

vestiges of bipartisanship as we select judges.

NOMINATION OF WILLIAM BARR

Mr. President, finally, the Senate will soon resume debate on the nomination of William Barr to be the Attorney General. I oppose this for many reasons, and later today I will join my Democratic colleagues during debate time to lay out my opposition to this nominee.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I thank the leader for his comments. I want to just say that the Democrats on the Judiciary Committee agree with him, and on their behalf, I would like to make the following comments.

Last week, the Judiciary Committee voted on the nomination of William Barr to be Attorney General of the United States. All Democrats voted against the nomination. There are reasons.

There is no question that Mr. Barr is qualified. He previously served as Attorney General from 1991 to 1993, and he has had a long legal career, but the question before us is whether Mr. Barr is the right choice to lead the Justice Department, at this time, with this President, when there are currently several active investigations that implicate this President, his campaign, his advisers, and/or his inner circle.

The answer for me and the Judiciary Committee Democrats is no. Let me explain why. Five months before being named for the Attorney General position, Mr. Barr wrote an extensive 19-page, single-spaced memo in which he provided great detail and legal arguments for his view of the President's absolute authority. Mr. Barr then shared and discussed that memo with the White House Counsel and the President's defense lawyers.

In this memo, Mr. Barr outlined his views on Special Counsel Mueller's investigation into possible obstruction of justice, the unitary executive, and whether a President can, in fact, be indicted.

One example, Mr. Barr argued that Special Counsel Mueller should not be allowed to question the President about obstruction of justice—point 1.

He concluded that the law does not apply to the President if it conflicts with a broad view of Executive authority, and that view is often referred to as the unitary executive.

Under this belief, conflict of interest laws cannot and do not apply to the President of the United States because, as Mr. Barr writes in his memo, "to apply them would impermissibly 'disempower' the President from supervising a class of cases that the Constitution grants him the authority to supervise. Under the Constitution, the President's authority over law enforcement matters is necessarily all-encompassing."

Read the memo. This is on page 11.

Further, Mr. Barr asserted that "the Constitution, itself, places no limit on

the President's authority to act on matters which concern him or his own conduct."

Mr. Barr went on to explain that, in his view, President Trump would have virtually unlimited authority over the Executive branch. As he said in his memo, the President "alone is the Executive branch. As such, he is the sole repository of all Executive powers conferred by the Constitution. Thus, the full measure of law enforcement authority is placed in the President's hands, and no limit is placed on the kinds of cases subject to his control and supervision."

That is page 11 of the memo.

Importantly, based on these conclusions, Mr. Barr asserts that certain Presidential actions—including firing FBI Director James Comey or telling the FBI to go easy on Michael Flynn—is never obstruction of justice.

In fact, Mr. Barr even said that "the President's discretion in these areas has long been considered 'absolute,' and his decisions exercising this discretion are presumed to be regular and are generally deemed nonreviewable."

That is page 10 in the memo.

This is a stunning legal argument. Taken to its natural conclusion, Mr. Barr's analysis squarely places this President above the law. To argue that the President has no check on his authority flies in the face of our constitutional principles of checks and balances and should be concerning to Democrats and Republicans.

Mr. Barr's views about the power of the President are especially troubling in light of his refusal to commit to making the special counsel's findings and the report publicly available, and his refusal to agree to protect the other investigations into President Trump.

When I asked Mr. Barr about this at the hearing, he said, in his own words, that he would "make as much information available as I can consistent with the rules and regulations that are part of the special counsel regulations."

When others pressed him, he changed his answer to suggest that he may instead release a summary of the special counsel's findings. This is not acceptable. There is nothing in existing law or regulations that prevents the Attorney General from sharing the special counsel's report and underlying factual findings with the American public. Many of us believe this report is seminal to the Presidency, and the public must be able to read it.

In addition, as part of our oversight responsibilities, Congress routinely requests and receives confidential information related to closed investigations. In fact, recently Congress asked for and received investigative information, including transcripts of FBI interviews of witnesses involved in the examination of Secretary Clinton's emails. This matter should be treated no differently.

After Mr. Barr's hearing, I sent him two letters. First, I asked him to pro-

vide Congress and the American public with the full accounting of the Mueller investigation, including any report prepared by the special counsel himself.

