or unethical activities or are subject to foreign influence or compromise by actors abroad. Congress's authority "to inquire into and publicize corruption, maladministration or inefficiency in agencies of the Government" has been unquestioned since "the earliest times in its history."⁵ That interest is at its height when Congress's oversight activities pertain to potentially illegal acts by the President. As a court determined in another context involving the release of a report about potential obstruction of justice by a President, "[i]t would be difficult to conceive of a more compelling need than that of this country for an unswervingly fair inquiry based on all the pertinent information."⁶

The March 24 letter also claims that the Special Counsel's decision not to reach a definitive legal conclusion about obstruction "leaves it to the Attorney General to determine whether the conduct described in the report constitutes a crime."⁷ That view is fundamentally flawed. As a coequal branch of government—indeed, as the only branch of government that is expressly empowered by the Constitution to hold the President accountable—Congress must be permitted to assess the President's conduct for itself. The Attorney General cannot unilaterally make himself judge and jury. That is particularly so where the Attorney General has already expressed the view—in arguing against a theory of obstruction in this very investigation—that "there is no legal prohibition . . . against the President's acting on a matter in which he has a personal stake."⁸

The Attorney General's pre-confirmation memorandum on this topic also stated that "the determination of 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."⁹ Neither the American people nor Congress, however, can make any such a determination without all of Special Counsel Mueller's evidence, analysis, and findings—unfiltered and in his own words.

⁵ *Watkins v. United States*, 354 U.S. 178, 200 n.33 (1957) (internal quotations omitted)

⁶ *In re Report & Rec. of June 5, 1972 Grand Jury Concerning Transmission of Evidence to House of Representatives*, 370 F. Supp. 1219, 1230 (D.D.C. 1974).

⁷ March 24 Letter at 3.

⁸ William P. Barr, *Memorandum Re: Mueller's "Obstruction" Theory* at 10, June 8, 2018 (emphasis omitted). Additionally, although the Attorney General's March 24 letter states that the absence of an underlying crime bears upon the President's intent, it is black-letter law that there need not be an underlying crime for obstruction of justice to occur. See, e.g., *United States v. Hopper*, 177 F.3d 828, 831 (9th Cir. 1999).

⁹ *Id.* at 11.

The Special Counsel’s investigation also confirmed that Russia engaged in extensive efforts to interfere in the 2016 presidential election, and Congress’s need for that information is no less urgent. The Special Counsel’s report, according to the Attorney General, describes “crimes committed by persons associated with the Russian government in connection with these efforts,” including “efforts to conduct computer hacking operations designed to gather and disseminate information to influence the election.”¹⁰

These hostile acts are ongoing: The Department has indicated in at least one other case that Russian influence efforts continued into the 2018 midterm elections.¹¹ The Director of National Intelligence likewise testified last year in regard to the 2018 midterm elections that Russia would continue to use “persistent and disruptive cyber operations” and would target “elections as opportunities to undermine democracy” both here and against our allies in Europe.¹² More recently, Director Coats warned that Russia and other adversaries “probably are already looking to the 2020 U.S. election” to conduct malign influence operations and that “Moscow may employ additional influence toolkits—such as spreading disinformation, conducting hack-and-leak operations, or manipulating data—in a more targeted fashion to influence U.S. policy, actions, and elections.”¹³ It is imperative that Congress have access to the Special Counsel’s full descriptions and evidence of these crimes and malign influence operations that the Russian government or associated actors perpetrated against our democracy.

Moreover, the Attorney General’s March 24 letter acknowledges “multiple offers from Russian-affiliated individuals to assist the Trump campaign.”¹⁴ The facts and circumstances uncovered by the Special Counsel’s Office surrounding these and any other overtures by foreign actors, as well as the individuals associated with them and how they responded to such offers, are of vital importance to Congress. The Foreign Affairs Committee, for example, requires access to these facts as it investigates whether the foreign and financial entanglements of the President and his associates may be improperly influencing foreign policy in ways that serve their private interests rather than the national security of the United States. Moreover, the House Permanent Select Committee on Intelligence must have access to the full facts as it evaluates counterintelligence threats and risks during and since the 2016 U.S. election, and as it considers

¹⁰ March 24 Letter at 2.

