

QUESTIONING BILL BARR'S "NO COLLUSION" PROPAGANDA, REGGIE WALTON ORDERS AN IN CAMERA REVIEW OF MUELLER REPORT

Before the Trump Administration started really politicizing justice, Reggie Walton had already proven himself willing to stand up to the Executive Branch. During the George W Bush Administration, he presided over the Scooter Libby trial, never shirking from attacks from the defendant. And in the first year of the Obama Administration, as presiding FISA Judge, he shut down parts of the phone dragnet and the entire Internet dragnet because they were so far out of compliance with court orders.

And Walton had already showed his impatience with Trump's stunts, most notably when presiding over a FOIA for materials related to the firing of Andrew McCabe. He finally forced DOJ to give the former Deputy FBI Director a prosecution declination so he could proceed with the FOIA lawsuit.

So it's unsurprising he's unpersuaded by DOJ's request to dismiss the EPIC/BuzzFeed lawsuits over their FOIAs to liberate the Mueller Report, and has ordered DOJ to provide him a copy of the Report before the end of the month to do an in camera review of redactions in it.

The Court has grave concerns about the objectivity of the process that preceded the public release of the redacted version of the Mueller Report and its impacts on the Department's subsequent justifications that its redactions of the Mueller Report are authorized by the

FOIA. For the reasons set forth below, the Court shares the plaintiffs' concern that the Department "dubious[ly] handl[ed] [] the public release of the Mueller Report." EPIC's Mem. at 40; see also id. ("Attorney General[] [Barr's] attempts to spin the findings and conclusions of the [Mueller] Report have been challenged publicly by the author of the [Mueller] Report. [] Attorney[] General[] [Barr's] characterization of the [Mueller] [R]eport has also been contradicted directly by the content of the [Mueller] Report."); Leopold Pls.' Mem. at 9 ("[T]here have been serious and specific accusations by other government officials about improprieties in the [Department's] handling and characterization of the [Mueller] Report[.]"). Accordingly, the Court concludes that it must conduct an in camera review of the unredacted version of the Mueller Report to assess de novo the applicability of the particular exemptions claimed by the Department for withholding information in the Mueller Report pursuant to the FOIA.

To justify this review, Walton cites Barr's silence about the multiple links between Trump and Russians and about the reason why Mueller didn't make a decision about charging Trump with obstruction.

Special Counsel Mueller himself took exception to Attorney General Barr's March 24, 2019 letter, stating that Attorney General Barr "did not fully capture the context, nature, and substance of th[e] [Special Counsel's] Office's work and conclusions," EPIC's Mot., Ex. 4 (March 27, 2019 Letter) at 1, and a review of the redacted version of the Mueller Report by the Court results in the Court's concurrence with Special Counsel Mueller's assessment

that Attorney General Barr distorted the findings in the Mueller Report. Specifically, Attorney General Barr's summary failed to indicate that Special Counsel Mueller "identified multiple contacts—'links,' in the words of the Appointment Order—between Trump [c]ampaign officials and individuals with ties to the Russian government," Def.'s Mot., Ex. D (Mueller Report – Volume I) at 66, and that Special Counsel Mueller only concluded that the investigation did not establish that "these contacts involved or resulted in coordination or a conspiracy with the Trump [c]ampaign and Russia, including with respect to Russia providing assistance to the [Trump] [c]ampaign in exchange for any sort of favorable treatment in the future," because coordination—the term that appears in the Appointment Order—"does not have a settled definition in federal criminal law," id., Ex. D (Mueller Report – Volume I) at 2, 66. Attorney General Barr also failed to disclose to the American public that, with respect to Special Counsel Mueller's investigation into whether President Trump obstructed justice, Special Counsel Mueller "determined not to make a traditional prosecutorial judgment[,] . . . recogniz[ing] that a federal criminal accusation against a sitting [p]resident would place burdens on the [p]resident's capacity to govern and potentially preempt constitutional processes for addressing presidential misconduct," but nevertheless declared that

if [he] had confidence after a thorough investigation of the facts that [] President [Trump] clearly did not commit obstruction of justice, [he] would so state. Based on the facts and the applicable legal standards, however, [he] [is]

unable to reach that judgment. The evidence [he] obtained about [] President[] [Trump's] actions and intent presents difficult issues that prevent [him] from conclusively determining that no criminal conduct occurred. Accordingly, while th[e] [Mueller] [R]eport does not conclude that [] President [Trump] committed a crime, it also does not exonerate him.

