

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of William Pelham Barr, of Virginia, to be United States Attorney, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. BOOKER) is necessarily absent.

The PRESIDING OFFICER (Ms. MCSALLY). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 55, nays 44, as follows:

[Rollcall Vote No. 23 Leg.]

YEAS—55

Alexander	Gardner	Portman
Barrasso	Graham	Risch
Blackburn	Grassley	Roberts
Blunt	Hawley	Romney
Boozman	Hoeven	Rounds
Braun	Hyde-Smith	Rubio
Burr	Inhofe	Sasse
Capito	Isakson	Scott (FL)
Cassidy	Johnson	Scott (SC)
Collins	Jones	Shelby
Cornyn	Kennedy	Sinema
Cotton	Lankford	Sullivan
Cramer	Lee	Thune
Crapo	Manchin	Tillis
Cruz	McConnell	Toomey
Daines	McSally	Wicker
Enzi	Moran	Young
Ernst	Murkowski	
Fischer	Perdue	

NAYS—44

Baldwin	Hassan	Rosen
Bennet	Heinrich	Sanders
Blumenthal	Hirono	Schatz
Brown	Kaine	Schumer
Cantwell	King	Shaheen
Cardin	Klobuchar	Smith
Carper	Leahy	Stabenow
Casey	Markey	Tester
Coons	Menendez	Udall
Cortez Masto	Merkley	Van Hollen
Duckworth	Murphy	Warner
Durbin	Murray	Warren
Feinstein	Paul	Whitehouse
Gillibrand	Peters	Wyden
Harris	Reed	

NOT VOTING—1

Booker

The PRESIDING OFFICER. On this vote the yeas are 55, and the nays are 44.

The motion is agreed to.

EXECUTIVE CALENDAR

The PRESIDING OFFICER. The clerk will report the nomination.

The bill clerk read the nomination of William Pelham Barr, of Virginia, to be Attorney General.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM. Madam President, we are now debating the nomination of Mr. Barr to be the Attorney General.

All I can say is if America ever needed a steady hand at the Department of Justice, it is now. Mr. Whitaker has done a good job as interim Attorney General, but we are looking for a new person to bring stability, improve morale, and be a steady hand and mature

leadership at a time when our country is very much divided.

I told President Trump, when he mentioned Mr. Barr to me as a potential nominee: The other names are impressive, but Mr. Barr stands out head and shoulders above the others.

If you knew who the others were, that is saying a lot.

Why not believe that? The best indication of what Mr. Barr will do as Attorney General in the future is what he has done in the past. He has actually been Attorney General before. He was approved by this body, under Bush 41, to be the Attorney General by a voice vote. He has been the Assistant Attorney General for the Office of Legal Counsel and the Deputy Attorney General. He has been the chief lawyer for the CIA. In all of these jobs, he was confirmed by the Senate by voice vote.

In other words, he was so well qualified that nobody felt the need to vote. Yes, he is a fine man. Let's go ahead and confirm him by voice vote.

Now, here we are, in 2019, and I can say, without any doubt, that if you think Bill Barr has been auditioning for this job, you really haven't paid much attention to how this whole thing came about.

Once the President mentioned to me that he was considering Mr. Barr, I asked him: Well, does he want the job?

He says he doesn't know, but everybody tells me he would be one of the best picks I can make.

I said: Well, I agree with what everybody else has told you.

I called Mr. Barr, on several occasions, asking to please consider this: I know that you are at a good time in your life. Your children are grown. You have made it. You have done a good job. You have a stellar reputation, and you have done the work of several lifetimes. But having said that, seldom can somebody in their late sixties be able to contribute the most in their life, and I believe this is your time to make the biggest contribution. In terms of what you have done for the country, that is saying a lot. Again, very seldom does this moment come along where you can make the biggest contribution to the country later in life after having served before.

So he agreed to take the job, and we have cloture by, I think, 55 votes. He got voted out of committee along party lines.