¹¹ See Criminal Complaint ¶ 14, *United States v. Khusyaynova*, No. 1:18-mj-464 (E.D. Va. Sept. 28, 2018) (alleging Russian national participated in a conspiracy “to interfere with U.S. political and electoral processes, including the 2018 U.S. elections”).

¹² Patricia Zengerle and Diona Chaicu, *U.S. 2018 Elections ‘Under Attack’ by Russia: U.S. Intelligence Chief*, Reuters, Feb. 13, 2018.

¹³ Worldwide Threats: Hearing before the S. Select Comm. on Intelligence, 116th Cong. (Jan. 29, 2019) (Statement of Daniel R. Coats, Director of National Intelligence).

¹⁴ March 24 Letter at 2.

remedies necessary to prevent, or mitigate to the greatest extent possible, the vulnerability of campaigns, or persons associated with them, to foreign influence or compromise operations.

Congressional committees have conducted multiple hearings regarding foreign influence operations and the security of our election systems and have proposed numerous legislative reforms to address vulnerabilities.¹⁵ In an appropriations bill enacted into law last year, Congress allocated much-needed funding to support election security initiatives.¹⁶ It is critical to legislation that has or will be introduced this year to understand foreign intelligence disinformation campaigns, risks to our election infrastructure security, evolving methods of voter targeting and suppression, and the manner in which foreign adversaries seek to exploit campaign vulnerabilities as well as the technology industry in our elections moving forward.

In addition, the House of Representatives' appropriations process for the next fiscal year is already underway—including for funding any election security, cybersecurity, and offensive or defensive counterintelligence operations needed to combat attacks during the 2020 election—with submission deadlines scheduled for April and appropriations packages expected to reach the House floor in June.¹⁷ However, Congress cannot fully address the scope of these threats (whether through appropriations or other legislation) without a thorough accounting by the Special Counsel's Office of the attack that occurred in 2016. Indeed, it is difficult to envision any function of Congress more important than ensuring the integrity of our democratic elections, authorizing and appropriating funding for the relevant federal authorities, and authorizing critical national security programs.

2. The Application of Rule 6(e) is Limited and Does Not Bar Disclosures to Congress

The Attorney General has indicated that the Department is reviewing the Special Counsel's report to identify material whose disclosure may be limited by Federal Rule of Criminal Procedure 6(e), which prohibits certain disclosures of "matter[s] occurring before the grand jury." In a call with Chairman Nadler, the Attorney General suggested that redactions made in accordance with Rule 6(e) will be substantial. But even assuming Rule 6(e) applies with respect to disclosures to Congress,¹⁸ the law clearly forbids the Department from making

¹⁵ See, e.g., Secure America from Russian Interference Act, H.R. 6437, 115th Cong. (2018); Defending Elections from Threats by Establishing Redlines Act, H.R. 4884, 115th Cong. (2018); Bot Disclosure Accountability Act, S. 3127, 115th Cong. (2018); H.R. 5011, Election Security Act, 115th Cong. (2018); For the People Act, H.R. 1, 116th Cong (2019).

¹⁶ Pub. L. No. 115-141, Div. E, tit. V (2018).

¹⁷ See Hearings, H. Comm. on Appropriations, 116th Cong. (2019); Paul M. Krawzak, *House appropriations may start markup in April*, RollCall, Mar. 19, 2019.

¹⁸ See, e.g., *In re Grand Jury Inv. of Ven-Fuel*, 441 F. Supp. 1299, 1302, 1304-08 (M.D. Fla. 1977) (holding that Congress has "an independent right" under the Constitution to obtain requested documents regardless of whether they are subject to Rule 6(e)); *In re Proceedings of Grand Jury No. 81-1 (Miami)*, 669 F. Supp. 1072, 1075 (S.D.

sweeping designations as to any evidence that happens to have been presented to a grand jury or was obtained through a grand jury subpoena.

