

# BILLY BARR'S OLC DECLINATIONS

The NYT reported yesterday that, in a bid to retroactively exonerate the President, Billy Barr pursued ways to overturn the campaign finance conviction of Michael Cohen.

But Mr. Barr spent weeks in the spring of 2019 questioning the prosecutors over their decision to charge Mr. Cohen with violating campaign finance laws, according to people briefed on the matter.

As part of that effort, Barr got the Office of Legal Counsel to write a memo (though not a formal opinion) about the applicability of criminal campaign finance law to efforts to squelch public information.

At one point during the discussions, Mr. Barr instructed Justice Department officials in Washington to draft a memo outlining legal arguments that could have raised questions about Mr. Cohen's conviction and undercut similar prosecutions in the future, according to the people briefed on the matter.

[snip]

The New York Times reported previously that Mr. Barr had questioned the legal theory of the campaign finance charges against Mr. Cohen, but it was not known that the attorney general went so far as to ask for the draft memo or had raised his concerns more than once.

The memo, written by the Justice Department's Office of Legal Counsel, addressed the Southern District's somewhat novel use of campaign finance laws to charge Mr. Cohen. Before Mr. Cohen's guilty plea, the only person

known to face criminal charges for payments meant to keep negative information buried during a political campaign was the former senator and Democratic presidential candidate John Edwards, who was not convicted.

Mr. Barr argued, among other things, that such cases might be better suited to civil resolutions by the Federal Election Commission than to criminal prosecutions, according to people with knowledge of the discussions.

Mr. Cohen, who reported to prison in May 2019, was recently released on furlough and is currently serving his sentence at his Manhattan home, after citing health concerns related to the coronavirus.

There is no indication that the Justice Department planned to issue a formal opinion on the campaign finances charges. Such a step, if taken, might have raised questions about the validity of the case against Mr. Cohen and affected any future effort to investigate Mr. Trump or others in his circle for similar conduct.

The news that Barr got OLC involved in criminal charging matters has repercussions on several other levels.

First, it means that potentially before Mueller finished his report, OLC would have established new ground on campaign finance crimes. That's important because two of the declinations in the Mueller Report involve Trump's acceptance of campaign dirt from foreigners – both the people at the June 9 meeting, and Roger Stone's apparent optimization of the WikiLeaks releases. While that's a different application of campaign finance (and not one that's a clear cut case), OLC's involvement on one application before the Mueller Report release opens the possibility that Steve Engel similarly weighed in on

another, with direction from Barr about what they should decide.

Add in the fact that Engel, along with PDAG Ed O'Callaghan, did the analysis behind Barr's decision to decline to prosecute Trump for obstruction of justice. It would be inappropriate for OLC to make a prosecutorial decision in any case, all the more so given that OLC has an opinion saying that no one DOJ should be making such decisions at all. Now add in the fact that Engel must have weighed in during the weeks leading up to this decision about campaign finance issues.

It's now widely agreed (though was always clear from the public record) that Trump lied in his responses to Mueller about his conversations with Roger Stone about WikiLeaks. And his hints that Stone would be pardoned are one of his most obstructive acts. Effectively, then, Engel would be playing both sides of the prosecutorial decision, setting the rules and then applying them, which isn't how justice is supposed to work.

Finally, consider that the Stone prosecutors were prepared to introduce Stone's lies to HPSCI about coordinating with Trump on his campaign efforts as 404(b) evidence (effectively to show that his lies were systematic). That Stone was coordinating (he kept asking Rick Gates for lists, which should have been purchased from the campaign, and he asked Steve Bannon to get him funding from Rebekah Mercer during the period when Bannon was running the campaign) would seem to be a campaign finance issue. This is another matter that OLC's review of campaign finance may have implicated.

It's not just that Barr went out of his way to make it legal for outsiders to pay to suppress bad news, but it's that he's secretly rewriting campaign finance law in ways that may have wider implications. And by doing so, Barr may have limited other prosecutorial decisions implicating Trump.