

# **IN A TOTALLY UNRESPONSIVE RESPONSE TO REGGIE WALTON'S ORDER, KERRI KUPEC DOES NOT DENY THAT BILL BARR MISREPRESENTED THE MUELLER REPORT**

Yesterday, Bill Barr's flack Kerri Kupec issued a statement purporting to rebut what Reggie Walton (whom she didn't name) wrote in his scathing opinion suggesting that Barr's bad faith misrepresentations of the Mueller Report meant he couldn't trust DOJ's representations now about the FOIA redactions in it.

Yesterday afternoon, a district court issued an order on the narrow legal question of whether it should review the unredacted Special Counsel's confidential report to confirm the report had been appropriately redacted under the Freedom of Information Act. In the course of deciding that it would review the unredacted report, the court made a series of assertions about public statements the Attorney General made nearly a year ago. The court's assertions were contrary to the facts. The original redactions in the public report were made by Department attorneys, in consultation with senior members of Special Counsel Mueller's team, prosecutors in the U.S. Attorney's Office, and members of the Intelligence Community. In response to FOIA requests, the entire report was then reviewed by career attorneys, including different career attorneys with expertise in FOIA

cases—a process in which the Attorney General played no role. There is no basis to question the work or good faith of any of these career Department lawyers. The Department stands by statements and efforts to provide as much transparency as possible in connection with the Special Counsel’s confidential report. [my emphasis]

It is being treated as a good faith response to what Walton wrote.

Except it’s not. It’s entirely off point.

Walton’s explanation for why he will conduct his own review of the the Mueller Report redactions doesn’t focus on the FOIA response itself. He addresses what happened before the redacted version of the Mueller Report was first released, before the FOIA review actually started.

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.

[snip]

the Court is troubled by his hurried release of his March 24, 2019 letter well in advance of when the redacted version of the Mueller Report was ultimately made available to the public. The speed by which Attorney General Barr released to the public the summary of Special Counsel Mueller’s principal conclusions, coupled with the fact that Attorney General Barr failed to provide a thorough representation of the findings set forth in the Mueller Report, causes the Court to question whether Attorney General Barr’s intent

was to create a one-sided narrative about the Mueller Report—a narrative that is clearly in some respects substantively at odds with the redacted version of the Mueller Report. [my emphasis]

That process preceded the FOIA response entirely, so the part of Kupec’s statement talking about the “good faith” of the “career Department lawyers” (of the sort that Barr is undermining with glee elsewhere) is irrelevant. And Kupec’s claim that Barr was not involved in that later process is also unrelated to whether he was involved in the initial redaction process, a question she doesn’t address.

As Walton notes, the redactions in the FOIA release exactly match those in the initial release, though the justifications are entirely different, which may mean those career attorneys had to come up with exemptions to match the outcome of the process in which Barr was involved.

[D]espite the Department’s representation that it “review[ed] the full unredacted [Mueller] Report for disclosure pursuant to the FOIA,” Brinkmann Decl. ¶ 11, the Court cannot ignore that the Department’s withholdings under the FOIA exemptions mirror the redactions made pursuant to Attorney General Barr’s guidance, which cause the Court to question whether the redactions are self-serving and were made to support, or at the very least to not undermine, Attorney General Barr’s public statements and whether the Department engaged in post-hoc rationalization to justify Attorney General Barr’s positions.

Kupec doesn’t even try to address the central claim of Walton’s opinion: that Barr’s public statements – about whether the report showed

“coordination” or “collusion,” and about whether it showed Trump obstructed the investigation – conflict with what is already evident in the unredacted parts of the redacted Report.

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.

These circumstances generally, and Attorney General Barr’s lack of candor specifically, call into question Attorney General Barr’s credibility and in turn, the Department’s representation that “all of the information redacted from the version of the [Mueller] Report released by [ ] Attorney General [Barr]” is protected from disclosure by its claimed FOIA exemptions. Brinkmann Decl. ¶ 11 (emphasis added). In the Court’s view, Attorney General Barr’s representation that the Mueller Report would be “subject only to those redactions required by law or by compelling law enforcement, national

security, or personal privacy interests” cannot be credited without the Court’s independent verification in light of Attorney General Barr’s conduct and misleading public statements about the findings in the Mueller Report, *id.*, Ex. 7 (April 18, 2019 Letter) at 3, and it would be disingenuous for the Court to conclude that the redactions of the Mueller Report pursuant to the FOIA are not tainted by Attorney General Barr’s actions and representations.

That is, Walton judges that Barr’s lies about the Mueller Report tainted the subsequent process, no matter how many career Department attorneys were involved.

Significantly, Kupec offers no rebuttal – none – to Walton’s judgement that Barr misrepresented what the Report showed.

As I have noted, it’s unlikely Walton will release much more than was originally released (though he will surely be prepared to release all of the Roger Stone related materials once Amy Berman Jackson lifts that gag). But the three or four places where he might all undermine the tales that Barr told about the Report. Unsealing those redactions would:

- Explain how the President and his son failed to cooperate
- Confirm that his son (and possibly his son-in-law) was a subject of the investigation
- Reveal how several of Trump’s flunkies told concerted lies before they decided to start telling the truth

- Show why Mueller seriously considered indicting Stone – and possibly even the President himself – for their actions encouraging the hack-and-leak operation

Moreover, on one key point – the redactions for privacy that in the FOIA review were exempted under b6 and b7C – Barr's initial claims about redactions are an obvious lie: he said those redactions hid "information that would unduly infringe on the personal privacy and reputational interests of peripheral third parties." Among the people the initial review treated as "peripheral third parties" are Donald Trump Jr. and Deputy National Security Advisor KT McFarland; in Judge Jackson's review in the Roger Stone trial, redactions protecting privacy and reputational interests even included the President himself.

Importantly, Walton's *in camera* review will be critical for the next step, which will be a review of DOJ's unprecedented b5 exemptions, which already show abundant evidence of politicization (and in which there is good reason to believe Barr has been involved). By reading the declination decisions pertaining to people like KT McFarland, Walton will understand how improper it is to redact her later 302s while releasing her earlier, deceitful ones.

If Kupec would like to do her job rather than play a key role in Barr's ongoing propaganda effort about the Report, she can explain what role Barr had in that initial review, something not addressed in her off point comment. Even better, she can explain why the redactions on the underlying materials like 302s are so obviously politicized.

But given that she's not even willing to deny that Barr misrepresented the initial report, I doubt she'll issue any statement that offers useful commentary on this process.