

From: Lasseter, David F. (OLA)
Subject: FW: HPSCI - Notification
To: Boyd, Stephen E. (OLA)
Sent: March 27, 2019 10:12 AM (UTC-04:00)
Attached: 20190325 - Joint Chairs Letter to AG re Special Counsel.pdf

I know there was a back and forth with Brian Rabbit on this issue. Just wondering if we need to convene some meeting or discussion.

From: Bitar, Maher <(b) (6)>
Sent: Monday, March 25, 2019 7:02 PM
To: Lasseter, David F. (OLA) (b) (6); Boyd, Stephen E. (OLA) (b) (6)
Cc: Goldman, Daniel (b) (6); Bergreen, Timothy <(b) (6)>
Subject: RE: HPSCI - Notification

Duplicative Material (Document ID 0.7.960.6955)

From: Lasseter, David F. (OLA)
Subject: FW: Report of Special Counsel Robert Mueller
To: Colborn, Paul P (OLC)
Cc: Weinsheimer, Bradley (ODAG)
Sent: March 27, 2019 3:39 PM (UTC-04:00)
Attached: 2019-03-25 Letter to AG Barr Re Special Counsel.pdf, Response to March 25 Chair Nadler SCO letter.docx

Paul—attached is the recent letter from multiple House chairman asking for the Mueller report and associated documents. Brad drafted the attached response. Could you review?

Admittedly, we need to gather and discuss production of materials generally but wanted you to review this in the interim.

Thanks,
dfi

From: Emmons, William <(b) (6)>
Sent: Monday, March 25, 2019 5:22 PM
To: DOJ Correspondence (SMO) <Ex_DOJCorrespondence@jmd.usdoj.gov>; Lasseter, David F. (OLA)
(b) (6) Boyd, Stephen E. (OLA) (b) (6)
Cc: Hiller, Aaron (b) (6)
Subject: Report of Special Counsel Robert Mueller

Please see the attached correspondence from Chairman Jerrold Nadler and other senior Democratic members of the House pertaining to the report of Special Counsel Robert Mueller.

From:
Subject: SCO interaction March 27-29
To:
Sent: March 29, 2019 1:43 PM (UTC-04:00)

As we discussed last week, I received a hand-delivered package from SCO on the evening of March 27 that contained a cover letter from Special Counsel and a document that was described as a redacted version of the Introduction and Executive Summaries to Volumes 1 and 2 of the Special Counsel's Report. I did not know this package was coming and I did not know that Special Counsel Mueller was considering preparing the letter contained in it. I previously had several discussions during March 25-27, principally with Aaron Zebley, but also with Jim Quarles, about the SCO assistance in identifying Rule 6(e) material, information that could implicate intelligence community equities, material whose release could prejudice ongoing matters now being handled by other Department components and material that could prejudice the privacy or reputational interests of third parties. These discussions built on earlier conversations that we have had with SCO on these issues. Upon receiving this package on the evening of March 27, I quickly reviewed its contents and discussed it briefly with the DAG and you. First thing on Thursday morning, March 28, I brought the letter and redacted documents to Brian Rabbitt and we discussed the contents. Later that morning, Brian, the DAG and I had a meeting with the AG and (b) (5)



Edward C. O'Callaghan
Principal Associate Deputy Attorney General
United States Department of Justice

(o) (b) (6)
(c) (b) (6)

From: Kupec, Kerri \ (OPA)\
Subject: DOJ Letter to Congress Regarding the Mueller Report
To: Kupec, Kerri \ (OPA)\
Sent: March 29, 2019 3:16 PM (UTC-04:00)
Attached: AGLetter32919.pdf

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

(b) (6)



The Attorney General
Washington, D.C.

March 29, 2019

The Honorable Lindsey Graham
Chairman, Committee on the Judiciary
United States Senate
290 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Jerrold Nadler
Chairman, Committee on the Judiciary
United States House of Representatives
2132 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Graham and Chairman Nadler,

I write in response to Chairman Nadler's March 25, 2019 letter and Chairman Graham's March 27, 2019 letter, which addressed the investigation of Special Counsel Robert S. Mueller, III and the "confidential report" he has submitted to me pursuant to 28 C.F.R. § 600.8(c).

As we have discussed, I share your desire to ensure that Congress and the public have the opportunity to read the Special Counsel's report. We are preparing the report for release, making the redactions that are required. The Special Counsel is assisting us in this process. Specifically, we are well along in the process of identifying and redacting the following: (1) material subject to Federal Rule of Criminal Procedure 6(e) that by law cannot be made public; (2) material the intelligence community identifies as potentially compromising sensitive sources and methods; (3) material that could affect other ongoing matters, including those that the Special Counsel has referred to other Department offices; and (4) information that would unduly infringe on the personal privacy and reputational interests of peripheral third parties. Our progress is such that I anticipate we will be in a position to release the report by mid-April, if not sooner. Although the President would have the right to assert privilege over certain parts of the report, he has stated publicly that he intends to defer to me and, accordingly, there are no plans to submit the report to the White House for a privilege review.

Also, I am aware of some media reports and other public statements mischaracterizing my March 24, 2019 supplemental notification as a "summary" of the Special Counsel's investigation and report. For example, Chairman Nadler's March 25 letter refers to my supplemental notification as a "four-page summary of the Special Counsel's review." My March 24 letter was not, and did not purport to be, an exhaustive recounting of the Special Counsel's investigation or

report. As my letter made clear, my notification to Congress and the public provided, pending release of the report, a summary of its “principal conclusions”—that is, its bottom line. The Special Counsel’s report is nearly 400 pages long (exclusive of tables and appendices) and sets forth the Special Counsel’s findings, his analysis, and the reasons for his conclusions. Everyone will soon be able to read it on their own. I do not believe it would be in the public’s interest for me to attempt to summarize the full report or to release it in serial or piecemeal fashion.

As I have discussed with both of you, I believe it would be appropriate for me to testify publicly on behalf of the Department shortly after the Special Counsel’s report is made public. I am currently available to testify before the Senate Judiciary Committee on May 1, 2019 and before the House Judiciary Committee on May 2, 2019.

* * *

Finally, in the interests of keeping the public informed as to these matters, I intend to make this letter public after delivering it to you.

Sincerely,

A handwritten signature in dark ink, appearing to read "W.P. Barr", with a stylized flourish at the end.

William P. Barr
Attorney General

cc: Ranking Member Dianne Feinstein; Ranking Member Doug Collins

From: Kupec, Kerri \ (OPA)\
Subject: DOJ Letter to Congress Regarding the Mueller Report
To: Kupec, Kerri \ (OPA)\
Sent: March 29, 2019 3:16 PM (UTC-04:00)
Attached: AGLetter32919.pdf

See attached.

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

(b) (6)



U.S. Department of Justice

Office of the Deputy Attorney General

Washington, D.C. 20530

June 27, 2018

The Honorable Charles Grassley
Chairman, Committee on the Judiciary
United States Senate
Washington, DC 20510-6275

Dear Chairman Grassley:

Thank you for your letter of May 17, 2018, and for meeting with me last Thursday, along with Ranking Member Feinstein. I appreciate your commitment to allow the Special Counsel investigation "to follow the facts wherever they lead without any improper outside interference."

I know that you and Ranking Member Feinstein share my commitment to protecting the integrity of federal investigations. Agents and prosecutors must base each decision on neutral standards and credible evidence. As we seek to do in all cases, the Department of Justice will complete the Special Counsel investigation as promptly as is feasible. When the investigation is finished, I anticipate that any objective and nonpartisan review will conclude that the Department consistently sought to make reasonable decisions and to comply with applicable laws, regulations, policies, and practices.

Legal, ethical, and policy obligations often prevent prosecutors from responding to criticism. As Attorney General Robert Jackson observed in 1940, prosecutors have a duty "to face any temporary criticism" and "maintain a dispassionate, disinterested, and impartial enforcement of the law."¹ The Inspector General's report addresses the consequences of trying to preempt criticism by disregarding principles that prohibit public statements, leaks to the media, and improper disclosures to the Congress about criminal investigations. Department officials must defend those principles in order to ensure that all investigations remain independent of partisan politics. We do not compete to win the hourly news cycle.

Special Counsel Appointment and Authority

Your May 17 letter asks a series of questions concerning the scope of the Special Counsel's authority. The current Special Counsel differs from an "independent counsel" and

¹ Robert H. Jackson, Attorney General of the United States, Twentieth Anniversary Dinner of the Federal Bar Association, Jan. 20, 1940, available at <https://www.justice.gov/sites/default/files/ag/legacy/2011/09/16/01-20-1940.pdf>.

some previous “special counsels,” because Special Counsel Mueller was appointed by the Department of Justice and remains subject to ongoing supervision.

The Attorney General retains the general authority to designate or name individuals as “special counsels” to conduct investigations or prosecutions of particular matters or individuals on behalf of the United States. Under regulations issued by the Attorney General in 1999, the Attorney General may appoint a “special counsel” from outside of the Department of Justice who acts as a special employee of the Department of Justice under the direction of the Attorney General. The Attorney General, however, may also appoint an individual as a special counsel, and may invest that individual with a greater degree of independence and autonomy to conduct investigations and prosecutions, regardless of any “special counsel” regulations, as Attorneys General did in 1973, 1994, and 2003.²

What a prosecutor is *called* – including “independent” or “special” – is a separate question from whether that prosecutor is subject to supervision by the Attorney General. Under the terms of his appointment, both by statute³ and by regulation,⁴ Special Counsel Mueller remains accountable like every other subordinate Department official.⁵

Special Counsels have been appointed for a variety of matters throughout history. For example, Attorney General William Barr appointed three Special Counsels from outside the Department of Justice during his 14-month tenure: (1) Nicholas Bua to investigate an array of allegations related to the “Inslaw Affair,” on November 7, 1991; (2) Malcolm Wilkey to investigate the House Bank controversy, on March 20, 1992; and (3) Frederick Lacey to investigate the Bush Administration’s handling of a bank fraud case involving loans to Iraq, on October 17, 1992.⁶

Attorney General Janet Reno appointed Robert Fiske as a Special Counsel to investigate the Whitewater land deal and other matters on January 20, 1994. Mr. Fiske explained that the appointment order was “deliberately drafted broadly ... to give me total authority to look into all appropriate matters relating to the events” For example, Mr. Fiske investigated a suicide in order to determine whether it might involve a crime related to his investigation – it did not – and prosecuted a fraud case with no obvious connection to Whitewater. Federal agents and

² Congressional Research Service, “Independent Counsels, Special Prosecutors, Special Counsels, and the Role of Congress,” Summary (June 20, 2013), available at <https://fas.org/sgp/crs/misc/R43112.pdf>.

³ 28 U.S.C. § 515, available at <https://www.law.cornell.edu/uscode/text/28/515>.

⁴ 28 CFR § 600.7, available at <https://www.law.cornell.edu/cfr/text/28/600.7>.

⁵ Many Department officials exercise authority to conduct criminal investigations without Senate confirmation. In the absence of a confirmed U.S. Attorney or Assistant Attorney General, non-Senate-confirmed attorneys routinely lead U.S. Attorney’s Offices and Department Divisions. Congress has authorized the Attorney General and federal judges to appoint persons to serve as U.S. Attorneys in the absence of Senate-confirmed officials. Assistant Attorneys General (confirmed, Presidentially-appointed, or acting) and U.S. Attorneys (confirmed, Attorney-General appointed, court-appointed, or acting) delegate authority to attorneys under their supervision. When conflicts arise, other Department officials may be designated to exercise the authority of a U.S. Attorney. Each of those prosecutors faces varying degrees of oversight, but they are all accountable to the Attorney General and the Deputy Attorney General, who retain authority to overrule them.

⁶ Congressional Research Service, Independent Counsel Law Expiration and the Appointment of “Special Counsels” 3-4 (Jan. 15, 2002).

prosecutors already were investigating crimes when Mr. Fiske was appointed, but the appointment order did not mention the crimes. When asked about supervision of Mr. Fiske, Attorney General Reno said, "I do not expect him to report to me,... and I do not expect to monitor him."⁷ That is not true of Special Counsel Mueller.

Then-Deputy Attorney General James Comey took a different approach in 2003, when he invoked his authority as Acting Attorney General to appoint Patrick Fitzgerald as a special prosecutor to investigate the Valerie Plame matter. Mr. Comey did not make that appointment under the Department's Special Counsel regulation. Instead, he delegated to the special prosecutor "all the authority of the Attorney General ... independent of the supervision or control of any officer of the Department." Mr. Comey followed up with a letter reinforcing that his delegation was "plenary."⁸ That is not true of Special Counsel Mueller's appointment.

The Ethics in Government Act allowed several statutory Independent Counsels to be appointed in the absence of probable cause that a crime had occurred, and some of those appointments were not publicized. Even under the Act, when prosecutors were under much less supervision than Special Counsels are under the Department's regulation, Congress did not interfere in the investigations. The statute required the Independent Counsel to submit an annual report to the Congress, but it allowed him to "omit any matter that in the judgment of the independent counsel should be kept confidential."⁹

Because the Attorney General's authority over Independent Counsels was limited, the judicial orders appointing them were a principal way to cabin their jurisdiction. Nonetheless, appointments often were made with "a broadly worded charter."¹⁰ For example, the appointment order for Whitewater Independent Counsel Kenneth Starr gave him authority to investigate "whether any individuals or entities have committed a violation of any federal criminal law ... relating in any way to James B. McDougal's, President William Jefferson Clinton's, or Mrs. Hillary Rodham Clinton's relationships with Madison Guaranty Savings & Loan Assn., Whitewater Development Corp., or Capital Management Services Inc."¹¹ McDougal owned and managed Madison Guaranty, so that charter provided vast discretion to investigate essentially any crime committed by any person that involved the savings and loan association. The Independent Counsel identified other unrelated matters of investigative interest, and he obtained orders from the court expanding his mandate, including "Travelgate," "Filegate," and the

⁷ Transcript of Weekly Press Briefing With Attorney General and Robert B. Fiske Jr., Former U.S. Attorney General in New York and Independent Prosecutor, Jan. 20, 1994, available at <https://www.justice.gov/archive/ag/speeches/1994/01-20-1994.pdf>.