Senator Biden told me something that stuck with me to this day: Never question the motive of a Senator. They got here their way. You can question their judgment but not their motive.

When it comes to Bill Barr, I can only tell my Democratic colleagues that there is nobody better that I know to recommend to you. This is as good as it gets on our side. I was happy when President Trump wanted to nominate Mr. Barr. I thought of all the people he could have chosen, and this was the top, by far.

I say that because of the way he conducted himself over decades of service

at the highest levels of government. He is a man of the law. He loves the law. His ethics is beyond reproach.

When it comes to Mr. Mueller's investigation, the Barrs and the Muellers are friends, but it will be a business relationship. I can promise you this: Mr. Barr will make sure that Mr. Mueller can finish his job without political interference. He said that, I believe that, and that is the way this movie has to end.

As for the memo that he wrote about one of the theories of obstruction of justice, related to the firing of Director Comey, I share his legal analysis and concern. If firing somebody that you have the ability to fire, for almost any reason, becomes obstruction of justice, then anytime you fire a U.S. attorney or assistant U.S. attorney, you are turning it into a political football.

So as for the statute that he wrote the memo about, his reasoning about how you should be reluctant to use this for an obstruction of justice case made perfect sense to me. When he was asked about the President's obstruction of justice, he said: Of course, the President can be charged with obstruction of justice. If the President encourages somebody to give false testimony, that will be obstruction of justice. If they tried to hide evidence from the courts or the Congress, that would be obstruction of justice.

The question was this: Could you bring a case based on firing somebody who is a political appointee? He had great reservations about that, but he acknowledged that the President is not above the law, and to suggest otherwise is not really listening to what he had to say—wanting an outcome rather than listening to what he had to say.

About sharing the Mueller report with the country at large, there is a regulation on point that basically requires Mr. Mueller to report to the chairman and ranking member of the Judiciary Committee of the House and of the Senate about the report. He has discretion to withhold information that he believes should be classified. He has to tell us—the chairman and the ranking member—whether or not he disagreed with Mr. Mueller's decision in any fashion.

In other words, if Mueller wanted to bring a charge or make an accusation, and Barr said no, under the regulation he would have to tell us that he actually disagreed with Mr. Mueller and why.

As to how much he will release, we will know when he gets the report, but here is what I do believe. He is going to err on the side of transparency. I am not going to take his discretion away from him. I trust him to make a good decision, and his promising us to release the report before he gets it is probably a bridge too far. For anybody wanting the job to make a bargain with a Senator just to get the job—that I will turn this report over even before I see it—is probably not the right answer.

Here is what Mr. Barr said that really stuck with me. I am not making bargains with editorial writers, with pundits, or with elected political leaders that I don't feel are right for the Department. I don't want the job that much. I don't need the job in terms of building a career. I have had a great career. I am doing this because I think I can provide some leadership at a time we need some.

We will have a vote here probably tomorrow. He is soon going to be Attorney General. I can tell all my Democratic colleagues that I cannot think of a better person to do this job at this time in our Nation's history. I know he will be devoted to following the law as the law is written. I know he will be fair to the President, but he will pick the rule of law over anything or anybody, including the Senate or the President.

He will be a shot in the arm for a Department that needs a morale lift. He is going to look at the abuses inside of the Department. How could a FISA warrant be issued on an American citizen based on a dossier? It is a bunch of political garbage.

As for what happened in 2016, he is going to look at that, too, I hope. But when it comes to Mr. Mueller, Mr. Mueller will be allowed to do his job, and there will come a day when his report is completed. I am confident that Mr. Barr will share it with the public to the fullest extent possible. I have every confidence he will.

To the people who are working at the Department of Justice, in a day or two, you are going to have a new leader. I think you should be excited about the reforms that will be coming. I think you should be excited about working for this good man. He has dedicated his life to your causes—a Department of Justice that is impartial, that goes after the bad guys, and that makes sure that the policies in place build up the country.