Secondly, I asked him in writing to commit to protecting all investigations into matters surrounding President Trump and the 2016 election.

Mr. President, I ask unanimous consent that these two letters be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,

Washington, DC, January 17, 2019.

MR. BARR: I very much appreciated your responses to questions before the Committee and hearing directly from you on many important issues. As I noted during the hearing, ensuring access to Mueller's findings and recommendations—unchanged—is of utmost importance. To this end, I and others asked you about releasing the report as drafted from the Special Counsel. When I first asked you, you clearly stated you would provide the report. Specifically, I asked,

"Will you commit to making any report Mueller produces at the conclusion of his investigation available to Congress and to the public? And you responded, 'As I said in my statement, I am going to make as much information available as I can consistent with the rules and regulations that are part of the special counsel regulations.'"

I then asked, "Will you commit to making any report on the obstruction of justice public?" You responded, "That is the same answer. Yes."

Later as others pressed you on these answers you expanded by saying:

"As the rules stand now, people should be aware that the rules I think say that the Special Counsel will prepare a summary report on any prosecutive or declination decisions, and that that shall be confidential and shall be treated as any other declination or prosecutive material within the Department."

In fact the regulations state, "At the conclusion of the Special Counsel's work, he or she shall provide the Attorney General with a confidential report explaining the prosecution or declination decisions reached by the Special Counsel."

As you may be aware, there is nothing in the regulations saying the report should be "treated as any other" Department material, nor is there anything defining confidential. Finally, there is no language in the regulations indicating that Congress cannot have access—especially when the materials in question relate to a completed investigation.

It is also worth noting that in the most recent past practice, the Department has provided Congress with investigative reports and other materials, including notes and summaries of witness interviews. Specifically, with regard to the investigation into Secretary Clinton the Department provided investigative reports, as well as notes and summaries of witness interviews. As you testified "the country needs a credible resolution of these issues" which argues in favor of complete transparency and public disclosure of as much information as possible, consistent with national security and active law enforcement needs.

I would appreciate your response on this as quickly as possible, and prior to the Committee's consideration of your nomination in our Executive Business meetings.

Sincerely,

DIANNE FEINSTEIN,
U.S. Senator.

U.S. SENATE,

Washington, DC, February 7, 2019.

WILLIAM P. BARR,
Kirkland & Ellis LLP,
Washington, DC.

DEAR MR. BARR: I am writing to follow up on my January 17 letter about Special Counsel Mueller's investigation, and regarding other investigations that implicate the President's interests. As you know, you were asked numerous questions about both the Mueller investigation as well as investigations in the Southern District of New York, Eastern District of Virginia, and District of Columbia.

As raised at your hearing, it is imperative that all of these investigations be free from any interference and allowed to continue. In your June 2018 memo, you took the position that "no limit is placed on the kinds of cases subject to [the President's] control and supervision," including "matters in which he has an interest." While you testified that you would not stop these investigations, you qualified your answer by saying "if I thought it was a lawful investigation." When asked if the President could fire prosecutors on these cases, you responded that "the President is free to fire his, you know, officials that he has appointed."

This gives you, and the President, considerable discretion and power over these investigations. I therefore ask for your commitment that these investigations will be allowed to proceed without interference, and for an explanation of how you will safeguard their independence and integrity, if confirmed.

Thank you for your attention to these important matters.

Sincerely,

DIANNE FEINSTEIN,
U.S. Senator.

Mrs. FEINSTEIN. I did not receive the courtesy of a response to either letter.

Here is a man seeking approval of his appointment. The ranking member of the Judiciary Committee sends him a letter asking two very valid questions, and there is no response. That told me something very loud and clear.

Over the past year, we have seen several other investigations arising out of the Southern District of New York, the Eastern District of Virginia, and the District of Columbia, where prosecutors are looking into crimes involving foreign donations to the Trump inauguration committee, money laundering, campaign finance violations, as well as possible efforts by Russian agents to assist the Trump campaign during the election. When asked about these investigations at his hearing, Mr. Barr refused to pledge they would be protected from interference. He refused to pledge that these valid investigations would be protected from interference.

For example, Senator COONS asked, "If the President ordered you to stop the [Southern District of New York] investigation in which someone identified as individual one is implicated, would you do that?"