⁸ Exhibit A, Letter from Deputy Attorney General James B. Comey to Patrick J. Fitzgerald (Dec. 30, 2003); Exhibit B, Letter from Deputy Attorney General James B. Comey to Patrick J. Fitzgerald (Feb. 6, 2004); Exhibit C, Letter from Deputy Attorney General James B. Comey to Associate Deputy Attorney General David Margolis (Aug. 12, 2005); Exhibit D, Deputy Attorney General James Comey, Department of Justice Press Conference (Dec. 30, 2003), available at https://www.justice.gov/archive/osc/documents/2006_03_17_exhibits_a_d.pdf.

⁹ 28 U.S.C. § 595, available at <https://www.law.cornell.edu/uscode/text/28/595>.

¹⁰ Stephen Labaton, *The Whitewater Inquiry: The Decision; Judges Appoint New Prosecutor For Whitewater*, New York Times, Aug. 6, 1994, available at <https://www.nytimes.com/1994/08/06/us/the-whitewater-inquiry-the-decision-judges-appoint-new-prosecutor-for-whitewater.html>.

¹¹ *Text of Order Appointing Starr*, Los Angeles Times, Aug. 6, 1994, available at http://articles.latimes.com/1994-08-06/news/mn-24149_1_independent-counsel.

Lewinsky matter.¹² The Attorney General did not supervise or control the Independent Counsel's decisions about which crimes and subjects to investigate within his broad mandates, or which persons to prosecute.

When the Independent Counsel statute expired, the Department adopted the current Special Counsel regulation as an internal policy concerning the appointment and management of Special Counsels. The regulation provides for congressional notification when an appointment is made and when it concludes. At the conclusion of the investigation, it requires notification to Congress of instances when the Attorney General concluded that a proposed action by the Special Counsel should not be pursued. The regulation contemplates ongoing consultation with Department components and continuing oversight by the Attorney General (or the Acting Attorney General), who remains accountable as in all other cases handled by the Department of Justice. The regulation achieves the objective of conducting an independent investigation while following normal Department policies, including supervision by a Senate-confirmed officer.

There is no statutory requirement to identify criminal violations before appointing a Special Counsel from outside the Department, and there is no requirement to publicize suspected violations in the appointment order under the Special Counsel regulation. Only one previous Special Counsel was appointed under the current regulation: John Danforth, to investigate the Waco matter, on September 9, 1999. As with Special Counsel Mueller, Mr. Danforth's appointment order did not publicly specify a crime or identify anyone as a subject.¹³

Special Counsel Mueller's Appointment and Delegated Authority

I determined that the appointment of Special Counsel Mueller to take charge of criminal matters that were already under investigation by federal agents and prosecutors was warranted under the Special Counsel regulation. The appointment order mentions 28 C.F.R. §§ 600.4 to 600.10 because they bear on the authority and duties of the Special Counsel. The public order did not identify the crimes or subjects because such publicity would be wrong and unfair, just as it would have been wrong and unfair to reveal that information prior to Special Counsel's appointment, and just as it would be wrong and unfair in other cases handled by a U.S. Attorney or Assistant Attorney General.

So long as the Attorney General or the Acting Attorney General remains accountable, there is federal statutory and regulatory authority to assign matters to a Special Counsel, just as the Attorney General and the Deputy Attorney General (even when the Attorney General is not recused¹⁴) have authority to assign matters to an Acting U.S. Attorney or any other Department

¹² John Mintz & Toni Locy, *Starr's Probe Expansion Draws Support, Criticism*, Washington Post, Jan. 23, 1998, available at https://www.washingtonpost.com/archive/politics/1998/01/23/starrs-probe-expansion-draws-support-criticism/6b907a9b-4db3-481d-8202-76db89360ab3/?utm_term=.1736da7300e2; <http://library.cqpress.com/cqresearcher/document.php?id=cqresrr1999050700>.

¹³ When asked, "Do you consider this a criminal review or an administrative review?" Danforth replied, "I don't know." Transcript of Press Conference with Attorney General Janet Reno Re: Appointment of Former Senator John Danforth to head Waco Probe, Sept. 9, 1999, available at <https://www.justice.gov/archive/ag/speeches/1999/agwaco9999.htm>.

¹⁴ 28 CFR § 0.1, available at <https://www.law.cornell.edu/cfr/text/28/0.15>.

official.¹⁵ The U.S. District Court for the District of Columbia recognized as much in its opinion in *Manafort v. United States*.¹⁶

When Special Counsel Mueller was appointed, he received comprehensive briefings about the relevant allegations and documents that described them in considerable detail, as with previous special counsel appointments. Some of the FBI agents who were investigating those matters continued to do so. The Department assigned a team of career and non-career officials to provide supervision and assist the Acting Attorney General in determining which leads should be handled by the Special Counsel and which by other Department prosecutors, and to review any proposed indictments in conjunction with Department components that ordinarily would review them.

The regulation states that the Special Counsel has the powers and authority of a U.S. Attorney (who may or may not be Senate-confirmed) and must follow Department policies and procedures.¹⁷ Under those policies and procedures, the Department should reveal information about a criminal investigation only when it is necessary to assist the criminal investigation or to protect public safety.¹⁸

In August 2017, Special Counsel Mueller received a written internal memorandum from the Acting Attorney General. The memorandum eliminated the ability of any subject, target, or defendant to argue that the Special Counsel lacked delegated authority under 28 U.S.C. § 515 to represent the United States. The names of the subjects were already in Department files, but we did not publicly disclose them because to do so would violate the Department's confidentiality policies.

Many of the questions raised in your letter concern the distinction between a counterintelligence investigation and a criminal investigation. The primary goal of a counterintelligence investigation is to protect against national security threats by, among other things, collecting intelligence information and disrupting foreign influence operations. The goal of a criminal investigation is to determine whether there is sufficient evidence to prosecute a criminal suspect in federal court. There was a "wall" between the two prior to September 11, 2001. There is no longer a wall, but agents and prosecutors are mindful that counterintelligence investigations may be broader than any criminal prosecutions that they generate.

The public announcement of the Special Counsel's appointment purposefully included no details beyond what Director Comey had disclosed at a public House Permanent Select Committee on Intelligence hearing on March 20, 2017. Director Comey revealed that:

the FBI, as part of our counterintelligence mission, is investigating the Russian government's efforts to interfere in the 2016 presidential election, and that includes *investigating the nature of any links between individuals associated with the Trump campaign and the Russian government, and whether there was any coordination*

¹⁵ 28 U.S.C. § 515, available at <https://www.law.cornell.edu/uscode/text/28/515>.

¹⁶ *Manafort v. U.S. Department of Justice et al*, Memorandum Opinion, No. 37, Apr. 27, 2018, available at <https://docs.justia.com/cases/federal/district-courts/district-of-columbia/dcdce/1:2018cv00011/192498/37>.

¹⁷ 28 CFR § 600.6, available at <https://www.law.cornell.edu/cfr/text/28/600.6>.

¹⁸ U.S. Attorneys' Manual § 1-7.100, available at <https://www.justice.gov/usam/usam-1-7000-media-relations#1-7.110>; *Id.* § 1-7.400, available at <https://www.justice.gov/usam/usam-1-7000-media-relations#1-7.110>.

*between the campaign and Russia's efforts. As with any counterintelligence investigation, this will also include an assessment of whether any crimes were committed. Because it is an open, ongoing investigation, and is classified, I cannot say more about what we are doing and whose conduct we are examining. At the request of congressional leaders, we have taken the extraordinary step ... of briefing this Congress's leaders, including the leaders of this Committee, in a classified setting, in detail about the investigation.*¹⁹

As is now publicly known, the Department of Justice and the FBI were conducting several investigations with potential relevance to Russian interference in the 2016 election when Special Counsel Mueller was appointed in May 2017. The public order explained that the Special Counsel will “ensure a full and thorough investigation of the Russian government’s efforts to interfere in the 2016 presidential election.”²⁰ Special Counsel Mueller is authorized to investigate potential criminal offenses. Counterintelligence investigations involving any current or future Russian election interference are not the Special Counsel’s responsibility.

Congressional Oversight Requests

Department of Justice and FBI personnel are working diligently and in good faith to provide an unprecedented level of congressional access to information that members of Congress believe may be relevant. Our responses to the many related and overlapping congressional inquiries are consistent with longstanding best practices. We respond as quickly as possible to the inquiries and accommodate requests when possible. We cannot fulfill requests that would compromise the independence and integrity of investigations, jeopardize intelligence sources and methods, or create the appearance of political interference. We need to follow the rules.

In 2016 and 2017, then-Director Comey made disclosures to the public and to Congress that he has acknowledged would not have been appropriate under regular order. He maintains that his 2016 statements to the public and to the Congress about the Hillary Clinton email investigation were justified by unique circumstances comparable to a “500-year flood.”²¹ He further believes that his 2017 disclosures about the investigation of alleged links between the Russian government agents who interfered in the election and persons associated with the Trump campaign were an “extraordinary step” justified by “unusual circumstances.”²²

It is important for the Department of Justice to follow established policies and procedures, especially when the stakes are high. It may seem tempting to depart from Department policies and traditions in an effort to deflect short-term criticism, but such deviations

¹⁹ House Permanent Select Committee on Intelligence (HPSCI), “Written Statement of James Comey to HPSCI Hearing Titled Russian Active Measures Investigation” March 20, 2017, available at <https://www.fbi.gov/news/testimony/hpsc-hearing-titled-russian-active-measures-investigation>.

²⁰ Press Release, Office of the Deputy Attorney General, Appointment of Special Counsel to Investigate Russian Interference With The 2016 Presidential Election and Related Matters, May 17, 2017, available at <https://www.justice.gov/opa/press-release/file/967231/download>.

²¹ Carrie Johnson, *James Comey Says FBI 'Would Be Worse Today' If Not For His Actions*, WAMU 88.5 American University, Apr. 17, 2018, available at <https://wamu.org/story/18/04/17/james-comey-says-fbi-would-be-worse-today-if-not-for-his-actions/>.

²² House Permanent Select Committee on Intelligence (HPSCI), “Written Statement of James Comey to HPSCI Hearing Titled Russian Active Measures Investigation” March 20, 2017, available at <https://www.fbi.gov/news/testimony/hpsc-hearing-titled-russian-active-measures-investigation>.

ultimately may cause a loss of public confidence in the even-handed administration of justice. We should be most on guard when we believe that our own uncomfortable present circumstances justify ignoring timeless principles respected by our predecessors. I urge you and your colleagues to support us in following the rules.

At my confirmation hearing, I promised that Department employees would conduct ourselves “with deep respect for the institution and employees of the Department of Justice, with acute understanding of our role in the constitutional structure, and with profound appreciation of our weighty responsibilities.”²³ My commitment to the Department’s longstanding traditions carries with it an obligation to ensure that we keep pending law enforcement matters separate from the sphere of politics and that there be no perception that our law enforcement decisions are influenced by partisan politics or pressure from legislators.

Regardless of political affiliation, thoughtful former Department leaders recognize that departures from our confidentiality policies pose an extraordinary threat to the Department’s independence and integrity. Former Deputy Attorneys General Larry Thompson and Jamie Gorelick explained that the Department of Justice “operates under long-standing and well-established traditions limiting disclosure of ongoing investigations to the public and even to Congress.... These traditions protect the integrity of the department” Violating those policies and disclosing information about criminal investigations constitutes “real-time, raw-take transparency taken to its illogical limit, a kind of reality TV of federal criminal investigation” that is “antithetical to the interests of justice.”²⁴

Punishing wrongdoers through judicial proceedings is only one part of the Department’s mission. We also have a duty to prevent the disclosure of information that would unfairly tarnish people who are not charged with crimes. In 1941, Attorney General Robert Jackson explained that disclosing information about federal investigations to Congress could cause “the grossest kind of injustice to innocent individuals,” and create “serious prejudice to the future usefulness of the Federal Bureau of Investigation.” It is useful to quote at length from the Attorney General’s letter:

[W]e have made extraordinary efforts to see that the results of counterespionage activities and intelligence activities of this Department involving those elements are kept within the fewest possible hands. A catalogue of persons under investigation or suspicion, and what we know about them, would be of inestimable service to foreign agencies; and information which could be so used cannot be too closely guarded.

Moreover, disclosure of the reports would be of serious prejudice to the future usefulness of the Federal Bureau of Investigation. As you

²³ United States Senate Committee On The Judiciary, “Written Statement Of Rod J. Rosenstein Nominee To Serve As Deputy Attorney General” March 7, 2017, available at <https://www.judiciary.senate.gov/imo/media/doc/03-07-17%20Rosenstein%20Testimony.pdf>.