Rule 6(e) “does not ‘draw a veil of secrecy . . . over all matters occurring in the world that happen to be investigated by a grand jury.’”¹⁹ “The mere fact that information has been presented to the grand jury does not” mean that the information is prohibited from disclosure.²⁰ Further, as the D.C. Circuit has made clear, the fact that evidence was obtained through a grand jury subpoena does not necessarily mean that it is barred from disclosure by Rule 6(e).²¹ As a result, the Department cannot withhold documents or information simply because they were produced in response to a grand jury subpoena. Because a person receiving the documents would not know whether they were obtained through a grand jury subpoena or other means, “subpoenaed documents would not necessarily reveal a connection to a grand jury.”²² Just last year, the D.C. Circuit reaffirmed this principal in *Bartko v. Dep’t of Justice*, where it made clear that “copies of specific records provided to a federal grand jury” were not covered by Rule 6(e) because “the mere fact the documents were subpoenaed fails to justify withholding under Rule 6(e).”²³

For this reason, it is clear the Department cannot withhold portions of the Special Counsel’s report merely because they discuss information that was presented to the grand jury or documents that were obtained through a grand jury subpoena. Likewise, the Department cannot withhold underlying evidence simply because it was presented to the grand jury or obtained through a grand jury subpoena. That is particularly so because the Special Counsel’s Office obtained a great deal of evidence by other means. The Special Counsel’s team interviewed numerous witnesses on a voluntary basis and acquired voluminous records without resorting to grand jury subpoenas.²⁴ Other evidence was obtained through different types of mandatory legal process, such as through the issuance of nearly 500 search warrants.²⁵ That evidence can of course be disclosed without implicating Rule 6(e). And because so much evidence was obtained

Fla. 1987) (similar). *But see In re Grand Jury Investigation of Uranium Indus.*, Misc. 78-173, 1979 WL 1661, at *4 (D.D.C. Aug. 16, 1979). No circuit court has squarely addressed this issue.

¹⁹ *Labow v. Dep’t of Justice*, 831 F.3d 523, 529 (D.C. Cir. 2016) (quoting *Senate of the Com. of Puerto Rico v. Dep’t of Justice*, 823 F.2d 574, 582 (D.C. Cir. 1987) (R.B. Ginsburg, J.)).

²⁰ *Id.* at 529.

²¹ *Id.* at 529-30.

²² *Id.* at 529.

²³ 898 F.3d 51, 73 (D.C. Cir. 2018) (quoting *Labow*, 831 F.3d at 530).

²⁴ *See, e.g.*, Philip Rucker et al., *A Mueller Mystery: How Trump Dodged a Special Counsel Interview—and a Subpoena Fight*, WASH. POST, Mar. 28, 2019 (quoting the President’s attorney, Rudolph Giuliani, who stated, “We allowed [the Special Counsel’s office] to investigate everybody, and [the White House] turned over every document they were asked for: 1.4 million documents.”).

²⁵ March 24 Letter at 1.

through these other means, the Department would have no basis to withhold materials or descriptions of materials that it happens to have gathered by issuing grand jury subpoenas. So long as those materials do not on their face ““reveal a connection to a grand jury,”” Rule 6(e) does not bar their disclosure.²⁶

As to testimony or other grand jury materials that are genuinely subject to Rule 6(e), the Department can and should work with the House Judiciary Committee to obtain the permission of the district court overseeing the grand jury to make disclosures to Congress on a confidential basis, as it has done in the past in analogous circumstances. The Department took that precise path after the grand jury considering evidence in the Watergate affair issued a report describing potentially criminal acts by President Nixon. The Justice Department filed briefs fully supporting disclosure of the report to the House Judiciary Committee, and made the obvious point that “[t]he need for the House to be able to make its profoundly important judgment on the basis of all available information is as compelling as any that could be conceived.”²⁷ Independent Counsel Kenneth Starr likewise sought the court’s authorization to disclose grand jury material regarding President Clinton to the House of Representatives.²⁸

The district court would have ample authority to permit disclosure of relevant materials to Congress. As Chief Judge Howell, the judge overseeing this grand jury, explained in a recent opinion, “numerous courts have recognized [that] a district court retains an inherent authority to unseal and disclose grand jury material not otherwise falling within the enumerated exceptions to Rule 6(e).”²⁹ Indeed, every federal court of appeals to have considered this question has reached that conclusion.³⁰ Congress’s need for these materials is beyond compelling, and the public interest in Congress receiving these materials is at its height. President Trump, moreover, has

²⁶ *Barko*, 898 F.3d at 73 (quoting *Labow*, 831 F.3d at 529).

²⁷ Mem. for the United States on Behalf of the Grand Jury at 16, *In re Report & Rec. of June 5, 1972 Grand Jury*, Misc. No. 74-21 (D.D.C. Mar. 5, 1974).