Id., Ex. D (Mueller Report – Volume II) at 1–2.

Walton further cites claims that Barr made in his April 18 press conference and letter – where he specifically claimed Mueller had found no evidence of collusion – to judge that Barr lacked candor in his statements about the report.

Similar statements were made in his April 18, 2019 letter. See Def.'s Mot., Ex. 7 (April 18, 2019 Letter) at 1–3 (stating that Special Counsel Mueller's "bottom-line conclusion on the question of so-called 'collusion' [was] [that] [t]he investigation did not establish that members of the Trump [c]ampaign conspired or coordinated with the Russian government in its election interference activities" and that "the evidence set forth in the [] [Mueller] [R]eport was [not] sufficient to establish that [] President [Trump] committed an obstruction-of-justice offense").

As noted earlier, the Court has reviewed the redacted version of the Mueller Report, Attorney General Barr's representations made during his April 18, 2019 press conference, and Attorney General Barr's April 18, 2019 letter. And, the Court cannot reconcile certain

public representations made by Attorney General Barr with the findings in the Mueller Report. The inconsistencies between Attorney General Barr's statements, made at a time when the public did not have access to the redacted version of the Mueller Report to assess the veracity of his statements, and portions of the redacted version of the Mueller Report that conflict with those statements cause the Court to seriously question whether Attorney General Barr made a calculated attempt to influence public discourse about the Mueller Report in favor of President Trump despite certain findings in the redacted version of the Mueller Report to the contrary.

[snip]

Here, although it is with great consternation, true to the oath that the undersigned took upon becoming a federal judge, and the need for the American public to have faith in the judicial process, considering the record in this case, the Court must conclude that the actions of Attorney General Barr and his representations about the Mueller Report preclude the Court's acceptance of the validity of the Department's redactions without its independent verification.

Walton doesn't say it explicitly, but he seems to believe what the unredacted portions of the report show amount to "collusion," the kind of collusion Trump would want to and did (and still is) covering up.

Be warned, however, that this review is not going to lead to big revelations in the short term.

There are several reasons for that. Many of the most substantive redactions pertain to the Internet Research Agency and Roger Stone cases.

Gags remain on both. While Walton is not an Article II pushover, he does take national security claims very seriously, and so should be expected to defer to DOJ's judgments about those redactions.

Where this ruling may matter, though, is in four areas:

- DOJ hid the circumstances of how both Trump and Don Jr managed to avoid testifying under a grand jury redaction. Walton may judge that these discussions were not truly grand jury materials.
- DOJ is currently hiding details of people – like KT McFarland – who lied, but then cleaned up their story (Sam Clovis is another person this may be true of). There's no reason someone as senior as McFarland should have her lies protected. All the more so, because DOJ is withholding some of the 302s that show her lies. So Walton may release some of this information.
- Because Walton will have already read the Stone material – that part that most implicates Trump – by the time Judge Amy Berman Jackson releases the gag in that case, he will have a view on what would still

need to be redacted. That may mean more of it will be released quickly than otherwise might happen.

- In very short order, the two sides in this case will start arguing over DOJ's withholding of 302s under very aggressive b5 claims. These claims, unlike most of the redactions in the Mueller Report, are substantively bogus and in many ways serve to cover up the details of Trump's activities. While this won't happen in the near term, I expect this ruling will serve as the basis for a similar in camera review on 302s down the road.

Update: Here's the FOIA version of the Mueller Report; here is Volume II. The b1 and b3 redactions won't be touched in this review. Where Walton might order releases are the b6, b7C redactions. I expect Walton *may* order these redactions removed, which show that Don Jr and someone else was investigated.

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, (b)(5), (b) (6), (b) (7)(C) Roger Stone, and (b)(5), (b) (6), (b) (7)(C) (b) (7)(E) (b) (7)(G) "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.

Update: I did a post last August about what Walton might do with these redactions. It holds

up, IMO.