²⁴ Jamie Gorelick and Larry Thompson, *James Comey is damaging our democracy*, The Washington Post, October 29, 2016, available at https://www.washingtonpost.com/opinions/james-comey-is-damaging-our-democracy/2016/10/29/894d0f5e-9e49-11e6-a0ed-ab0774c1eaa5_story.html?noredirect=on&utm_term=.81fcfa641bdd.

probably know, much of this information is given in confidence and can only be obtained upon pledge not to disclose its sources. A disclosure of the sources would embarrass informants -- sometimes in their employment, sometimes in their social relations, and in extreme cases might even endanger their lives. We regard the keeping of faith with confidential informants as an indispensable condition of future efficiency.

Disclosure of information contained in the reports might also be the grossest kind of injustice to innocent individuals. Investigative reports include leads and suspicions, and sometimes even the statements of malicious or misinformed people. Even though later and more complete reports exonerate the individuals, the use of particular or selected reports might constitute the grossest injustice, and we all know that a correction never catches up with an accusation.

In concluding that the public interest does not permit general access to Federal Bureau of Investigation reports for information by the many congressional committees who from time to time ask it, I am following the conclusions reached by a long line of distinguished predecessors in this office who have uniformly taken the same view....

Since the beginning of the Government, the executive branch has from time to time been confronted with the unpleasant duty of declining to furnish to the Congress and to the courts information which it has acquired and which is necessary to it in the administration of statutes.²⁵

Attorney General Jackson's letter mentioned that the pending congressional request was "one of the many made by congressional committees." He understood the profoundly harmful consequences of proceeding down a road that would empower congressional members and staffers to choose which federal investigations should be publicized.

Congressional leaders respected Attorney General Jackson's obligation to do the job he swore an oath to perform -- "well and faithfully execute the duties of the office" -- by preserving the independence of federal law enforcement and protecting it from political influence. President Eisenhower later agreed, finding that "it is essential to the successful working of our system that the persons entrusted with power in any of the three great branches of government shall not encroach upon the authority confided to the others."²⁶

Requiring the Department of Justice to disclose details about criminal investigations would constitute a dangerous departure from important principles. Criminal *prosecutions* should be relatively transparent -- because the public should know the grounds for finding a citizen guilty of criminal offenses and imposing punishment -- but criminal *investigations* emphatically are not supposed to be transparent. In fact, disclosing uncharged allegations against American

²⁵ 40 Op. Att'y Gen. 45, 46-48 (1941), http://pogoblog.typepad.com/1941_Att'y_Gen_Op_FBI_files.htm.

²⁶ Dwight D. Eisenhower, President of the United States, "Letter to the Secretary of Defense Directing Him To Withhold Certain Information from the Senate Committee on Government Operations," May 17, 1954, available at <http://www.presidency.ucsb.edu/ws/index.php?pid=9890>.

citizens without a law-enforcement need is considered to be a violation of a prosecutor's trust.²⁷ As stated in the Department's Principles of Federal Prosecution:

In all public filings and proceedings, federal prosecutors should remain sensitive to the privacy and reputation interests of uncharged third-parties. In the context of public plea and sentencing proceedings, this means that, *in the absence of some significant justification, it is not appropriate to identify (either by name or unnecessarily-specific description), or cause a defendant to identify, a third-party wrongdoer unless that party has been officially charged with the misconduct at issue.* In the unusual instance where identification of an uncharged third-party wrongdoer during a plea or sentencing hearing is justified, the express approval of the United States Attorney and the appropriate Assistant Attorney General should be obtained prior to the hearing absent exigent circumstances.... In other less predictable contexts, *federal prosecutors should strive to avoid unnecessary public references to wrongdoing by uncharged third-parties.* With respect to bills of particulars that identify unindicted co-conspirators, prosecutors generally should seek leave to file such documents under seal. Prosecutors shall comply, however, with any court order directing the public filing of a bill of particulars.

As a series of cases makes clear, *there is ordinarily "no legitimate governmental interest served" by the government's public allegation of wrongdoing by an uncharged party,* and this is true "[r]egardless of what criminal charges may . . . b[e] contemplated by the Assistant United States Attorney against the [third-party] for the future." In re Smith, 656 F.2d 1101, 1106-07 (5th Cir. 1981). Courts have applied this reasoning to preclude the public identification of unindicted third-party wrongdoers in plea hearings, sentencing memoranda, and other government pleadings....

In most cases, any legitimate governmental interest in referring to uncharged third-party wrongdoers can be advanced through means other than those condemned in this line of cases. For example, in those cases where the offense to which a defendant is pleading guilty requires as an element that a third-party have a particular status (e.g., 18 U.S.C. § 203(a)(2)), the third-party can usually be referred to generically ("a Member of Congress"), rather than identified specifically ("Senator X"), at the defendant's plea hearing. Similarly, when the defendant engaged in joint criminal conduct with others, generic references ("another individual") to the uncharged third-party

²⁷ 24 J. Am. Jud. Soc'y 18 (1940), 31 J. Crim. L. 3 (1940), "Address at Conference of United States Attorneys, Washington, D.C." (April 1, 1940), available at <https://www.roberthjackson.org/speech-and-writing/the-federal-prosecutor/>.

wrongdoers can be used when describing the factual basis for the defendant's guilty plea.²⁸

Even when we file federal charges, Department policy strongly counsels us not to implicate by name any person who is not officially charged with misconduct.

The recent Inspector General report emphasizes the solemn duty of federal law enforcement officials to defend the confidentiality of federal investigations. I hope you and your colleagues in the Senate and House will support us in restoring those principles. The Department of Justice must not proceed along the unhappy road to being perceived as a partisan actor, deciding what information to reveal and what information to conceal based on the expected impact on the personal or political interests of its temporary leaders and congressional allies.

The current investigation of election interference is important, but there are also thousands of other important investigations pending in the Department of Justice and the FBI. Every investigation is important to the persons whose reputations may be irreparably damaged or whose careers may be permanently disrupted. No matter who an investigation involves – an ordinary citizen, a local or state politician, a campaign official, a foreign agent, or an officer of the federal legislative, executive, or judicial branch – agents and prosecutors are obligated to protect its confidentiality and preserve the Department's independence from political influence.

Throughout American history, wise legislators have worked with Department officials to limit oversight requests in order to respect the Department's duty to protect national security, preserve personal privacy, and insulate investigations from the appearance of interference.²⁹ For instance, the Department sent a letter to a House committee chair in 2000, describing the Department's policies on responding to congressional oversight requests. The letter explains:

Such inquiries inescapably create the risk that the public and the courts will perceive undue political and Congressional influence over law enforcement and litigation decisions. Such inquiries also often seek records and other information that our responsibilities for these matters preclude us from disclosing.³⁰

The letter quotes President Ronald Reagan, who wrote that a "tradition of accommodation should continue as the primary means of resolving conflicts between the Branches." Regardless of whether an inter-branch information request is made by letter or subpoena, the relationship between the branches gives rise to "an implicit constitutional mandate,"³¹ to "reach an accommodation short of full-scale confrontation."³² It must not be the case that the Department

²⁸ United States Attorneys' Manual, 9-27.760 - Limitation on Identifying Uncharged Third-Parties Publicly, available at <https://www.justice.gov/usam/usam-9-27000-principles-federal-prosecution#9-27.760>.

²⁹ The Department of Justice is created and funded by legislation – just like the lower federal courts – but the Department of Justice is a central component of the executive branch, a coequal partner with the legislative branch and the judicial branch in our constitutional structure.

³⁰ Robert Raben, Assistant Attorney General, "DOJ View Letters on Subcommittee on Rules and Organization of the House testimony on 'Cooperation, Comity, and Confrontation: Congressional Oversight of the Executive Branch'" July 15, 1999, available at <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/linder.pdf>.

³¹ *United States v. AT&T Co.*, 567 F.2d 121, 127 (D.C. Cir. 1977).

³² Bradley & Goldsmith, *Foreign Relations Law* (4th ed. 2017).

is required to risk damage to reputations, put cases and lives at risk, and invite political interference by opening sensitive files to congressional staff without restriction.

Tension between Congress's oversight interests and the Department's solemn responsibility to protect law enforcement information is unavoidable. In 1989, then-Assistant Attorney General William Barr wrote that misunderstandings often arise because congressional investigations, by their nature, are usually adversarial and unbounded by the rules of evidence.³³ In another 1989 opinion, the Department's Office of Legal Counsel explained that "the executive branch has ... consistently refused to provide confidential information" to "congressional committees with respect to open cases."³⁴

Sometimes there is a strong temptation to seek short-term benefit at the cost of long-term values. But departures from Department traditions contribute to a loss of public confidence. We can build public confidence if we stick to the principle that the prosecutor is "the servant of the law, the twofold aim of which is that guilt shall not escape nor innocence suffer."³⁵

Approval of Foreign Intelligence Surveillance Act Applications

Finally, you asked whether I delegated approval authority under the Foreign Intelligence Surveillance Act. Such approval authority is not delegable beyond the approving officials designated in the Foreign Intelligence Surveillance Act. FISA affidavits are written and sworn under oath by career federal agents who verify that they are true and correct. They are reviewed by investigative agency supervisors and attorneys, and by Department of Justice attorneys and supervisors. Before filing, they must be approved by an intelligence agency leader, usually the FBI Director, and by either the Attorney General, the Deputy Attorney General, or the Assistant Attorney General for the National Security Division. In every case, the ultimate decision on whether to allow surveillance is made by a federal judge who independently determines whether the evidence provided under oath by the federal agent meets the requisite legal standard.

³³ Congressional Requests for Confidential Executive Branch Information, Memorandum Opinion for the General Counsel's Consultative Group, June 19, 1989, *available at* <https://www.justice.gov/file/24236/download>.

³⁴ Congressional Requests for Information from Inspectors General Concerning Open Criminal Investigations, Memorandum Opinion for the Chairman Investigations/Law Enforcement Committee President's Council on Integrity and Efficiency, March 24, 1989, *available at* <https://www.justice.gov/file/24181/download>.

³⁵ *Berger v. United States*, 295 U.S. 78 (1935), *available at* <https://supreme.justia.com/cases/federal/us/295/78/case.html>.

Conclusion

I hope that you find this information helpful. I regret that the many duties of my office preclude me from responding personally to every congressional inquiry. I am deeply grateful to have the support of a talented and dedicated team that understands our obligation to work cooperatively with the Congress to protect the American people and preserve the rule of law.

Sincerely,

/s/

Rod J. Rosenstein
Deputy Attorney General

cc: Ranking Member Feinstein
Chairman Goodlatte
Ranking Member Nadler

From: Boyd, Stephen E. (OLA)
Subject: SCO Handout
To: Prim F. Escalona (OLA) (b) (6)
Sent: March 31, 2019 3:21 PM (UTC-04:00)
Attached: op-olc-v025-p0001_0.pdf, 2018.6.27dagrosensteinlettertochairmangrassley.pdf, AG March 24 2019 Letter to House and Senate Judiciary Committees.pdf, Handout SCO Report.docx, Letter from the Attorney General_3.22.2019.pdf, Letter re.32919.pdf, op-olc-v008-p0252_0.pdf

Call you about this later today or tomorrow morning...

Stephen

Stephen E. Boyd
Assistant Attorney General
U.S. Department of Justice
Washington, D.C.

(b) (6)

THE DEPARTMENT OF JUSTICE MUST FOLLOW ALL APPLICABLE LAWS, FEDERAL REGULATIONS, AND DEPARTMENTAL POLICIES WHEN RELEASING THE SPECIAL COUNSEL'S REPORT.

The Department is faithfully following applicable federal regulations governing the Special Counsel, and must continue to do so.

- 28 CFR § 600.8 requires the Special Counsel, upon completion of his investigation, to “provide the Attorney General with a confidential report explaining the prosecution or declination decisions reached by the Special Counsel.”
 - Special Counsel Robert Mueller provided his “confidential report” to the Attorney General on March 22, 2019.
- 28 CFR § 600.9 requires the Attorney General to “notify the Chairman and Ranking Minority Member of the Judiciary Committees of each House of Congress” when the Special Counsel concludes his investigation. The regulation also requires the Attorney General to provide “a description and explanation” of any instance “in which the Attorney General concluded that a proposed action by a Special Counsel was so inappropriate or unwarranted under established Departmental practices that it should not be pursued.”
 - The Attorney General’s March 22, 2019 letter notified the Chairmen and Ranking Members of the House and Senate Judiciary Committees of the conclusion of the Special Counsel’s investigation, and noted that no such instance occurred.
- On March 24, 2019, the Attorney General provided a supplemental notification to inform the House and Senate Judiciary Committees of the Special Counsel “principal conclusions.” In that notification, the Attorney General wrote, “I am mindful of the public interest in this matter. For that reason, my goal and intent is to release as much of the Special Counsel report as I can consistent with applicable law, regulations, and Departmental policies.”
- On March 29, 2019, the Attorney General responded to separate letters from Chairman Graham and Chairman Nadler with additional information about the Department’s review process. Therein, the Attorney General noted that the Department was identifying and redacting four categories of information: (1) Material subject to Federal Criminal Rule of Procedure 6(e) that by law cannot be made public, (2) Material that the intelligence community identifies as potentially compromising to sources and methods, (3) Material that could affect other ongoing matters, and (4) Information that would unduly infringe on the personal privacy and reputational interests of peripheral third parties.
- Exercising the discretion provided in 28 CFR § 600.9, the Attorney General has elected to disclose to the public each of his notifications to Congress.

Because Federal law prohibits the public disclosure of Grand Jury material, the Department must identify and redact such material prior to the Report’s release.