Mr. Barr responded that "every decision within the department has to be made based on the attorney general's independent conclusion and assessment that it's in accordance with the law, so I would not stop a bona fide lawful investigation."

However, this qualification of "a bona fide, lawful investigation" is all important. In his 19-page memo, Mr. Barr clearly wrote this: "The full measure of law enforcement authority is placed in the President's hands, and no limit is placed on the kinds of cases subject to his control and supervision," including "matters in which he has an interest." I really see why he was nominated. This is the offering of complete protection from the law by the Attorney General—future Attorney General, if he should become one.

Mr. Barr went on to argue that if the President determined "an investigation was bogus, the President ultimately had legitimate grounds for exercising his supervisory powers to stop the matter." This would mean that the President could stop the Mueller investigation, which the President has repeatedly described as a "witch hunt" and "hoax."

It also means that if Donald Trump decided the Southern District of New York's investigation was, in Mr. Barr's words, "bogus," the President would have the right to stop the investigation. Think about that. Think about the ramifications of that.

When Senator BLUMENTHAL asked Mr. Barr during his hearing, "If the President fired a United States attorney, would you support continuing that investigation, even under the civil servants, the career prosecutors, who would remain?"

Mr. Barr replied, "Yeah . . . I believe, regardless of who or what outside the department is trying to influence what is going on, every decision within the department relating to enforcement, the attorney general has to determine independently that—that it is a lawful action."

Think about that. The Attorney General becomes the arbiter, independently, of what a lawful action comprises. But, again, according to this memo, firing a U.S. attorney, even if it implicates the President's own personal interests, is a lawful action by the President.

During this hearing, Mr. Barr stated that "the President can fire a U.S. attorney. They are a presidential appointment."

The meaning of this is clear: Prosecutors in these cases can be fired arbitrarily by the President of the United States under his plenary authority.

As I said at the outset, the question is whether Mr. Barr is the right person for the job at this time. The memo that I am quoting from I spent a full day reading and thinking about, and it was the most extreme case for Presidential power that I have ever read. In and of itself, it gives me cause to believe this is why—I could be wrong, but this is why he received that nomination.

Given the broad implications of Presidential power and unlimited control Mr. Barr believes this President has over law enforcement matters, I cannot support this nominee to serve as Attorney General. At this critical time in

our Nation's history, we must have an Attorney General who is objective and who is clearly committed to protecting the interests of the people, the country, and the Constitution.—not the President.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

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Mr. THUNE. Mr. President, we are doing a number of important things in the Senate this week.

Last night, we passed the Natural Resources Management Act. This is a bipartisan package of more than 100 individual bills that will help protect our natural resources, spur economic development, increase access to public lands, and much more.

I was very pleased that my Custer County Airport Conveyance Act, which I introduced with the other Members of the South Dakota delegation, was included in this bill. This legislation will give Custer County Airport full ownership of the land on which it operates and allow the airport to make improvements to its facilities.

Custer County Airport supports business and recreational aviation and fire suppression efforts in the Black Hills region, and I am pleased that this bill will increase the airport's ability to serve this area of South Dakota.

I am grateful to Chairman MURKOWSKI for her leadership on this important lands package, as well as to Ranking Member MANCHIN and all of those who worked on these bills at the committee level.

NOMINATION OF WILLIAM BARR

Mr. President, last night, the Senate moved forward on William Barr's nomination to be Attorney General. We will have the final vote on that nomination later this week.

The President made an outstanding choice with Mr. Barr. Mr. Barr is eminently qualified to be Attorney General. In fact, he has already been Attorney General—under President George H.W. Bush. He also served as Assistant Attorney General in the Office of Legal Counsel at the Department of Justice and as Deputy Attorney General.

He has won respect from both sides of the aisle. He has been confirmed by the Senate without opposition—not once, not twice, but three times. He was unanimously confirmed as Attorney General under George H.W. Bush in a Democrat-controlled Senate. Then-Judiciary Committee Chairman Joe Biden described him as "a heck of an honorable guy."

Senator LEAHY also spoke at that time, expressing his belief that Mr. BARR would be "an independent voice for all Americans."

Today, Mr. Barr continues to earn respect from Democrats. The ranking member on the Judiciary Committee noted in January:

He's obviously very smart. He was attorney general before. No one can say he isn't qualified.