²⁸ See Order, *In re Madison Guaranty Savings & Loan Assoc.*, Div. No. 94-1 (D.C. Cir. Special Div. July 7, 1998).

²⁹ *In re App. to Unseal Dockets Related to the Independent Counsel’s 1998 Investigation of President Clinton*, 308 F. Supp. 3d 314, 323 (D.D.C. 2018).

³⁰ *Id.* at 323-24. See *Carlson v. United States*, 837 F.3d 753, 763 (7th Cir. 2016); *In re Craig*, 131 F.3d 99, 103 (2d Cir. 1997); *In re Pet. to Inspect & Copy Grand Jury Materials*, 735 F.2d 1261, 1268 (11th Cir. 1984); see also *Pitch v. United States*, 915 F.3d 704, 708-09 (11th Cir. 2019); *Haldeman v. Sirica*, 501 F.2d 714, 715 (D.C. Cir. 1974) (court was “in general agreement with” the district court’s decision to release the Watergate grand jury’s report to Congress). The D.C. Circuit heard argument last fall in a case involving a historian who seeks the release of grand jury material involving an incident that occurred in the 1950s pursuant to the court’s inherent authority to release materials otherwise covered by Rule 6(e). *McKeever v. Barr*, No. 17-5149. The facts of that case are obviously distinct from those presented here. As the Department explained in its brief in *McKeever*, “[t]he question in this appeal is whether . . . a district court may order the disclosure of secret grand jury records solely for reasons of historical or academic interest.”

expressed public support for the report's release.³¹ As such, the Department should immediately request that these materials be released to Congress.

The Attorney General has refused thus far to work with Congress in that regard. At his confirmation hearing, however, the Attorney General stated: "I . . . believe it is very important that the public and Congress be informed of the results of the special counsel's work. My goal will be to provide as much transparency as I can consistent with the law."³² The most efficacious way to honor that commitment would be to join with the House Judiciary Committee in seeking expedited disclosure of any Rule 6(e) material to Congress, and to refer any questions about the scope of Rule 6(e)'s application to independent court review.

3. Any Potential Claim of Executive Privilege Has Been Waived

Although the Attorney General's March 24 letter made no mention of executive privilege, his March 29 letter states that "there are no plans to submit the report to the White House for a privilege review," because the President "intends to defer" to the Attorney General on those issues. Whatever that may mean, it would be highly improper for the Department to conceal portions of the report based on claims of executive privilege on behalf of the President. As an initial matter, the Department's own long-standing policy is that executive privilege "should not be invoked to conceal evidence of wrongdoing or criminality on the part of executive officers."³³

In any event, the President and the White House have waived any claims of executive privilege. The White House voluntarily disclosed millions of documents to the Special Counsel's office and permitted multiple senior officials to be interviewed by the Special Counsel's team, without asserting any type of privilege.³⁴ Having voluntarily disclosed this evidence, the President cannot now seek to invoke executive privilege to block its release. As the D.C. Circuit has held in an analogous context, regarding waiver of attorney-client privilege, "[t]he client cannot be permitted to pick and choose among his opponents, waiving the privilege for some and resurrecting the claim of confidentiality to obstruct others."³⁵ Moreover, the White House has similarly shared information and documents with numerous former White House

³¹ Liam Stack, *Trump Says Mueller Report Should Be Made Public: 'Let People See It,'* N.Y. TIMES, Mar. 20, 2019.

³² *The Nomination of the Honorable William Pelham Barr to be Attorney General of the United States*, hearing before the S. Comm. on the Judiciary, Jan. 15, 2019 (statement of the Hon. William Barr).

³³ Robert B. Shanks, Office of Legal Counsel, *Congressional Subpoenas of Department of Justice Investigative Files*, 8 Op. O.L.C. 252, 267 (1984).

³⁴ See Rucker et al., *supra* note 24; Michael Schmidt and Maggie Haberman, *White House Counsel, Don McGahn, Has Cooperated Extensively in Mueller Inquiry*, N.Y. TIMES, Aug. 18, 2018 (noting that no privilege was asserted).