- Federal Rules of Criminal Procedure 6(e) provides that government attorneys, grand jury jurors, and others “must not disclose a matter occurring before the grand jury.”
 - This rule, which imposes restrictions on the use and disclosure of information relating to “matter[s] occurring before [a] grand jury,” protects the integrity of grand jury proceedings and ensures that the unique investigative powers of a grand jury are used strictly for their intended criminal justice function.
 - “Accordingly, as a general matter, persons and entities external to the grand jury process are precluded from obtaining transcripts of grand jury testimony or other documents or information that would reveal what took place in the proceedings, even if the grand jury has concluded its work and even if the information is sought pursuant to otherwise-valid legal processes.” “Federal Grand Jury Secrecy: Legal Principles and Implications for Congressional Oversight,” Congressional Research Service, Report R45456 (January 10, 2019)
- Rule 6(e) provides a number of exceptions. Congressional oversight is not one of them.
- OLC opinion
- Court can order disclosure. (Process?)

The Department has a longstanding policy against disclosing non-public information about unindicted individuals.

- Department speaks through indictments and convictions.
- Justice Manual
- Rosenstein’s letter - <https://www.justice.gov/ola/page/file/1080041/download>

Suggestions that the Department’s prior release of information regarding the Federal Bureau of Investigation’s 2016 investigation into Secretary Clinton’s use of a private email server set a precedent for the release of the Special Counsel’s investigative files are false.

- The prior administration waived internal deliberative privilege as it related to the Clinton investigation.
 - On July 5, 2016, FBI Director James Comey publically discussed the FBI’s investigative activities and internal deliberations regarding the Clinton E-Mail investigation. The press conference represented a significant departure from established practices and procedures. [Quote?]
 - In August 2016, the FBI made sensitive investigative files available to certain Congressional committees. The documents included FBI 302’s and the FBI’s Letterhead Memorandum.

- The Inspector General announced a review of the matter on January 12, 2017. <https://oig.justice.gov/press/2017/2017-01-12.pdf>. (The IG's report was published in June 2018.)
 - [IG critique of Comey for inappropriate disclosures.]
- Given the prior administrations disclosure of information, the Department determined that it likely could not assert internal deliberative privileges in response to congressional oversight inquires.
 - Multiple congressional oversight committees sought access to the documents that the IG collected as part of his review. The IG indicated he had no objection to the Department providing those documents.
 - Because of FBI Director Comey's prior disclosures of information, the Department determined that it likely could not successfully assert internal deliberative privilege over the documents.
 - To the extent that information was provided through a unique accomodiation process, the Department took care to protect sensitive information and prevent the disclosure of information protected by law—including 6(e) material.
 - Unique process. Limited designated staff. Small percentage of documents actually produced in hard copy. Removed 6(e) . Removed info about ongoing or other investigations.
- Information provided as an accommodation of Congressional oversight requests about the early stages of the counter intelligence investigation Russian were appropriate under the circumstances, and were generally limited to activities that took place prior to the appointment of the Special Counsel.
- In contrast to Clinton, which was fully closed, the Department must protect information about ongoing investigations.
- In contrast to Comey's statements about the investigation , SCO Mueller, DAG Rosenstein, and other Department officials have made no public comment about the Special Counsel's investigation and declined to provide Congress sensitive information about the investigation.



The Attorney General
Washington, D.C.

March 22, 2019

The Honorable Lindsey Graham
Chairman, Committee on the Judiciary
United States Senate
290 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Jerrold Nadler
Chairman, Committee on the Judiciary
United States House of Representatives
2132 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Dianne Feinstein
Ranking Member, Committee on the Judiciary
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Doug Collins
Ranking Member, Committee on the Judiciary
United States House of Representatives
1504 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Graham, Chairman Nadler, Ranking Member Feinstein, and Ranking Member Collins:

I write to notify you pursuant to 28 C.F.R. § 600.9(a)(3) that Special Counsel Robert S. Mueller III has concluded his investigation of Russian interference in the 2016 election and related matters. In addition to this notification, the Special Counsel regulations require that I provide you with “a description and explanation of instances (if any) in which the Attorney General” or acting Attorney General “concluded that a proposed action by a Special Counsel was so inappropriate or unwarranted under established Departmental practices that it should not be pursued.” 28 C.F.R. § 600.9(a)(3). There were no such instances during the Special Counsel’s investigation.

The Special Counsel has submitted to me today a “confidential report explaining the prosecution or declination decisions” he has reached, as required by 28 C.F.R. § 600.8(c). I am reviewing the report and anticipate that I may be in a position to advise you of the Special Counsel’s principal conclusions as soon as this weekend.

Separately, I intend to consult with Deputy Attorney General Rosenstein and Special Counsel Mueller to determine what other information from the report can be released to Congress and the public consistent with the law, including the Special Counsel regulations, and the Department’s long-standing practices and policies. I remain committed to as much transparency as possible, and I will keep you informed as to the status of my review.

Finally, the Special Counsel regulations provide that “the Attorney General may determine that public release of” this notification “would be in the public interest.” 28 C.F.R. § 600.9(c). I have so determined, and I will disclose this letter to the public after delivering it to you.

Sincerely,


William P. Barr
Attorney General

From: Lasseter, David F. (OLA)
Subject: SCO report related requests
To: Weinsheimer, Bradley (ODAG); Colborn, Paul P (OLC)
Cc: Johnson, Joanne E. (OLA)
Sent: April 1, 2019 3:13 PM (UTC-04:00)
Attached: 2019-03-25 Letter to AG Barr Re Special Counsel.pdf, 2019-03-22 DOJ Preservation Letter.pdf, 3.25.2019 Feinstein to Barr re Mueller Investigation Report.pdf

Brad/Paul—just ensuring y'all have these three letters related to SCO report. I believe both of you have the first attachment but I don't know about the others. OLA will draft a response to the preservation request letter and will send to both of you. The other two we will discuss at our meeting.

Thanks,
dfi

David F. Lasseter
Deputy Assistant Attorney General
Office of Legislative Affairs
U.S. Department of Justice
(b) (6)

Congress of the United States
Washington, DC 20515

March 22, 2019

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

Dear Attorney General Barr:

We understand that Special Counsel Robert S. Mueller III has now concluded his investigation of the Russian government's efforts to interfere in the 2016 election and of "any links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump."¹ We also understand that Special Counsel Mueller has issued a report to you pursuant to 28 C.F.R. § 600.8(c).

We ask that you immediately take steps to preserve (1) Special Counsel Mueller's report; (2) all evidence underlying the report; and (3) all related work product and investigatory materials compiled by the Special Counsel's Office. This request applies to all documents, records, memoranda, correspondence, or other communications, or any portion thereof relevant to the work of the Special Counsel's Office. We remind you that concealing, removing, or destroying such records may constitute a crime.²

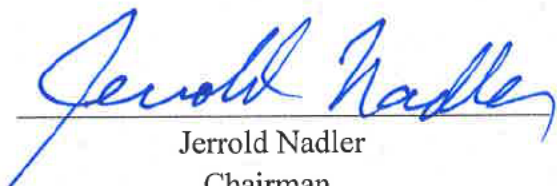
Committees of the United States Congress are conducting investigations parallel to those of the Special Counsel's Office, and preservation of these records is critical to ensure that we are able to do our work without interference or delay. We therefore ask that you immediately confirm that the Department of Justice is preserving these records and that you provide us with all orders, notices, and guidance regarding preservation of information related to these matters and investigations.

¹ *Appointment of Special Counsel to Investigate Russian Interference with the 2016 Presidential Election and Related Matters*, Order No. 3915-2017, Office of the Deputy Attorney General, May 17, 2017.

² 18 U.S.C. § 2071.

We look forward to your prompt attention and response to our request.

Sincerely,



Jerrold Nadler
Chairman
House Committee on the Judiciary



Dianne Feinstein
Ranking Member
Senate Committee on the Judiciary



Adam Schiff
Chairman
House Permanent Select Committee on Intelligence



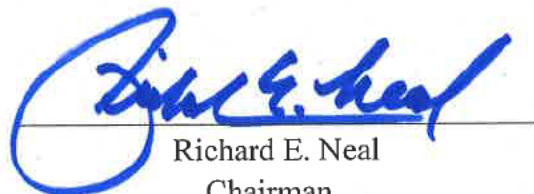
Mark Warner
Ranking Member
Senate Select Committee on Intelligence



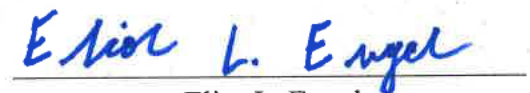
Elijah E. Cummings
Chairman
House Committee on Oversight and Reform



Maxine Waters
Chairwoman
House Committee on Financial Services



Richard E. Neal
Chairman
House Committee on Ways and Means



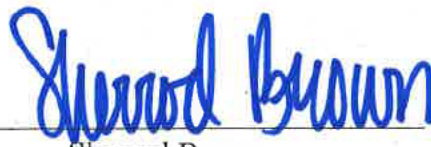
Eliot L. Engel
Chairman
House Committee on Foreign Affairs



Robert Menendez
Ranking Member
Senate Committee on Foreign Relations



Ron Wyden
Ranking Member
Senate Committee on Finance



Sherrod Brown

Ranking Member

Senate Committee on Banking, Housing, and Urban Affairs

cc:

Rod Rosenstein
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

John Demers
Assistant Attorney General for National Security
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Congress of the United States
Washington, DC 20515

March 25, 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:

Your March 24 letter concerning Special Counsel Mueller's report leaves open many questions concerning the conduct of the President and his closest advisors, as well as that of the Russian government during the 2016 presidential election. Accordingly, we formally request that you release the Special Counsel's full report to Congress no later than Tuesday, April 2. We also ask that you begin transmitting the underlying evidence and materials to the relevant committees at that time.

As you know, on March 14, the full House of Representatives approved H. Con. Res. 24, calling for the release of the Special Counsel's report by a vote of 420-0.¹ Each of our committees is currently engaged in oversight activities that go directly to the President's conduct, his attempts to interfere with federal and congressional investigations, his relationships and communications with the Russian government and other foreign powers, and/or other alleged instances of misconduct.

Your four-page summary of the Special Counsel's review is not sufficient for Congress, as a coequal branch of government, to perform this critical work. The release of the full report and the underlying evidence and documents is urgently needed by our committees to perform their duties under the Constitution. Those duties include evaluating the underlying facts and determining whether legislative or other reforms are required—both to ensure that the Justice

¹ Roll Call Vote No. 125, 116th Cong., Mar. 14, 2019.

Department is able to carry out investigations without interference or obstruction by the President and to protect our future elections from foreign interference.

First, Congress must be permitted to make an independent assessment of the evidence regarding obstruction of justice. The determinations you have reached regarding obstruction and the manner in which you chose to characterize the Special Counsel's investigation only raise further questions, particularly in light of the Special Counsel's decision to refrain from making "a traditional prosecutorial judgment."² We also cannot evaluate your determination that "the report identifies no actions" that meet the elements of obstruction in the absence of the report, evidence and other materials.³

Second, we have no reason to question that Special Counsel Mueller made a well-considered prosecutorial judgment in two specific and narrow areas—whether the Trump campaign conspired to join Russia's election-related online disinformation and hacking and dissemination efforts. But it is vital for national security purposes that Congress be able to evaluate the full body of facts and evidence collected and evaluated by the Special Counsel, including all information gathered of a counterintelligence nature.

The provision of the report—in complete and unredacted form—and the underlying evidence and materials would be fully consistent with the Justice Department's practice and precedent with Congress, which the Department reinforced in recent years. With respect to the Hillary Clinton email investigation, the Department and the FBI released more than 880,000 pages of documents, publicly identified career officials involved in the case, and produced volumes of internal deliberative materials, including sensitive investigatory and classified materials.⁴ In response to congressional requests and subpoenas regarding allegations of bias in the Russia investigation, the Department produced to congressional committees thousands of pages of highly sensitive law enforcement and classified investigatory and deliberative records related to that investigation—which remained open and ongoing at the time. Moreover, the Department produced to congressional committees in full, and then took the unprecedented step of releasing to the public in redacted form, multiple documents related to the surveillance of a United States person under the Foreign Intelligence Surveillance Act.⁵

² Letter from U.S. Attorney General William Barr to Chairman Jerrold Nadler, H. Comm. on the Judiciary, et al., Mar. 24, 2019.

³ *Id.*

⁴ See, e.g., *A Review of Allegations Regarding Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election*, hearing before the H. Comm. on the Judiciary, June 28, 2018 (statement of FBI Director Christopher Wray).

⁵ Byron Tau, et al., *Trump Orders Declassification of Intelligence Documents Related to Former Adviser Carter Page*, WALL ST. JOURNAL, Sept. 17, 2018.

We look forward to receiving the report in full no later than April 2, and to begin receiving the underlying evidence and documents that same day.⁶ To the extent that you believe applicable law limits your ability to comply, we urge you to begin the process of consultation with us immediately in order to establish shared parameters for resolving those issues without delay.

Sincerely,


Jerrold Nadler
Chairman
House Committee on the Judiciary


Elijah E. Cummings
Chairman
House Committee on Oversight and Reform


Adam Schiff
Chairman
House Permanent Select Committee on Intelligence


Maxine Waters
Chairwoman
House Committee on Financial Services


Richard E. Neal
Chairman
House Committee on Ways and Means


Eliot L. Engel
Chairman
House Committee on Foreign Affairs

⁶ As to materials that are subject to Rule 6(e) of the Federal Rules of Criminal Procedure, there is precedent for the release of such materials to Congress under similar circumstances. We look forward to discussing this issue to determine if we can reach a mutually acceptable accommodation.