I think Mr. Barr represents that way of doing business in Washington that has sort of been lost. He is a "handshake and phone call" kind of guy. He has been up here for a very, very long time. He has earned a lot of accolades in the legal profession.

Some of the people who came forward to testify on his behalf definitely have a different legal philosophy and political philosophy than Mr. Barr, but they all said, without hesitation, that he is one of the finest people they have ever known and he will be a great Attorney General.

I want to thank President Trump for nominating Mr. Barr. I don't think he could have done a better job in picking someone than Mr. Barr. I want to let the people at the Department of Justice know that help is on the way. I want the American people to understand that this man has a record that should comfort you—that with Bill Barr, you know what you are getting. He has served at the highest levels of government for decades—former Attor-

ney General, Deputy Attorney General, and chief legal counsel to the CIA. He has done it all.

He is ready to take over, and he is mature in his judgment. He is calm in his demeanor. He is passionate about the law. He loves the Department of Justice.

To the American people, you can go to bed here soon knowing that the Department of Justice is in good hands.

To my colleagues that voted against him, give him a chance. I think he is going to deliver for the country.

To the committee, thank you for allowing the nomination to go through so quickly.

To DIANNE FEINSTEIN, who is a great partner, I appreciate the processing of the nomination. We may have differences of opinion about what the right answer is, but we could not have asked for a better process. Mr. Barr was challenged, but respectfully so.

Having said that, we are about to confirm a new Attorney General at a time when we need one. This is just not somebody for the job. This is a very special person for the job.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Madam President, I guess I am here to follow my friend Senator GRAHAM and bring the opposing view regarding Mr. Barr.

I offer my appreciation to the chairman, as he leaves, for the way that he conducted the hearing. I know that he offered his appreciation to the ranking member, but the hearing, I thought, was well handled. Everybody had a chance to ask their questions and say their things, and I think the comments that the chairman made afterward about trying to bring the committee together were well received on my side.

There are a number of problems, however, that I have with this nominee. Many of them relate to continuing problems in the Department. One, in particular, I warned Mr. Barr about in a letter that I sent to him beforehand in order to make sure that he wasn't surprised by the question and so that I could get a proper, thoughtful answer. The problem is that the Department, for purposes of recusal analysis and for purposes of conflict analysis, takes a look at what people's different financial entanglements are and who they worked for before. It is a fairly standard process, but there is a big gaping hole in it. The big gaping hole in the process is that when it was set up originally at the beginning of the Obama administration, the Supreme Court hadn't yet decided *Citizens United*, so the flood of unlimited special interest money that poured into our politics, which quickly became unlimited, special interest dark money, was not then a problem.

Also, you didn't see a lot of Democrats who had a lot of engagement with dark money coming to high office, but with the Trump administration that all changed, and we now have an Act-

ing Attorney General, Mr. Whitaker, who was paid \$1.2 million through a group called FACT. Basically, FACT is a front group. It does no business. It has no product. It provides no service. It basically just pays Mr. Whitaker to go on talk shows and criticize Democrats. There are very few employees. The only employee I am aware of, other than, perhaps, clerical people, was actually Whitaker himself, so one would like to know why he was paid that money and who paid him in order to do proper recusal and conflict checks.

But here is what is interesting: The money that came in to pay him through FACT, before it got to FACT, had been laundered through another group called Donors Trust. Donors Trust is another group that does no business, has no service, creates no product, manufactures nothing. Its purpose for existence is to strip the identities off of big donors—ordinarily it seems big Republican special interest donors—so that the money they then give goes anonymously to groups that pretend they are not fossil fuel funded, for instance, because the identity of the fossil fuel donor has been stripped clean, or they are not the tool of the Koch brothers because the Koch brothers' identity has been stripped clean. It is a device for misleading and confusing people. When you consider how much of that \$1 million went through to Mr. Whitaker in salary, the idea that he doesn't know who was paying him when so much of FACT's money came through that one donation is really improbable.