³⁵ *Permian Corp. v. United States*, 665 F.2d 1214, 1221 (D.C. Cir. 1981).

officials and their private counsel.³⁶ The D.C. Circuit has expressly held that the White House “waive[s] its claims of privilege in regard to [] specific documents that it voluntarily reveal[s] to third parties outside the White House.”³⁷

Lastly, in the unlikely event that the White House has preserved privilege as to any of the evidence underlying the Mueller report, the public interest in disclosure would still overwhelmingly outweigh the President’s interest in secrecy. The privilege pertaining to presidential communications is not absolute. Just as the Supreme Court determined in *United States v. Nixon*, the public interest here in the “fair administration of justice” outweighs the President’s “generalized interest in confidentiality.”³⁸

4. Ongoing Investigations, Classified Information, and Privacy and Reputational Interests of Third Parties Should Not Prevent Release to Congress

The fact that certain investigations remain ongoing cannot justify the Department withholding critical evidence from Congress that pertains to Russia’s interference in our federal elections or obstruction of justice by the President. Indeed, during the previous Congress, the Department produced to congressional committees thousands of pages of highly sensitive law enforcement and classified investigatory and deliberative records.³⁹ Many of these were related to *this very same investigation*—which of course was open and ongoing at the time.

Similarly, the mere presence of classified information in the Mueller report or in underlying evidence cannot justify withholding evidence from Congress, which is well equipped to handle classified information and does so on a daily basis. The Department can provide any classified materials to the appropriate committees for handling in secure facilities. It can also permit the Intelligence Community to review the report on an expedited basis in order to share with Congress whatever equities the Intelligence Community feels may be implicated by the release of specific information contained in the report or any underlying materials. Additionally, to the extent the Special Counsel’s Office is in possession of underlying evidence that is particularly sensitive, the relevant committees are in a position to work with the Department to reach an accommodation to ensure appropriate handling as Congress has in the past on numerous occasions. However, the Department should not be able to simply invoke the same reasons for redacting the report from public view as a shield against disclosure to a coequal branch of government.

³⁶ See, e.g., Schmidt and Haberman, *supra* note 34.

³⁷ *In re Sealed Case*, 121 F.3d 729, 741-42 (D.C. Cir. 1997).

³⁸ 418 U.S. 683, 713 (1974).

³⁹ See, e.g., *DOJ hands over new classified documents on Russia probe to Congress*, Associated Press, June 23, 2018; Charlie Savage, *Carter Page FISA Released by Justice Department*, N.Y. TIMES, July 21, 2018

Finally, the Department also should not be able to keep from Congress information related to the “reputational interests of peripheral third parties” as referenced in the Attorney General’s March 29 letter. To the extent the Special Counsel has developed information relative to President Trump’s family members (including those employed by the White House) or his associates, campaign employees, consultants, advisers, and others within the scope of the investigation, that should not be withheld from Congress. It is precisely the type of information that the relevant committees need to perform their oversight, legislative, and other responsibilities. There is no constitutionally recognized privilege that would apply in such instances, and there is ample precedent for provision of such information, as recently as the last Congress.

Boyd, Stephen E. (OLA)

From: Boyd, Stephen E. (OLA)
Sent: Thursday, May 2, 2019 10:04 AM
To: Rosenstein, Rod (ODAG)
Subject: Fwd: Letter to Inspector General Horowitz and Director Amundson
Attachments: 2019.04.30 Letter to DOJ OIG and OPR.pdf; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: "Weinsheimer, Bradley (ODAG)" <bradweinsheimer@jmd.usdoj.gov>
Date: April 30, 2019 at 5:53:38 PM EDT
To: "Boyd, Stephen E. (OLA)" <seboyd@jmd.usdoj.gov>, "O'Callaghan, Edward C. (ODAG)" <ecocallaghan@jmd.usdoj.gov>
Subject: FW: Letter to Inspector General Horowitz and Director Amundson

FYSA. Brad.

From: Amundson, Corey (OPR) <Corey.Amundson@opr.usdoj.gov>
Sent: Tuesday, April 30, 2019 4:56 PM
To: Weinsheimer, Bradley (ODAG) <bradweinsheimer@jmd.usdoj.gov>; Ragsdale, Jeffrey (OPR) <Jeffrey.Ragsdale@opr.usdoj.gov>
Subject: FW: Letter to Inspector General Horowitz and Director Amundson