United States Senate
WASHINGTON, DC 20510-0504
<http://feinstein.senate.gov>

March 25, 2019

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

Dear Attorney General Barr:

Yesterday, we received your summary of Special Counsel Mueller's nearly two-year investigation and comprehensive report. However, I have several questions and request a full copy of the report and underlying evidence on behalf of the Judiciary Democrats.

Special Counsel Mueller spent nearly two years investigating, with a team of 19 lawyers and 40 FBI agents and other professional staff. As you note in your summary, "[t]he Special Counsel issued more than 2,800 subpoenas, executed nearly 500 search warrants, obtained more than 230 orders for communication records, issued almost 50 orders authorizing use of pen registers, made 13 requests to foreign government for evidence, and interviewed approximately 500 witnesses."

Congress must now determine the risks to national security, whether there was misconduct or abuse of power, whether existing laws are sufficient to deter and punish election interference, and what next steps are appropriate. A four-page summary of Special Counsel Mueller's extensive investigation and report, with no underlying evidence or findings, is not adequate to accomplish our constitutional, legislative, and oversight responsibilities.

There is no law, regulation, or DOJ practice that prevents production of information related to a closed investigation to Congress. In fact, Congress routinely requests, and receives, confidential information related to closed criminal investigations and counterintelligence matters as part of its oversight responsibilities. For example, over the past several years, Republicans have

requested and received substantial 880,000 pages, including substantial confidential and classified information related to investigations of Hillary Clinton. Republicans have also requested and received confidential material related to the Special Counsel's investigation *while it has been ongoing*, including classified documents from the FISA court.

We are willing to work with you to ensure appropriate protections are put in place to protect information that implicates legitimate privacy interests or endangers ongoing investigations or criminal cases from becoming public. But these considerations are not a reason for withholding the report or underlying documentation from Congress. To the extent you believe existing law constrains your ability to comply with this request, we ask that you immediately begin the process of consultation and accommodation so that there is no delay in reaching agreement.

Thank you for your immediate attention to this request. Please provide the full report by Monday, April 1 and start producing the underlying documentation on that date.

Sincerely,



Dianne Feinstein
United States Senator

CC: Senator Lindsey Graham,
Chairman, Senate Judiciary Committee

From: Hart, Jessica E. (OLA)
Subject: AG Letters re Mueller
To: Hovakimian, Patrick (ODAG)
Sent: April 1, 2019 5:41 PM (UTC-04:00)
Attached: AG March 24 2019 Letter to House and Senate Judiciary Committees.pdf, Letter re.32919.pdf, Letter from the Attorney General_3.22.2019.jpg, AG March 24 2019 Letter to House and Senate Judiciary Committees (1).pdf

Pat,
Attached are the 3 letters the AG sent, all were made public. The first two would be beneficial to read. DOJ has not made any other public statement about the Mueller report since it was delivered to the AG.

Jessica



The Attorney General
Washington, D.C.

March 29, 2019

The Honorable Lindsey Graham
Chairman, Committee on the Judiciary
United States Senate
290 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Jerrold Nadler
Chairman, Committee on the Judiciary
United States House of Representatives
2132 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Graham and Chairman Nadler,

I write in response to Chairman Nadler's March 25, 2019 letter and Chairman Graham's March 27, 2019 letter, which addressed the investigation of Special Counsel Robert S. Mueller, III and the "confidential report" he has submitted to me pursuant to 28 C.F.R. § 600.8(c).

As we have discussed, I share your desire to ensure that Congress and the public have the opportunity to read the Special Counsel's report. We are preparing the report for release, making the redactions that are required. The Special Counsel is assisting us in this process. Specifically, we are well along in the process of identifying and redacting the following: (1) material subject to Federal Rule of Criminal Procedure 6(e) that by law cannot be made public; (2) material the intelligence community identifies as potentially compromising sensitive sources and methods; (3) material that could affect other ongoing matters, including those that the Special Counsel has referred to other Department offices; and (4) information that would unduly infringe on the personal privacy and reputational interests of peripheral third parties. Our progress is such that I anticipate we will be in a position to release the report by mid-April, if not sooner. Although the President would have the right to assert privilege over certain parts of the report, he has stated publicly that he intends to defer to me and, accordingly, there are no plans to submit the report to the White House for a privilege review.

Also, I am aware of some media reports and other public statements mischaracterizing my March 24, 2019 supplemental notification as a "summary" of the Special Counsel's investigation and report. For example, Chairman Nadler's March 25 letter refers to my supplemental notification as a "four-page summary of the Special Counsel's review." My March 24 letter was not, and did not purport to be, an exhaustive recounting of the Special Counsel's investigation or

From: O'Callaghan, Edward C. (ODAG)
Subject: FW: Letter to AG Barr
To: Rosenstein, Rod (ODAG); Weinsheimer, Bradley (ODAG); Ellis, Corey F. (ODAG); Peterson, Andrew (ODAG)
Sent: April 1, 2019 7:25 PM (UTC-04:00)
Attached: 4.1.2019 Letter to William Barr + appendix.pdf

Edward C. O'Callaghan

(b) (6)

From: Boyd, Stephen E. (OLA) (b) (6)
Sent: Monday, April 1, 2019 7:20 PM
To: O'Callaghan, Edward C. (ODAG) (b) (6); Rabbitt, Brian (OAG) (b) (6)
Cc: Lasseter, David F. (OLA) (b) (6); Hankey, Mary Blanche (OLA) (b) (6)
Escalona, Prim F. (OLA) (b) (6) >
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) (b) (6)
Subject: FW: Letter to AG Barr

FYI.

From: McElvein, Elizabeth (b) (6)
Sent: Monday, April 1, 2019 6:39 PM
To: (b) (6) David Lasseter '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
(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.

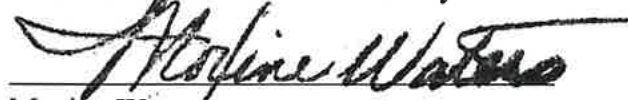
Sincerely,



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.

From: Lasseter, David F. (OLA)
Subject: Fwd: Letter to AG Barr
To: Weinsheimer, Bradley (ODAG); Colborn, Paul P (OLC)
Sent: April 1, 2019 7:40 PM (UTC-04:00)
Attached: 4.1.2019 Letter to William Barr + appendix.pdf, ATT00001.htm

Fysa. New letter from Nadler, et al. Suggests subpoena coming this week.

David F. Lasseter

Begin forwarded message:

From: "McElvein, Elizabeth" <(b) (6)>
Date: April 1, 2019 at 18:39:03 EDT
To: (b)(6) David Lasseter email
"doj.correspondence@usdoj.gov" <doj.correspondence@usdoj.gov>
Cc: "Hiller, Aaron" (b) (6) >, "Hariharan, Arya"
<(b) (6)>
Subject: Letter to AG Barr

Duplicative Material (Document ID: 0.7.29034)

From: Rabbitt, Brian (OAG)
Subject: FW: Letter to AG Barr
To: Gannon, Curtis E. (OLC) (b) (6) ; Engel, Steven A. (OLC) (b) (6)
Sent: April 2, 2019 8:58 AM (UTC-04:00)
Attached: 4.1.2019 Letter to William Barr + appendix.pdf

From: Boyd, Stephen E. (OLA) (b) (6)
Sent: Monday, April 1, 2019 7:20 PM
To: O'Callaghan, Edward C. (ODAG) (b) (6) ; Rabbitt, Brian (OAG) (b) (6) >
Cc: Lasseter, David F. (OLA) (b) (6) ; Hankey, Mary Blanche (OLA) (b) (6)
Escalona, Prim F. (OLA) (b) (6)
Subject: FW: Letter to AG Barr

Duplicative Material (Document ID: 0.7.29034)

From: Weinsheimer, Bradley (ODAG)
Subject: FW: Letter to AG Barr
To: O'Callaghan, Edward C. (ODAG)
Sent: April 3, 2019 12:24 PM (UTC-04:00)
Attached: 4.1.2019 Letter to William Barr + appendix.pdf

Do we want to (b) (5)

Brad.

From: Lasseter, David F. (OLA) (b) (6)
Sent: Wednesday, April 3, 2019 9:43 AM
To: Weinsheimer, Bradley (ODAG) (b) (6)
Subject: FW: Letter to AG Barr
Importance: High

Brad—good morning. Could you assist on drafting the response to this incoming? Another one we can discuss when we get together.

dfi

From: DOJ Correspondence (SMO) <Ex_DOJCorrespondence@jmd.usdoj.gov>
Sent: Tuesday, April 2, 2019 9:24 AM
To: Lasseter, David F. (OLA) (b) (6)
Subject: FW: Letter to AG Barr
Importance: High

Good morning David

Pls provide assignment guidance. Thanks.

From: McElvein, Elizabeth (b) (6) >
Sent: Monday, April 01, 2019 6:39 PM
To: Lasseter, David F. (OLA) (b) (6) >; DOJ Correspondence (SMO) <Ex_DOJCorrespondence@jmd.usdoj.gov>
Cc: Hiller, Aaron (b) (6) >; Hariharan, Arya <(b) (6)>
Subject: Letter to AG Barr

Duplicative Material (Document ID: 0.7.29034)

From: Shapiro, Elizabeth (CIV)
Subject: RE: Moot in EPIC v. DOJ
To: Enlow, Courtney D. (CIV); (b)(6), (b)(7)(C) per FBI (OGC) (FBI); Weinsheimer, Bradley (ODAG); Baker, Brittnie (OIP); Brinkmann, Vanessa R (OIP); Breyan, Jonathan (OIP); NNS
Sent: April 3, 2019 7:28 PM (UTC-04:00)
Attached: 2019.4.3 Response to Motion for PI v3.docx

All,
Attached is an early draft of our opposition brief. This is still being reviewed in our office, and we don't yet have the final or near final version of OIP's declaration. But this will give you a head start. It's due Friday.
Thanks,
Betsy

From: Enlow, Courtney D. (CIV) (b) (6)
Sent: Wednesday, April 03, 2019 2:19 PM
To: (b)(6), (b)(7)(C) per FBI (OGC) (FBI) (b)(6), (b)(7)(C) per FBI Shapiro, Elizabeth (CIV) (b) (6); Weinsheimer, Bradley (ODAG) (b) (6); Baker, Brittnie (OIP) (b) (6); Brinkmann, Vanessa R (OIP) (b) (6); Breyan, Jonathan (OIP) (b) (6); (b)(6), (b)(7)(C)
Subject: RE: Moot in EPIC v. DOJ

For those who can't make it in person on Monday, dial-in information is below:

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

Best regards,
Courtney

Courtney Enlow
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, N.W., Room 12102
Washington, D.C. 20005
(b) (6)
(b) (6)

From: Enlow, Courtney D. (CIV) (b) (6)
Sent: Tuesday, April 02, 2019 12:22 PM
To: (b)(6), (b)(7)(C) per FBI (OGC) (FBI) (b)(6), (b)(7)(C) per FBI; Shapiro, Elizabeth (CIV) (b) (6); Weinsheimer, Bradley (ODAG) (JMD) (b) (6); Baker, Brittnie (OIP) (JMD) (b) (6); Brinkmann, Vanessa R (OIP) (JMD) (b) (6); Breyan, Jonathan (OIP) (JMD) (b) (6); (b)(6), (b)(7)(C)
Subject: Moot in EPIC v. DOJ

All,

I will be having a moot on EPIC's motion for a preliminary injunction on Monday at 2:00 in room 11531 at 1100 L Street. You likely will have to be escorted up, so please call me when you get here.

I can arrange a dial-in number if you want to join but cannot make it to our building. Please let me know if you would

like me to do so.

Best regards,
Courtney

Courtney Enlow
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, N.W., Room 12102
Washington, D.C. 20005

(b) (6)

(b) (6)

From: Kupec, Kerri (OPA)
Subject: RE: statement on reports of Barr/Mueller tensions
To: Tierney Sneed
Sent: April 4, 2019 11:03 AM (UTC-04:00)

Every page of the “confidential report” provided to Attorney General Barr on March 22, 2019 was marked “May Contain Material Protected Under Fed. R. Crim. P. 6(e)” - a law that protects confidential grand jury information - and therefore could not be publicly released. Given the extraordinary public interest in the matter, the Attorney General decided to release the report’s bottom-line findings and his conclusions immediately — without attempting to summarize the report — with the understanding that the report itself would be released after the redaction process. As the Attorney General stated in his March 29th letter to Chairman Graham and Chairman Nadler, he does not believe the report should be released in “serial or piecemeal fashion.” The Department continues to work with the Special Counsel on appropriate redactions to the report so that it can be released to Congress and the public.

- Department of Justice Spokesperson Kerri Kupec

From: Tierney Sneed (b) (6)
Sent: Thursday, April 4, 2019 10:57 AM
To: Kupec, Kerri (OPA) (b) (6)
Subject: statement on reports of Barr/Mueller tensions

Hi Kerri,

I see the DOJ has issued a new statement on the reports last night regarding concerns from the Mueller team with how AG Barr handled the release of the bottom lines from the investigations. Will you please send over?

