

# ONE MAN'S DECLINATION DECISION IS ANOTHER MAN'S CRIMINAL SUSPECT FAILSON

One thing Robert Mueller's March 27 letter to Attorney General William Barr reveals – in addition to the fact that Mueller is as pissed as he has ever been in his career – is that the two men think very differently about the redactions in the now released report. DOJ has always said it redacted information for four reasons:

- Grand jury material
- Ongoing investigations
- Investigative techniques (sources and methods)
- Peripheral privacy

It was always clear the last category was – as described – abusively applied. That's because a number of knowable PP details involve people who are not peripheral at all. For example, I suggested that the redacted description of someone who committed perjury on page 194 might be Carter Page (one other possibility, given the discrepancies between George Papadopoulos and Sam Clovis' testimony, is the latter figure). One of the people whose lies are detailed on page 199 must be KT McFarland, who managed to correct the lies she told when first interviewed by the FBI in the wake of Mike Flynn's plea deal.

But the most obvious example of this comes in the scope paragraph on page 12:

On October 20, 2017, the Acting Attorney General confirmed in a memorandum the Special Counsel's investigative authority as to several individuals and entities. First, "as part of a full and thorough investigation of the Russian government's efforts to interfere in the 2016 presidential election," the Special Counsel was authorized to investigate "the pertinent activities of Michael Cohen, Richard Gates, [Personal Privacy], Roger Stone, and [PP]." "Confirmation of the authorization to investigate such individuals," the memorandum stressed, "does not suggest that the Special Counsel has made a determination that any of them has committed a crime." Second, with respect to Michael Cohen, the memorandum recognized the Special Counsel's authority to investigate "leads relate[d] to Cohen's establishment and use of Essential Consultants LLC to, *inter alia*, receive funds from Russian-backed entities." Third, the memorandum memorialized the Special Counsel's authority to investigate individuals and entities who were possibly engaged in "jointly undertaken activity" with existing subjects of the investigation, including Paul Manafort. Finally, the memorandum described an FBI investigation opened before the Special Counsel's appointment into "allegations that [then-Attorney General Jeff Sessions] made false statements to the United States Senate[.]" and confirmed the Special Counsel's authority to investigate that matter.

While the first redaction is uncertain, the second redaction of the expanded scope – which came after the investigation started focusing on the June 9 meeting – has to be Don Jr given the spacing on the second line, which can only be a suffix.

KT McFarland is not a peripheral figure by any shade. But the President's son is the definition of a central player. And yet Bill Barr would have you believe that redaction is some coffee boy hired on a whim.

And the thing is, these redactions are hiding not just innocent bystanders. Don Jr is someone whom Mueller believed broke the law – at least on campaign finance and maybe on CFAA when he accessed a non-public site using a password obtained from WikiLeaks (I had thought the redaction on page 179 was of some script kiddies investigated in Philadelphia, but now that I realize these PP redactions are not of peripheral people at all, I'm reconsidering) – but who couldn't or shouldn't be charged.

Compare his treatment with that of Jeff Sessions' forgetfulness about meeting with Sergey Kislyak, which the report presents as a complete exoneration. The discussion of that exoneration is unredacted in both the investigative scope on page 12 and declinations section (197-198).

Mueller in his letter makes it clear he doesn't consider that PP category peripheral people. Rather, he treats it as a declination decision.

I previously sent you a letter dated March 25, 2019, that enclosed the

introduction and executive summary for each volume of the Special Counsel's report marked with redactions to remove any information that potentially could be protected by Federal Rule of Criminal Procedure 6(e); **that concerned declination decisions**; or that related to a charged case. [my emphasis]

The appropriateness of the redaction may be the same in both cases: clearly Mueller believes those not charged, even if it was a close call, should not be identified (with the notable exception of Jeff Sessions).

But Mueller is not pretending these are peripheral figures. The Attorney General is hiding the seriousness of potential criminal acts by at least five Trump flunkies – including Trump's failson – by pretending these people are peripheral figures rather than central figures that, for whatever reason, the Special Counsel decided not to charge.

*As I disclosed last July, I provided information to the FBI on issues related to the Mueller investigation, so I'm going to include disclosure statements on Mueller investigation posts from here on out. I will include the disclosure whether or not the stuff I shared with the FBI pertains to the subject of the post.*