FYI

From: Berger, Christine (Judiciary-Dem)
Sent: Tuesday, April 30, 2019 1:11 PM
To: 'Lee, Rene R. (OIG)' <Rene.R.Lee@usdoj.gov>; 'Miles, Adam (OIG)' <Adam.Miles@usdoj.gov>; 'Geach, Ryan (OIG)' <Ryan.Geach@usdoj.gov>; 'opr.complaints@usdoj.gov' <opr.complaints@usdoj.gov>
Cc: Greenfeld, Helaine (Hirono) (b) (6)
Subject: Letter to Inspector General Horowitz and Director Amundson

Dear all,

Please find attached a copy of a letter sent by mail to Inspector General Horowitz and Director Amundson from Senators Mazie Hirono, Richard Blumenthal, Kamala D. Harris, Edward J. Markey, Tom Udall, Ron Wyden, Sheldon Whitehouse, Patty Murray, Cory A. Booker, Jack Reed, Kristen Gillibrand, and Amy Klobuchar.

Best regards,
Christine

Christine Berger

Senior Counsel

Office of Senator Mazie K. Hirono | Committee on the Judiciary

713 Hart Senate Office Bldg. Washington, DC 20510

(202) 224-(b) (6)

United States Senate

WASHINGTON, DC 20510

April 30, 2019

The Honorable Michael E. Horowitz
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Corey R. Amundson
Director and Chief Counsel
Office of Professional Responsibility
U.S. Department of Justice
950 Pennsylvania Avenue, NW, Suite 3266
Washington, D.C. 20530

Dear Inspector General Horowitz and Director Amundson:

We write regarding the serious concerns that have been raised about the actions of Attorney General William Barr with respect to his handling of Special Counsel Robert Mueller's report. Attorney General Barr's actions raise significant questions about his decision not to recuse himself from overseeing the Special Counsel's investigation, whether his actions with respect to the release of the report complied with Department of Justice policies and practices, and whether he has demonstrated sufficient impartiality to continue overseeing the fourteen criminal matters related to the Special Counsel's investigation that were referred principally to other components of the Department of Justice and the Federal Bureau of Investigation (FBI).¹ In light of these concerns, we respectfully request that the Office of the Inspector General and the Office of Professional Responsibility immediately begin investigations of these issues.

Six months before his nomination to be Attorney General, Mr. Barr wrote an unsolicited 19-page memo to Deputy Attorney General Rod Rosenstein and Assistant Attorney General for the Office of Legal Counsel Steve Engel criticizing Special Counsel Mueller's investigation of obstruction of justice by Donald Trump.² In his memo, Mr. Barr conceded that he was "in the dark about many facts," and yet he asserted that "Mueller's obstruction theory is fatally misconceived" and premised on a "legally insupportable reading of the law."³ Mr. Barr also argued that "Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction."⁴ Despite this memo, which presents, at the very least, an appearance of bias, Mr. Barr refused to recuse himself from directly overseeing Special Counsel Mueller's investigation when he was confirmed as Attorney General.⁵ While the Justice Department stated that Attorney General Barr's decision to not recuse was consistent with the advice of senior ethics attorneys, it provided few details about the nature of this seemingly anomalous decision. Given the Attorney General's subsequent troubling actions in handling the Special Counsel's report, further investigation of the process leading to his non-recusal decision is warranted.

¹ Department of Justice, *Report On The Investigation Into Russian Interference In The 2016 Presidential Election*, Appendix D, <https://www.justice.gov/storage/report.pdf>.

² Memo from Bill Barr to Deputy Attorney General Rod Rosenstein and Assistant Attorney General Steve Engel, June 8, 2018, available at <https://int.nyt.com/data/documenthelper/549-june-2018-barr-memo-to-doj-mue/b4c05e39318dd2d136b3/optimized/full.pdf#page=1>.

³ *Id.* at 1.

⁴ *Ibid.*

⁵ See Josh Gerstein, *Barr won't recuse himself from Mueller oversight*, POLITICO (March 4, 2019), <https://www.politico.com/story/2019/03/04/barr-wont-recuse-mueller-1203210>.

Attorney General Barr's actions following the completion of Special Counsel Mueller's report raise further questions regarding his impartiality towards the Special Counsel's investigation and the appropriateness of his conduct as the chief law enforcement officer of the United States. After notifying Congress and the public on Friday, March 22, 2019, that he had received the Special Counsel's report,⁶ Attorney General Barr released a four-page letter on March 24, 2019, that purported "to summarize the principal conclusions reached by the Special Counsel."⁷ The letter, however, selectively quoted fragments from the Special Counsel's report. Moreover, the subsequent release of the redacted report revealed that the Attorney General's letter had presented quotations from the report out of context or with key words omitted to suggest that the President had been cleared of wrongdoing.⁸ Given that the Special Counsel's report included executive summaries that seem to have been readily available for public release, we found the letter particularly concerning as a possible effort to mislead the public.