Thanks,
Tierney

--
Tierney Sneed
Talking Points Memo
(b) (6)
@tierney_megan

From: Kupec, Kerri (OPA)
Subject: RE: AFP query re WP, NYT reports on Barr-Mueller
To: Paul HANDLEY
Sent: April 4, 2019 11:04 AM (UTC-04:00)

Every page of the “confidential report” provided to Attorney General Barr on March 22, 2019 was marked “May Contain Material Protected Under Fed. R. Crim. P. 6(e)” - a law that protects confidential grand jury information - and therefore could not be publicly released. Given the extraordinary public interest in the matter, the Attorney General decided to release the report’s bottom-line findings and his conclusions immediately — without attempting to summarize the report — with the understanding that the report itself would be released after the redaction process. As the Attorney General stated in his March 29th letter to Chairman Graham and Chairman Nadler, he does not believe the report should be released in “serial or piecemeal fashion.” The Department continues to work with the Special Counsel on appropriate redactions to the report so that it can be released to Congress and the public.

- Department of Justice Spokesperson Kerri Kupec

From: Paul HANDLEY <(b) (6)>
Sent: Thursday, April 4, 2019 9:04 AM
To: Kupec, Kerri (OPA) (b) (6)
Subject: AFP query re WP, NYT reports on Barr-Mueller

Hi,

Both the Times and Post say Mueller team folks alleged AG Barr omitted or downplayed troubling information in his summary of the Mueller report. Do you have any response to that?

Thanks,

Paul

Paul HANDLEY
US National Security Correspondent
AFP - Agence France-Presse

Suite 600, 1500 K Street NW, Washington DC 20005 USA

Tel: +(b) (6) - Mob: +(b) (6) - Fax: +(b) (6)



Join us on:



From: Kupec, Kerri (OPA)
Subject: RE: Justice Dept statement on AG William Barr and Mueller report
To: Justin Wise
Sent: April 4, 2019 11:12 AM (UTC-04:00)

Every page of the “confidential report” provided to Attorney General Barr on March 22, 2019 was marked “May Contain Material Protected Under Fed. R. Crim. P. 6(e)” - a law that protects confidential grand jury information - and therefore could not be publicly released. Given the extraordinary public interest in the matter, the Attorney General decided to release the report’s bottom-line findings and his conclusions immediately — without attempting to summarize the report — with the understanding that the report itself would be released after the redaction process. As the Attorney General stated in his March 29th letter to Chairman Graham and Chairman Nadler, he does not believe the report should be released in “serial or piecemeal fashion.” The Department continues to work with the Special Counsel on appropriate redactions to the report so that it can be released to Congress and the public.

- Department of Justice Spokesperson Kerri Kupec

From: Justin Wise <(b) (6)>
Sent: Thursday, April 4, 2019 11:09 AM
To: Kupec, Kerri (OPA) <(b) (6)>
Subject: Justice Dept statement on AG William Barr and Mueller report

Hi, I am Justin Wise, a reporter for The Hill. I'm reaching out in regards to a [statement](#) I saw from the Justice Dept. about Attorney General William Barr's handling of Robert Mueller's report on the Russia investigation. I was interested in if the department could provide The Hill with the statement.

Thank you,

Justin Wise

From: Kupec, Kerri (OPA)
Subject: RE: Statement on Barr letter of Mueller report?
To: Jacqueline Thomsen
Sent: April 4, 2019 11:21 AM (UTC-04:00)

Every page of the “confidential report” provided to Attorney General Barr on March 22, 2019 was marked “May Contain Material Protected Under Fed. R. Crim. P. 6(e)” - a law that protects confidential grand jury information - and therefore could not be publicly released. Given the extraordinary public interest in the matter, the Attorney General decided to release the report’s bottom-line findings and his conclusions immediately — without attempting to summarize the report — with the understanding that the report itself would be released after the redaction process. As the Attorney General stated in his March 29th letter to Chairman Graham and Chairman Nadler, he does not believe the report should be released in “serial or piecemeal fashion.” The Department continues to work with the Special Counsel on appropriate redactions to the report so that it can be released to Congress and the public.

- Department of Justice Spokesperson Kerri Kupec

From: Jacqueline Thomsen <(b) (6)>
Sent: Thursday, April 4, 2019 11:11 AM
To: Kupec, Kerri (OPA) <(b) (6)>
Subject: Statement on Barr letter of Mueller report?

Hi Kerri – saw you released a statement on AG Barr's letter on the Mueller report, could you pass along? Thanks

--
Jacqueline Thomsen
(b) (6)
@jacq_thomsen

From: Kupec, Kerri (OPA)
Subject: RE: DOJ Letter to Congress Regarding the Mueller Report
To: Laura Rozen
Sent: April 4, 2019 11:24 AM (UTC-04:00)

Every page of the “confidential report” provided to Attorney General Barr on March 22, 2019 was marked “May Contain Material Protected Under Fed. R. Crim. P. 6(e)” - a law that protects confidential grand jury information - and therefore could not be publicly released. Given the extraordinary public interest in the matter, the Attorney General decided to release the report’s bottom-line findings and his conclusions immediately — without attempting to summarize the report — with the understanding that the report itself would be released after the redaction process. As the Attorney General stated in his March 29th letter to Chairman Graham and Chairman Nadler, he does not believe the report should be released in “serial or piecemeal fashion.” The Department continues to work with the Special Counsel on appropriate redactions to the report so that it can be released to Congress and the public.

- Department of Justice Spokesperson Kerri Kupec

From: Laura Rozen <(b) (6)>
Sent: Thursday, April 4, 2019 11:21 AM
To: Kupec, Kerri (OPA) <(b) (6)>
Subject: Re: DOJ Letter to Congress Regarding the Mueller Report

Hi Kerri,

Hope you are well.

Could I get your statement regarding the decisionmaking on releasing the Mueller report?

many thanks,
Laura

On Mar 29, 2019, at 3:16 PM, Kupec, Kerri (OPA) <(b) (6)> wrote:

See attached.

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

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

<AGLetter32919.pdf>

From: Kupec, Kerri (OPA)
Subject: RE: latest statement on Mueller report
To: Meredith Lee
Sent: April 4, 2019 11:24 AM (UTC-04:00)

Every page of the “confidential report” provided to Attorney General Barr on March 22, 2019 was marked “May Contain Material Protected Under Fed. R. Crim. P. 6(e)” - a law that protects confidential grand jury information - and therefore could not be publicly released. Given the extraordinary public interest in the matter, the Attorney General decided to release the report’s bottom-line findings and his conclusions immediately — without attempting to summarize the report — with the understanding that the report itself would be released after the redaction process. As the Attorney General stated in his March 29th letter to Chairman Graham and Chairman Nadler, he does not believe the report should be released in “serial or piecemeal fashion.” The Department continues to work with the Special Counsel on appropriate redactions to the report so that it can be released to Congress and the public.

- Department of Justice Spokesperson Kerri Kupec

From: Meredith Lee <(b) (6)>
Sent: Thursday, April 4, 2019 11:21 AM
To: Kupec, Kerri (OPA) <(b) (6)>
Subject: latest statement on Mueller report

Hi Kerri,
Could you please forward the DOJ's statement from this morning on the Mueller report release?
Thanks so much,
Meredith

Meredith Lee
PBS NewsHour
Reporter / Producer
O: (b) (6)
M: (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.

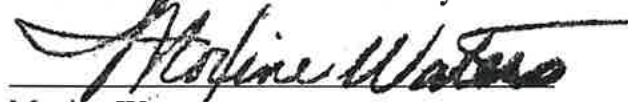
Sincerely,



Jerrold Nadler

Chairman

House Committee on the Judiciary



Maxine Waters

Chairwoman

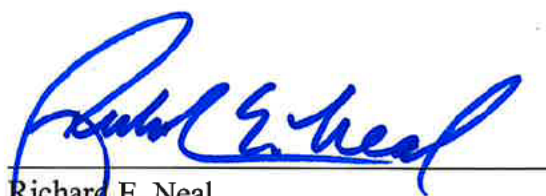
House Committee on Financial Services



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.

From: Kupec, Kerri (OPA)
Subject: RE: Pls send me statement on Barr summary of Mueller report
To: Brune, Tom
Sent: April 4, 2019 11:40 AM (UTC-04:00)

Every page of the "confidential report" provided to Attorney General Barr on March 22, 2019 was marked "May Contain Material Protected Under Fed. R. Crim. P. 6(e)" - a law that protects confidential grand jury information - and therefore could not be publicly released. Given the extraordinary public interest in the matter, the Attorney General decided to release the report's bottom-line findings and his conclusions immediately - without attempting to summarize the report - with the understanding that the report itself would be released after the redaction process. As the Attorney General stated in his March 29th letter to Chairman Graham and Chairman Nadler, he does not believe the report should be released in "serial or piecemeal fashion." The Department continues to work with the Special Counsel on appropriate redactions to the report so that it can be released to Congress and the public.

- Department of Justice Spokesperson Kerri Kupec

-----Original Message-----

From: Brune, Tom <(b) (6)>
Sent: Thursday, April 4, 2019 11:28 AM
To: Kupec, Kerri (OPA) <(b) (6)>
Subject: Pls send me statement on Barr summary of Mueller report

Tom Brune
Washington Bureau
Newsday
529 14th St. NW
Suite 1001
Office: (b) (6)
Mobile: (b) (6)
@TomBruneDC

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From: Kadhim Shubber
Subject: Re: Statement re: Mueller report
To: Kupec, Kerri (OPA)
Cc: Hornbuckle, Wyn (OPA)
Sent: April 4, 2019 11:40 AM (UTC-04:00)

Thank you

On Thu, 4 Apr 2019 at 11:40, Kupec, Kerri (OPA) <(b) (6)> wrote:

>
> Every page of the "confidential report" provided to Attorney General Barr on March 22, 2019 was marked "May Contain Material Protected Under Fed. R. Crim. P. 6(e)" - a law that protects confidential grand jury information - and therefore could not be publicly released. Given the extraordinary public interest in the matter, the Attorney General decided to release the report's bottom-line findings and his conclusions immediately - without attempting to summarize the report - with the understanding that the report itself would be released after the redaction process. As the Attorney General stated in his March 29th letter to Chairman Graham and Chairman Nadler, he does not believe the report should be released in "serial or piecemeal fashion." The Department continues to work with the Special Counsel on appropriate redactions to the report so that it can be released to Congress and the public.

>
> - Department of Justice Spokesperson Kerri Kupec

>
> -----Original Message-----

> From: Kadhim Shubber <(b) (6)>
> Sent: Thursday, April 4, 2019 11:37 AM
> To: Kupec, Kerri (OPA) <(b) (6)> Hornbuckle, Wyn (OPA)
<(b) (6)>
> Subject: Statement re: Mueller report

>
> Hi Kerri and Wyn,

>
> Hope you're well - could you send me over the statement you put out today re: the Mueller report?

>
> Thanks for your help

>
> Kadhim

>
> --
>
> Kadhim Shubber
> US Legal and Enforcement correspondent
> Financial Times

>
> cell: +(b) (6)
> Office: +(b) (6)

>
> --

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Kadhim Shubber
US Legal and Enforcement correspondent
Financial Times

Cell: +(b) (6)
Office: +(b) (6)

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From: Masood Farivar
Subject: RE: Your Statement On Mueller Report
To: Kupec, Kerri (OPA)
Sent: April 4, 2019 1:19 PM (UTC-04:00)

Thanks, Kerri. Appreciate it.

Masood

From: Kupec, Kerri (OPA) [mailto:(b) (6)]
Sent: Thursday, April 04, 2019 1:18 PM
To: Masood Farivar <(b) (6)>
Subject: RE: Your Statement On Mueller Report

Every page of the “confidential report” provided to Attorney General Barr on March 22, 2019 was marked “May Contain Material Protected Under Fed. R. Crim. P. 6(e)” - a law that protects confidential grand jury information - and therefore could not be publicly released. Given the extraordinary public interest in the matter, the Attorney General decided to release the report’s bottom-line findings and his conclusions immediately — without attempting to summarize the report — with the understanding that the report itself would be released after the redaction process. As the Attorney General stated in his March 29th letter to Chairman Graham and Chairman Nadler, he does not believe the report should be released in “serial or piecemeal fashion.” The Department continues to work with the Special Counsel on appropriate redactions to the report so that it can be released to Congress and the public.

- Department of Justice Spokesperson Kerri Kupec

From: Masood Farivar <(b) (6)>
Sent: Thursday, April 4, 2019 12:21 PM
To: Kupec, Kerri (OPA) <(b) (6)>
Subject: Your Statement On Mueller Report

Hi Kerri,

Could I get your statement in response to the NYT/WaPo stories about the Mueller report?

Thanks so much!

Masood Farivar
Justice Correspondent
Voice of America
(b) (6)

From: O'Callaghan, Edward C. (ODAG)
Subject: SCO interaction March 27-29
To: Weinsheimer, Bradley (ODAG)
Sent: April 4, 2019 1:38 PM (UTC-04:00)

As we discussed last week, I received a hand-delivered package from SCO on the evening of March 27 that contained a cover letter from Special Counsel and a document that was described as a redacted version of the Introduction and Executive Summaries to Volumes 1 and 2 of the Special Counsel's Report. I did not know this package was coming and I did not know that Special Counsel Mueller was considering preparing the letter contained in it. I previously had several discussions during March 25-27, principally with Aaron Zebley, but also with Jim Quarles, about the SCO assistance in identifying Rule 6(e) material, information that could implicate intelligence community equities, material whose release could prejudice ongoing matters now being handled by other Department components and material that could prejudice the privacy or reputational interests of third parties. These discussions built on earlier conversations that we have had with SCO on these issues. Upon receiving this package on the evening of March 27, I quickly reviewed its contents and discussed it briefly with the DAG and you. First thing on Thursday morning, March 28, I brought the letter and redacted documents to Brian Rabbitt and we discussed the contents. Later that morning, Brian, the DAG and I had a meeting with the AG and it was decided to call Special Counsel Mueller to discuss the letter and the redacted documents. (b) (5)



Edward C. O'Callaghan

Principal Associate Deputy Attorney General
United States Department of Justice

(o)(b) (6)

(c)(b) (6)

From: Weinsheimer, Bradley (ODAG)
Subject: RE: Draft response to Nadler re SCO preservation
To: Lasseter, David F. (OLA); Colborn, Paul P (OLC)
Sent: April 4, 2019 2:06 PM (UTC-04:00)
Attached: FBI_Response_to_Nadler_3_22_19_re_preservation_of_SCO_documents_(draft 4 4 19) GBW.docx

I would edit the response in line with the attached. (b)(5), (b)(6), (b)(7)(C) per EOUSA; (b)(5) per FBI

The language I propose tracks the language of the request. Thanks, Brad.

