

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

January 14, 2019

Dear Chairman Graham:

Thank you for taking the time to meet with me last week. I appreciated the opportunity to speak with you about my upcoming hearing before the Senate Judiciary Committee and my plans for the Department of Justice if I am confirmed.

During our meeting, you asked me about the legal memorandum that I drafted as a private citizen in June 2018, a copy of which I provided to the Committee last month. Although the memorandum is publicly available and has been the subject of extensive reporting, I believe there may still be some confusion as to what my memorandum did, and did not, address.

As I explained in my January 10, 2019 letter responding to questions posed by Ranking Member Feinstein, the memorandum did not address – or in any way question – the Special Counsel’s core investigation into Russian efforts to interfere with the 2016 election. Indeed, I have known Bob Mueller personally and professionally for 30 years, and I have the utmost respect for him and the important work he is doing. When Bob was appointed, I publicly praised his selection and expressed confidence that he would handle the investigation properly. As I noted during our discussion, I personally appointed and supervised three special counsels myself while serving as Attorney General. I also authorized an independent counsel under the Ethics in Government Act. I believe the country needs a credible and thorough investigation into Russia’s efforts to meddle in our democratic process, including the extent of any collusion by Americans, and thus feel strongly that that the Special Counsel must be permitted to finish his work. I assured you during our meeting – and I reiterate here – that, if confirmed, I will follow the Special Counsel regulations scrupulously and in good faith, and I will allow Bob to complete his investigation.

As for the memorandum itself, as we discussed during our meeting, the memorandum’s analysis was narrow in scope. It addressed a single obstruction-of-justice theory under a specific federal statute, 18 U.S.C. § 1512(c), that I thought, based on public information, Special Counsel Mueller might have been considering at the time. The memorandum did not address any of the other obstruction theories that have been publicly discussed in connection with the Special Counsel’s investigation.

The principal conclusion of my memo is that the actions prohibited by section 1512(c) are, generally speaking, the hiding, withholding, destroying, or altering of evidence – in other words, acts that impair the availability or integrity of evidence in a proceeding. The memorandum did not suggest that a President can never obstruct justice. Quite the contrary, it expressed my belief that a President, just like anyone else, can obstruct justice if he or she engages in wrongful actions that impair the availability of evidence. Nor did the memorandum claim, as some have incorrectly suggested, that a President can never obstruct justice whenever he or she is exercising a constitutional function. If a President, acting with the requisite intent, engages in the kind of evidence impairment the statute prohibits – regardless whether it involves the exercise of his or her constitutional powers or not – then a President commits obstruction of justice under the statute. It is as simple as that.

During our meeting, you asked why I drafted the memorandum. I explained that, as a former Attorney General, I am naturally interested in significant legal issues of public import, and I frequently offer my views on legal issues of the day – sometimes in discussions directly with public officials; sometimes in published op-eds; sometimes in amicus briefs; and sometimes in Congressional testimony. For example, immediately after the attacks of September 11, 2001, I reached out to a number of officials in the Bush administration to express my view that foreign terrorists were enemy combatants subject to the laws of war and should be tried before military commissions, and I directed the administration to supporting legal materials I previously had prepared during my time at the Department. More recently, I have offered my views to officials at the Department on a number of legal issues, such as concerns about the prosecution of Senator Bob Menendez.

In 2017 and 2018, much of the news media was saturated with commentary and speculation about various obstruction theories that the Special Counsel may have been pursuing at the time, including theories under section 1512(c). I decided to weigh in because I was worried that, if an overly expansive interpretation of section 1512(c) were adopted in this particular case, it could, over the longer term, cast a pall over the exercise of discretionary authority, not just by future Presidents, but by all public officials involved in administering the law, especially those in the Department. I started drafting an op-ed. But as I wrote, I quickly realized that the subject matter was too dry and would require too much space. Further, my purpose was not to influence public opinion on the issue, but rather to make sure that all of the lawyers involved carefully considered the potential implications of the theory. I discussed my views broadly with lawyer friends; wrote the memo to senior Department officials; shared it with other interested parties; and later provided copies to friends. I was not representing anyone when I wrote the memorandum, and no one requested that I draft it. I wrote it myself, on my own initiative, without assistance, and based solely on public information.

You requested that I provide you with additional information concerning the lawyers with whom I shared the memorandum or discussed the issue it addresses. As the media has reported, I provided the memorandum to officials at the Department of Justice and lawyers for the President. To the best of my recollection, before I began writing the memorandum, I provided

my views on the issue to Deputy Attorney General Rod Rosenstein at lunch in early 2018. Later, on a separate occasion, I also briefly provided my views to Assistant Attorney General Steven Engel. After drafting the memorandum, I provided copies to both of them. I also sent it to Solicitor General Noel Francisco after I saw him at a social gathering. During my interactions with these Department officials, I neither solicited nor received any information about the Special Counsel's investigation. In addition to sharing my views with the Department, I thought they also might be of interest to other lawyers working on the matter. I thus sent a copy of the memorandum and discussed those views with White House Special Counsel Emmet Flood. I also sent a copy to Pat Cipollone, who had worked for me at the Department of Justice, and discussed the issues raised in the memo with him and a few other lawyers for the President, namely Marty and Jane Raskin and Jay Sekulow. The purpose of those discussions was to explain my views.

As I explained during our meeting, I frequently discuss legal issues informally with lawyers, and it is possible that I shared the memorandum or discussed my thinking reflected in the memorandum with other people in addition to those mentioned above, including some who have represented clients in connection with the Special Counsel's work. At this time, I also recall providing the memorandum to, and/or having conversations about its contents with, the following:

- Professor Bradford Clark
- Richard Cullen
- Eric Herschmann
- Abbe Lowell
- Andrew McBride
- Patrick Rowan
- George Terwilliger
- Professor Jonathan Turley
- Thomas Yannucci

The foregoing represents my best recollection on these issues at this time. I look forward to discussing these issues further with you and your colleagues at my upcoming hearing.

Sincerely,

A handwritten signature in blue ink that reads "WP Barr".

William P. Barr