We are also troubled by the Attorney General's use of his March 24 letter to summarily conclude that the "evidence developed during the Special Counsel's investigation is not sufficient to establish that the President committed an obstruction-of-justice offense."⁹ The letter asserts, without any justification, that the Special Counsel's decision not to reach "any legal conclusions leaves it to the Attorney General to determine whether the conduct described in the report constitutes a crime."¹⁰ It is unclear what statute, regulation, or policy led the Attorney General to interject his own conclusion that the President's conduct did not amount to obstruction of justice, particularly when he had not yet released the redacted Special Counsel's report, which explicitly noted that "if we had confidence after a thorough investigation of the facts that the President clearly did not commit obstruction of justice, we would so state."¹¹ The Attorney General's conduct is even more concerning given that the report itself identifies Congress's impeachment authority and future prosecution once the President leaves office as possible ways to address the obstruction of justice evidence. But the report does not refer to a purported role of the Attorney General to make legal conclusions that the Special Counsel expressly declined to make.¹²

In addition, we found disturbing that Attorney General Barr provided the President's personal attorneys access to the Special Counsel's report before Congress and the public. News reports indicate that the Attorney General granted Rudy Giuliani, Jay Sekulow and two other Trump lawyers access to review the full redacted report for two days before providing the redacted report to Congress and the public.¹³ While the Attorney General asserted that the President's personal attorneys' *request* to review the redacted report before its public release "was consistent with the practice followed under the Ethics in Government Act," we have serious concerns about

⁶ Letter from Attorney General William Barr (March 22, 2019), available at <https://int.nyt.com/data/documenthelper/708-attorney-general-william-barr-letter-mueller/b7fd3a05ab618bad8544/optimized/full.pdf#page=1>.

⁷ Letter from Attorney General William Barr (March 24, 2019), available at <https://www.documentcloud.org/documents/5779688-AG-March-24-2019-Letter-to-House-and-Senate.html>.

⁸ See Charlie Savage, *How Barr's Excerpts Compare to the Mueller Report's Findings*, N.Y. TIMES (April 20, 2019), <https://www.nytimes.com/2019/04/19/us/politics/mueller-report-william-barr-excerpts.html>.

⁹ *Supra* note 7.

¹⁰ *Ibid.*

¹¹ *Supra* note 1, at vol. 2, p. 8.

¹² See, e.g., *supra* note 1, at vol. 2, p. 8, 178.

¹³ See, e.g., Karen Freifeld, *Trump lawyers reviewed Mueller report for 10 hours before it was made public*, REUTERS (April 19, 2019), <https://www.reuters.com/article/us-usa-trump-russia-lawyers-idUSKCN1RV18M>.

the propriety of the Attorney General's decision to grant access to the full redacted report, particularly when he did not appear to grant other individuals named in the report similar access and he did not limit review to the portions of the report referencing Donald Trump.¹⁴ This decision to purportedly act "consistent with the practice" under an expired law merits exacting review to determine whether the Attorney General's action was appropriate and justified, given that he ignored other provisions of this law, such as those requiring Congress to be provided with information necessary to enable it to conduct proper oversight.¹⁵

We further believe that Attorney General Barr's decision to hold a press conference to assert his own views regarding the report well before releasing the redacted report and his statements at the press conference warrant serious scrutiny as to whether they were proper and consistent with Justice Department policies and practices. At the press conference, Attorney General Barr appeared to make statements that were inconsistent with the Special Counsel's findings and demonstrated a lack of impartiality. For example, the Attorney General claimed that "the White House fully cooperated with the Special Counsel's investigation," despite the Special Counsel's detailed findings of President Trump's efforts to obstruct the investigation, refusal to be interviewed by the Special Counsel, and submission of "inadequate" written responses.¹⁶ The Attorney General also repeatedly asserted that there was "no collusion," defending the President as "frustrated and angered by a sincere belief that the investigation was undermining his presidency."¹⁷