-----Original Message-----

From: Lasseter, David F. (OLA) (b)(6)
Sent: Thursday, April 4, 2019 1:37 PM
To: Colborn, Paul P (OLC) (b)(6) Weinsheimer, Bradley (ODAG)
(b)(6)
Subject: FW: Draft response to Nadler re SCO preservation

Gentlemen--any issues with this response from FBI to the attached incoming?

dfi

-----Original Message-----

From: (b)(6), (b)(7)(C), (b)(7)(E) per FBI (OGC) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI
Sent: Thursday, April 4, 2019 12:26 PM
To: Lasseter, David F. (OLA) (b)(6)
Cc: (b)(6), (b)(7)(C), (b)(7)(E) per FBI (DO) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI (b)(6) (OLA)
(b)(6)
Subject: Draft response to Nadler re SCO preservation

Hi David:

(b)(5) per FBI

Thank you,

(b)(6), (b)(7)(C), (b)(7)(E) per FBI

Assistant General Counsel
Federal Bureau of Investigation
Office of the General Counsel
935 Pennsylvania Ave., NW
Washington, D.C. 20535
Desk: (b)(6), (b)(7)(C), (b)(7)(E) per FBI
Email:

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Questions & Subjects

Mr. Chairman, this is a hearing about the Department's budget request, not about the Special Counsel's investigation. But Democrats have asked question after question about the Mueller Report. The Attorney General has said all he is going to say on that matter at this time.

It looks like to me he is handling this matter appropriately and demonstrating respect for Congress and the American People by moving quickly:

- The day the investigation concluded, the AG informed Congress.
- He immediately made it clear that there was no interference in Mueller's work.
- Within 48 hours of receiving the Report, the AG informed Congress of the "principal conclusions" of the Report.
- The AG said he wants to make as much of the Report public as possible consistent with the law, and it looks like that is what he is doing.
- The AG said his review will be finished soon and the Report will be out in mid-April.
- The AG has already committed to testifying in the House and the Senate immediately after recess.

Every time we repeat a question about the Mueller Report, we waste time that could be spent learning about the important work of the Department of Justice. What I want to ask about is:

1. **PSN**—Attorney General Sessions placed a heavy emphasis on the Public Safety Network (PSN) program. He viewed it as the centerpiece of his crime reduction strategy. Do you intend to keep PSN at the center of the Department's anti-crime work, and, if so, are you allocating appropriate resources to it?
2. **First Step Act**—As you know, Congress passed the First Step Act last year. The Department had concerns with certain aspects of the Act, but now it is in law. I have read your prior statements that you intend to enforce the law as written. The Committee appreciates that view. Can you update the committee on the status of implantation and any barriers or challenges you see for full implementation?
3. **Opioids**—Our nation faces the serious epidemic of opioid abuse. I think the Department over the last couple of years has done a good job of addressing this difficult problem head on. We are aware of the Prescription Interdiction & Litigation Task Force. What role is the task force playing in the Department's efforts to find this growing problem?
4. **Elder Fraud & Abuse**—Like many districts, my district is home to a large number of retirees. I'm increasingly concerned about the elderly being taken advantage of by scammers and con men, especially give the rise of technology and social media. Is the Department aware of this problem and what are you doing about it?
5. **School Safety**—I was pleased to see that the Administration established a Federal Commission on School Safety. What role is the Department playing in protecting our nation's schools, and what is your view on School Resource Officers? Does the COPS office play a role in those initiatives?

6. **Encryption**—The problem known as “Going Dark”—where tech companies encrypt data in a manner such that not even the company itself can retrieve it—presents some very difficult questions of law, including issues related to law enforcement. Does the Department see “Going Dark” as a problem?
7. **FIX NICS**—The National Criminal Background Check System (NICS) is used by Federal Firearm Licensees to determine whether a prospective buy is eligible to buy firearms. In 2018, Congress passed the Fix NICS Act strengthen the NICS system by, among other things, imposing new reporting requirements and incentivizing states and tribal governments. What is the Department doing to implement the Fix NICS Act?
- 8.

From: O'Callaghan, Edward C. (ODAG)
Subject: Fwd: Roger Stone
To: Weinsheimer, Bradley (ODAG)
Sent: April 4, 2019 3:04 PM (UTC-04:00)
Attached: Stone letter to Attorney General 3.29.19.pdf, ATT00001.htm, 4-5-19 letter to defense counsel re report.dotx, ATT00002.htm

Edward C. O'Callaghan

(b) (6)

Begin forwarded message:

From: "Liu, Jessie (USADC)" <(b) (6)>
Date: April 4, 2019 at 11:11:42 AM EDT
To: "Rabbitt, Brian (OAG)" <(b) (6)> "O'Callaghan, Edward C. (ODAG)" <(b) (6)>
Subject: Roger Stone

Brian and Ed:

As Brian and I just discussed, attached is Roger Stone's counsel's letter to the Attorney General, asserting that he is entitled to a copy of the Special Counsel's report. If you would like us to respond on behalf of the Department, we would propose something like the attached – essentially stating that (b) (5) . (His trial date, by the way, is November 5.)

Thanks.

Jessie

GRANT J. SMITH

ATTORNEY-AT-LAW

Grant J. Smith, Esq.

(b) (6)

Direct Dial - (b) (6)

March 29, 2019

VIA USPS EXPRESS DELIVERY

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

Re: Special Counsel Report Demand

Dear Mr. Attorney General:

As counsel to Roger Stone, we read with interest your March 24, 2019, letter to the House and Senate Judiciary Committees regarding the principal conclusions reached by the Special Counsel Robert S. Mueller, III (the "Letter").

As you are aware, Mr. Stone is a defendant in a case brought by the Special Counsel and is the only case remaining which has yet to be adjudicated. As your Letter acknowledges, as mandated by 28 C.F.R. § 600.8(c), the Special Counsel was required to explain the prosecution or declination decisions he reached during the course of his investigation. As a current criminal defendant, Mr. Stone is entitled to understand the circumstances and the rationale behind the decision to charge him with the crimes he has been charged with, as well as any other discussions in the report surrounding Mr. Stone's case. Additionally, along the same vein, and as a core defense to the allegations levied against him, Mr. Stone is entitled to know with specificity, the names of the individuals not charged by the Special Counsel and the similarity, if any, of the possible charges considered for them in order to be able to evaluate why Mr. Stone was charged, yet others with the same set of circumstances were not.

Further, as you know, there is an extensive witness list filed under seal in Mr. Stone's case. It is imperative to know if any of the individuals on that list were threatened with charges, committed chargeable offenses which were not charged, and the reasons behind those decisions. By way of example, it is public knowledge that Dr. Jerome Corsi was provided documentation outlining charges to be brought against him yet, the Special Counsel's investigation closed without Dr. Corsi being charged with any crime. If the press reporting is to be believed, there are no additional charges to be brought by the Special Counsel and it would appear that Dr. Corsi is not being charged. It is clear that this decision would be part of the report which was required to include the rationale for charging or not charging an individual. However, Mr. Stone's demand for this information is not and should not be limited to the individuals whose potential charges were similar to Mr. Stone's, the charging decision

of any witness in his case would be relevant to Mr. Stone's defense. These facts, as put forth in the report of the Special Counsel, are imperative and integral to Mr. Stone's defense.

The report of the Special Counsel is of import to Mr. Stone for another reason, the potential inclusion within its pages of *Brady* Material.¹ With over 2,800 subpoenas, 500 search warrants, and over 500 witness interviews, the defense is entitled to review all of the evidence to determine if any of it is exculpatory, not just what the Special Counsel has designated or not designated as such in Mr. Stone's case. Additionally, any plea agreements which have a tangential relationship to Mr. Stone's case, and specifically those of anyone on the sealed witness list, would be required to be turned over to the defense.² Certainly, given the probable thoroughness of the Special Counsel's report, any plea agreements bearing on Mr. Stone's case would have been included in the final report.

I would propose the Department of Justice immediately provide the Special Counsel's report with all of the substantiating documentation to Mr. Stone and his defense team under the judicial protective order currently in place, subject to the terms and conditions of the same.

I look forward to your prompt reply.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'GJ Smith', with a stylized flourish at the end.

Grant J. Smith, Esq.

cc: Robert S. Mueller, III, Special Counsel (via Email)
Bruce Rogow, Esq.
Robert Buschel, Esq.
Tara Campion, Esq.

¹ *Brady v. Maryland*, 373 U.S. 83 (1963)

² *Giglio v. United States*, 405 U.S. 150 (1972)

From: O'Callaghan, Edward C. (ODAG)
Subject: FW: Letter to AG Barr
To: Rosenstein, Rod (ODAG)
Sent: April 4, 2019 3:26 PM (UTC-04:00)
Attached: 2019-04-04 Letter to AG Barr.pdf

Edward C. O'Callaghan

(b) (6)

From: Boyd, Stephen E. (OLA) <(b) (6)>
Sent: Thursday, April 4, 2019 3:20 PM
To: Kupec, Kerri (OPA) <(b) (6)> Rabbitt, Brian (OAG) <(b) (6)> O'Callaghan, Edward C. (ODAG) <(b) (6)>
Cc: Lasseeter, David F. (OLA) <(b) (6)>
Subject: FW: Letter to AG Barr

Incoming from Nadler. SB

From: Emmons, William <(b) (6)>
Sent: Thursday, April 4, 2019 3:16 PM
To: DOJ Correspondence (SMO) <(b) (6)> Boyd, Stephen E. (OLA) <(b) (6)> Lasseeter, David F. (OLA) <(b) (6)>
Cc: Hiller, Aaron <(b) (6)> Hariharan, Arya <(b) (6)>
Subject: Letter to AG Barr

Please see attached a letter from Chairman Jerrold Nadler to Attorney General Barr requesting information regarding the summary and public release of Special Counsel Robert Mueller's report.

U.S. House of Representatives
Committee on the Judiciary

Washington, DC 20515-6216
One Hundred Sixteenth Congress

April 4, 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:

I write to you regarding troubling press reports relating to your handling of Special Counsel Mueller's report, and to urge that you immediately release to the public any "summaries" contained in the report that may have been prepared by the Special Counsel.

The *New York Times* and the *Washington Post* both report that some in the Special Counsel's office have raised concerns about your March 24 letter summarizing the results of the Special Counsel's investigation. The *Post* wrote that "members of [Special Counsel] Mueller's team have complained to close associates that the evidence they gathered on obstruction was alarming and significant."¹

These reports suggest that the Special Counsel prepared his own summaries, intended for public consumption, which you chose to withhold in favor of your own: "Some members of the office were particularly disappointed that Barr did not release summary information the special counsel team had . . . prepared for different sections of the report, with a view that they could [be] made public."² In fact, one unnamed U.S. official is quoted as saying that "Mueller's team assumed the information was going to be made available to the public . . . 'and so they prepared their summaries to be shared in their own words—and not in the attorney general's summary of their work, as turned out to be the case.'"³

¹ Ellen Nakashima et al., *Limited information Barr has shared about Russia investigation frustrated some on Mueller's team*, WASH. POST, Apr. 4, 2019. See also Nicholas Fandos, *Some on Mueller's Team Say Report Was More Damaging than Barr Revealed*, N.Y. TIMES, Apr. 3, 2019.

² *Id.*

³ *Id.*

In your March 29 letter to the Chairmen of the Senate and House Judiciary Committees, you stated that the Special Counsel is “assisting” you in the process of making appropriate redactions before the report is released publicly.⁴ If these recent reports are accurate and the Special Counsel’s office prepared summaries “in a way that minimum redactions, if any, would have been necessary,”⁵ then those summaries should be publicly released as soon as possible.

This action is, of course, no substitute for providing to Congress the complete and unredacted report and underlying evidence, for all of the reasons set forth in our April 1 letter.⁶ Congress is entitled to the entire record. But we have a common obligation to share as much of that record with the public as we can. Additionally, if the Special Counsel’s summaries fit the summary you provided on March 24, that would alleviate substantial concerns that the House Judiciary Committee may wish to discuss when you appear to testify. If there is significant daylight between his account and yours, the American people should know that too.

It is notable that the Department’s press statement this morning does not deny the existence of these summaries. The Department merely indicated that “[e]very page of the ‘confidential report’ ... was marked ‘May Contain Material Protected under Fed. R. Crim. P. 6(e)’.” If these summaries were, in fact, produced for public consumption by experienced prosecutors, then a precautionary marking should not be an impediment to public production in a very short period of time.

In light of the reported disagreements between the Special Counsel’s office and yours, we also request that you produce to the Committee all communications between the Special Counsel’s office and the Department regarding the report, including those regarding the disclosure of the report to Congress, the disclosure of the report to the public, and those regarding your March 24 letter that purports to “summarize the principal conclusions reached by the Special Counsel and the results of his investigation.”⁷

Finally, in our phone conversation on March 27, you indicated that you would inform me when the Special Counsel’s office has completed its review of the report for materials covered by Rule 6(e) of the Federal Rules of Criminal Procedure. I ask that you inform the Committee whether that has occurred and, if not, to report when that review is complete.

⁴ Letter from Attorney General William Barr, U.S. Dept. of Justice, to Chairman Jerrold Nadler, H. Comm. on the Judiciary, and Chairman Lindsay Graham, S. Comm. on the Judiciary, Mar. 29, 2019.

⁵ Ellen Nakashima, et al., *Limited information Barr has shared about Russia investigation frustrated some on Mueller’s team*, Wash. Post, April 4, 2019.

⁶ Letter from Chairman Jerrold Nadler, H. Comm. on the Judiciary, et al., to Attorney General William Barr, U.S. Dept. of Justice, Apr. 1, 2019.

⁷ Letter from Attorney General William Barr, U.S. Dept. of Justice, to Chairman Jerrold Nadler, H. Comm. on the Judiciary, et al., Mar. 24, 2019.

The Department's press statement today noted that you "[do] not believe the report should be released in 'serial or piecemeal fashion.'" Unfortunately, that selective release has in effect already occurred. You have already provided an interpretation of the Special Counsel's conclusions in a fashion that appears to minimize the implications of the report as to the President. Releasing the summaries—without delay—would begin to allow the American people to judge the facts for themselves.

Sincerely,

A handwritten signature in black ink, reading "Jerrold Nadler", written over a horizontal line.

Jerrold Nadler

Chairman

House Committee on the Judiciary

cc: The Honorable Doug Collins
Ranking Member

From: Murray, Claire (OAG)
Subject: Fwd: Mueller Report FOIA PI Opposition
To: Rabbitt, Brian (OAG); Levi, William (OAG)
Sent: April 5, 2019 7:38 AM (UTC-04:00)
Attached: 2019.4.4 Response to Motion for PI v5.docx, ATT00001.htm, (1) EPIC v. DOJ, No. 19-810 - Complaint.pdf, ATT00002.htm, (7) 2019.3.29 - Pls.' Motion for PI.pdf, ATT00003.htm

I have reviewed and this seems unobjectionable, but I wanted to make sure you had seen. (This will be filed today.)

Sent from my iPhone

Begin forwarded message:

From: "Shumate, Brett A. (CIV)" <(b) (6)>
To: "Murray, Claire (OAG)" <(b) (6)> "Baughman, Matthew (ODAG)"
<(b) (6)> "Pandya, Brian (OASG)" <(b) (6)> "Davis, Patrick
(OASG)" <(b) (6)>
Cc: "Hunt, Jody (CIV)" <(b) (6)> "Haas, Alex (CIV)"
<(b) (6)>
Subject: Mueller Report FOIA PI Opposition

Attached is a draft brief in opposition to the PI motion filed by EPIC seeking expedited processing of its FOIA request for the Mueller report. The brief is due Friday, and a hearing is next Tuesday.

Brett

From: Boyd, Stephen E. (OLA)
Subject: Fwd: Checking In
To: Rabbitt, Brian (OAG)
Sent: April 5, 2019 11:18 AM (UTC-04:00)
Attached: 4.1.2019 Letter to William Barr + appendix.pdf, ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: "Hiller, Aaron" <(b) (6)>
Date: April 4, 2019 at 11:36:51 AM EDT
To: "Boyd, Stephen E. (OLA)" <(b) (6)>
Cc: "Apelbaum, Perry" <(b) (6)>
Subject: Checking In

Stephen,

Given some of the developments this week, we thought it would be useful to check in.

- We have set aside May 2 as a potential date for the Attorney General's appearance. But Mr. Nadler stands by his request that the AG testify before the Committee as soon as possible, and we wonder if there isn't room for some accommodation here. Let's talk about possibilities in April.
- When they last spoke by phone, the Attorney General promised Mr. Nadler a status report when the Special Counsel had finished his "first cut" at proposed redactions. May we have a status report, please?
- During that phone conversation, the Attorney General asked for a "white paper" on working with the Committee to obtain a court order that would grant the Committee access to any grand jury information that may be in the report. We provided a preliminary legal analysis in our April 1 letter to the AG. I have attached it again here. Can you tell you us when we might anticipate a response? The Chairman feels that both the Committee and Department would be at their strongest if we could go to court together to obtain this material.

Let me know if you think a call would be useful.

-Aaron

From: Enlow, Courtney D. (CIV)
Subject: RE: EPIC v. DOJ - updated draft opposition brief
To: Weinsheimer, Bradley (ODAG); (b)(6), (b)(7)(C), (b)(7)(E) per FBI (OGC) (FBI); Shapiro, Elizabeth (CIV); Baker, Brittanie (OIP); Brinkmann, Vanessa R (OIP); Breyan, Jonathan (OIP); (b)(6), (b)(7)(C)
Sent: April 5, 2019 11:34 AM (UTC-04:00)

Thanks, Brad.

From: Weinsheimer, Bradley (ODAG) <(b)(6)>
Sent: Friday, April 05, 2019 11:33 AM
To: Enlow, Courtney D. (CIV) <(b)(6)> (b)(6), (b)(7)(C), (b)(7)(E) per FBI (OGC) (FBI) >; Shapiro, Elizabeth (CIV) <(b)(6)> Baker, Brittanie (OIP) <(b)(6)> Brinkmann, Vanessa R (OIP) <(b)(6)> Breyan, Jonathan (OIP) <(b)(6)> (b)(6), (b)(7)(C)
Subject: RE: EPIC v. DOJ - updated draft opposition brief

That's fine with me. Thanks, Brad.

From: Enlow, Courtney D. (CIV) <(b)(6)>
Sent: Friday, April 5, 2019 11:28 AM
To: (b)(6), (b)(7)(C), (b)(7)(E) per FBI (OGC) (FBI); Weinsheimer, Bradley (ODAG) <(b)(6)> Shapiro, Elizabeth (CIV) <(b)(6)> Baker, Brittanie (OIP) <(b)(6)> Brinkmann, Vanessa R (OIP) <(b)(6)> Breyan, Jonathan (OIP) <(b)(6)> (b)(6), (b)(7)(C)
Subject: RE: EPIC v. DOJ - updated draft opposition brief

Brad,

Based on a comment we received from OAG, we added the below paragraph to pages 28-29 of the attached brief. Do you have any concerns or edits?

(b)(5) (AWP and DPP)

[REDACTED]

Thanks,
Courtney

From: (b)(6), (b)(7)(C), (b)(7)(E) per FBI (OGC) (FBI) <(b)(6), (b)(7)(C), (b)(7)(E) per FBI>
Sent: Thursday, April 04, 2019 4:24 PM
To: Weinsheimer, Bradley (ODAG) <(b)(6)> Enlow, Courtney D. (CIV) <(b)(6)> Shapiro, Elizabeth (CIV) <(b)(6)> Baker, Brittanie (OIP) <(b)(6)> Brinkmann, Vanessa R (OIP) <(b)(6)> Breyan, Jonathan (OIP) <(b)(6)> (b)(6), (b)(7)(C)
Subject: RE: EPIC v. DOJ - updated draft opposition brief

(b)(5) per FBI

Thanks.

(b)(6), (b)(7)(C),
(b)(7)(E) per FBI

Federal Bureau of Investigation | Office of the General Counsel

(b)(6), (b)(7)(C), (b)(7)(E) per FBI

(b)(6), (b)(7)(C), (b)(7)(E) per FBI

(office) |
(unclass)

(b)(6), (b)(7)(C), (b)(7)(E) per FBI

(mobile)

(b)(6), (b)(7)(C), (b)(7)(E) per FBI

(S)

(b)(6), (b)(7)(C), (b)(7)(E) per FBI

(TS)

Confidentiality Statement:

This message is transmitted to you by the Office of the General Counsel of the Federal Bureau of Investigation. The message, along with any attachments, may be confidential and legally privileged. If you are not the intended recipient of this message, please destroy it promptly without further retention or dissemination (unless otherwise required by law). Please notify the sender of the error by a separate e-mail or by calling (b)(6)

From: Weinsheimer, Bradley (ODAG) [mailto:(b)(6)]

Sent: Thursday, April 04, 2019 2:08 PM

To: Enlow, Courtney D. (CIV) <(b)(6)> Shapiro, Elizabeth (CIV) <(b)(6)>

(b)(6), (b)(7)(C), (b)(7)(E) per FBI OGC (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI

; Baker, Brittanie (OIP) (JMD) <(b)(6)>

Brinkmann,

Vanessa R (OIP) (JMD) <(b)(6)>

Breyan, Jonathan (OIP) (JMD)

<(b)(6)> (b)(6), (b)(7)(C)

Subject: RE: EPIC v. DOJ - updated draft opposition brief

A few proposed edits. Thanks, Brad.

From: Enlow, Courtney D. (CIV) <(b)(6)>

Sent: Thursday, April 4, 2019 11:42 AM

To: Shapiro, Elizabeth (CIV) <(b)(6)>

(b)(6), (b)(7)(C), (b)(7)(E) per FBI

(OGC) (FBI)

(b)(6), (b)(7)(C), (b)(7)(E) per FBI

; Weinsheimer,

Bradley (ODAG) <(b)(6)>

Baker, Brittanie (OIP) <(b)(6)>

Brinkmann,

Vanessa R (OIP) <(b)(6)>

Breyan, Jonathan (OIP) <(b)(6)>

(b)(6), (b)(7)(C)

Subject: EPIC v. DOJ - updated draft opposition brief

All,
Attached is an updated draft of our opposition brief. It incorporates Brad's comments and includes more information from the draft OIP declaration.

Best regards,
Courtney

From: Shapiro, Elizabeth (CIV) <(b)(6)>

Sent: Wednesday, April 03, 2019 7:28 PM

To: Enlow, Courtney D. (CIV) <(b)(6)>

(b)(6), (b)(7)(C), (b)(7)(E) per FBI

(OGC) (FBI)

(b)(6), (b)(7)(C), (b)(7)(E) per FBI

; Weinsheimer,

Bradley (ODAG) <(b)(6)>

Baker, Brittanie (OIP) <(b)(6)>

Brinkmann,

Vanessa R (OIP) <(b)(6)>

Breyan, Jonathan (OIP) <(b)(6)>

(b)(6), (b)(7)(C)

Subject: RE: Moot in EPIC v. DOJ

Duplicative Material (Document ID 0.7.960.39047)

From:
Subject: RE: FOIA case
To: Shumate, Brett A. (CIV); Murray, Claire (OAG)
Cc: Hunt, Jody (CIV)
Sent: April 5, 2019 12:06 PM (UTC-04:00)

Below are a few suggested edits. I am also copying ODAG, OLA, and OLC as they have been involved in this process and may have views. (I've reattached your original email to provide context.)

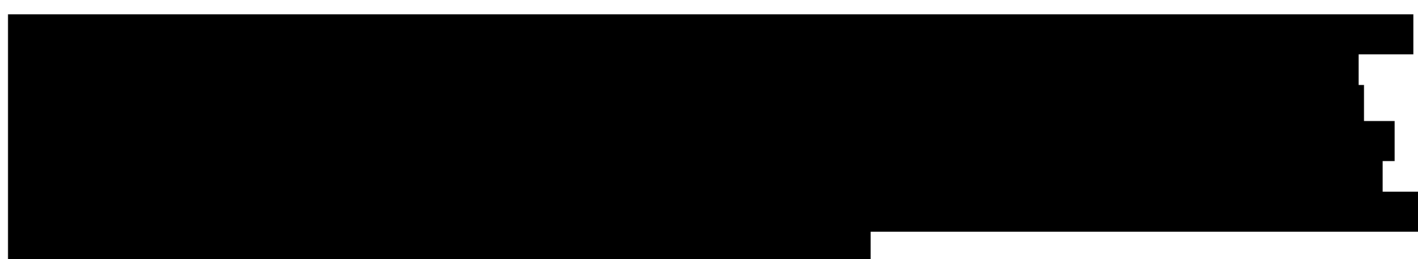
(b)(5) (AWP and DPP)



From: Shumate, Brett A. (CIV) <(b) (6)>
Sent: Friday, April 5, 2019 11:52 AM
To: Rabbitt, Brian (OAG) <(b) (6)> Murray, Claire (OAG) <(b) (6)>
Cc: Hunt, Jody (CIV) <(b) (6)>
Subject: FOIA case

Brian, per our discussion, we added the following language to the public interest section:

(b)(5) (AWP and DPP)

Thanks,

Brett A. Shumate
Deputy Assistant Attorney General
Civil Division, Federal Programs Branch
(b) (6)

From: Murray, Claire \(\OAG\)
Subject: Fwd: Mueller Report FOIA PI Opposition
To: Rabbitt, Brian \(\OAG\); Levi, William \(\OAG\)
Sent: April 5, 2019 7:38 AM (UTC-04:00)
Attached: 2019.4.4 Response to Motion for PI v5.docx, ATT00001.htm, (1) EPIC v. DOJ, No. 19-810 - Complaint.pdf, ATT00002.htm, (7) 2019.3.29 - Pls.' Motion for PI.pdf, ATT00003.htm

I have reviewed and this seems unobjectionable, but I wanted to make sure you had seen. (This will be filed today.)

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(OASG)" <(b) (6)>
Cc: "Hunt, Jody (CIV)" <(b) (6)> "Haas, Alex (CIV)"
<(b) (6)>
Subject: Mueller Report FOIA PI Opposition

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Brett