Moreover, the Attorney General's statements at the press conference compounded the misleading impression he created in his March 24 letter regarding the Special Counsel's determinations regarding the criminality of the President's conduct. In both his March 24 letter and his statements at the press conference, Attorney General Barr gave the misimpression that the guidelines from the Justice Department's Office of Legal Counsel (OLC) against indicting a sitting president played little to no role in the Special Counsel's decision to not charge the President with obstruction of justice.¹⁸ The redacted report, however, makes clear that the OLC's guidelines played a significant role in the Special Counsel's decision, stating that the Special Counsel's office "accepted OLC's legal conclusion for the purpose of exercising prosecutorial jurisdiction."¹⁹ These statements and actions, along with the Attorney General's prior statements, such as his claim that the federal government's investigation of the Trump campaign constituted "spying," also indicate that he lacks the impartiality to continue overseeing ongoing matters stemming from the Special Counsel's investigation.²⁰

¹⁴ Attorney General William P. Barr Delivers Remarks on the Release of the Report on the Investigation into Russian Interference in the 2016 Presidential Election, April 18, 2019, <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-remarks-release-report-investigation-russian>.

¹⁵ See, e.g., 28 U.S.C. 595(c); 28 U.S.C. 594(h).

¹⁶ Compare *ibid.* with *supra* note 1, Appendix C.

¹⁷ *Supra* note 15.

¹⁸ Aaron Blake, *How William Barr successfully pre-spun the Mueller report for Trump*, N.Y. TIMES (April 19, 2019), https://www.washingtonpost.com/politics/2019/04/19/how-william-barr-successfully-pre-spun-mueller-report-trump/?utm_term=.122c1c6362ba.

¹⁹ *Supra* note 1, at vol. 1, p. 1.

²⁰ See, e.g., Nicholas Fandos and Adam Goldman, *Barr Asserts Intelligence Agencies Spied on the Trump Campaign*, N.Y. TIMES (April 10, 2019), <https://www.nytimes.com/2019/04/10/us/politics/barr-trump-campaign-spying.html>.

Given these concerns, we therefore urge the Office of the Inspector General and the Office of Professional Responsibility to initiate immediately investigations of the following matters:

- Whether Attorney General Barr's decision not to recuse himself from overseeing the Special Counsel's investigation was proper and consistent with ethical rules and practices within the Department of Justice;
- Whether Attorney General Barr's four-page letter dated March 24, 2019, regarding Special Counsel Mueller's report was misleading and whether it was consistent with Department of Justice policies and practices;
- Whether Attorney General Barr's actions in permitting President Trump's private attorneys to review the entire Special Counsel's report at length before sharing the report with Congress, other individuals named in the report, and the public, was appropriate and consistent with Department of Justice policies and practices;
- Whether Attorney General Barr's press conference on April 18, 2019, regarding Special Counsel Mueller's report, which took place well before he released a redacted version of the report, was misleading and consistent with Department of Justice policies and practices;
- Whether Attorney General Barr has demonstrated sufficient impartiality to continue overseeing the ongoing matters related to the Special Counsel's investigation referenced in Appendix D of the Special Counsel's report;
- Whether Attorney General Barr took any steps related to the transfers and referrals listed in Appendix D of the report that were contrary to the advice of career prosecutors at the Justice Department or the Department's policies; and
- Whether any of Attorney General Barr's other actions or statements call into question his impartiality such that they warrant his recusal from particular matters or are relevant to the Senate Judiciary Committee's oversight into the Department of Justice.

Thank you for your consideration of this important matter. We look forward to a prompt response.

Sincerely,



MAZIE K. HIRONO
United States Senator



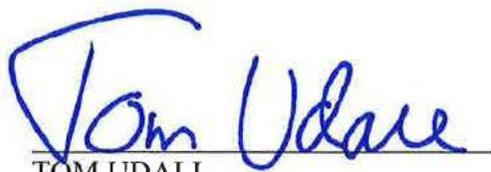
RICHARD BLUMENTHAL
United States Senator



KAMALA D. HARRIS
United States Senator



EDWARD J. MARKEY
United States Senator



TOM UDALL
United States Senator



RON WYDEN
United States Senator



SHeldon WHITEHOUSE
United States Senator



PATTY MURRAY
United States Senator



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United States Senator



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United States Senator



KIRSTEN GILLIBRAND
United States Senator



AMY KLOBUCHAR
United States Senator