He was questioned on this in the House the other day. I don't think he was truthful. I think he does know, and I hope—hope—that the House will pursue with subpoenas finding out who the donor was so that we actually know, because I think he does. Obviously, the donor does.

So what we have now is a situation where the Acting Attorney General of the United States potentially has a \$1 million conflict of interest that I believe the Acting Attorney General knows about, that the donor with whom he has a conflict of interest obviously knows about, that has been hidden from the rest of us through laundering through Donors Trust, and that is not an environment that is conducive to proper recusal and proper conflict-of-interest assessment.

It is very poor practice, and if it weren't for the fact that dark money is so important to big Republican donor interests, I think people would readily clear this up. If the shoe were on the other foot, my colleagues on the other side would have steam coming out of their ears to get to the bottom of this. But because what is likely to be revealed is a big Republican donor, suddenly there is this massive disinterest.

Mr. Barr proposed himself as the person who is going to come to this office to defend the Department of Justice, to put the institutional interests of the

Department of Justice first, to protect it from the vagaries of the Trump administration. Yet when he was asked about this, he completely fell down. He offered no sensible or reasonable assurances, so that concerned me a little bit.

I then went on to ask him, since the Department of Justice has a National Security Division, which oversees counterintelligence work, and since the Department of Justice contains the FBI, which does the counterintelligence investigations to protect our country, I asked him this: In a counterintelligence investigation, in operating to protect our country in this counterintelligence function, what should the Department of Justice know about business or other entanglements of senior officials with foreign interests and powers?

The very heart of counterintelligence is to look at American officials and see what their vulnerabilities might be to influence or control or manipulation by foreign interests and powers. That is the goal of doing counterintelligence in the first place.

So what evidence do you need to be able to do that? Obviously, it would be helpful to know what business or other interests with foreign powers senior officials have so that you can make that assessment, so you can follow whatever leads that might produce, that may give you understanding of things that otherwise seem inexplicable. It is obvious evidence to support the FBI's counterintelligence function.

Rather than give a straight answer and say "Yes, this is obvious evidence, and obviously we will do our counterintelligence function better when we know when senior officials have foreign business entanglements," again he completely fell down in his answer and started quarrelling about what Senators have to declare and wouldn't give a straight answer. Well, there is an obvious reason he wouldn't give a straight answer. The obvious reason he would not give a straight answer is that the President who appointed him has significant—although we don't understand them well yet—significant business entanglements that we don't know about. We need to find out what his business entanglements are, and it is really hard to assess some of his behavior without knowing who is on the other side of his foreign business relationships and how much money is involved and how much is at risk for him. That is pretty elementary stuff.

If you are the person who is telling yourself, as the Attorney General, who is going to come in and be the institutionalist and defend the prerogatives of the Department, defend the procedures and protocols of the Department against a President who respects none of that and who has those very entanglements, to then come in and say "You know what, I am not going to be interested in any of that; I am, instead, going to ask counterquestions back to you about other different officials"—

the inability to get a straight answer to that question signals a great deal to me about when, in a pinch, he has to choose between defending the Department and protecting the political interests of the President, which way he is going to go. I gave him that choice in that question. I gave him that choice in that question, and he very clearly came down on the side of protecting the political interests of the President.

If you can't get through a hearing question without flipping away from the interests of the Department and protecting the President, good luck when the pressure is really on. He lost enormous credibility with me in his inability to answer those questions.

It is really hard to determine recusal for conflict of interest if you don't know who paid \$1 million to a senior Department official, and it is really hard to determine counterintelligence issues if you don't know what foreign entanglements senior officials have. Those are statements I would hope would be so obvious as to be indisputable. Yet this candidate foundered on both of them.

The other issue is the question of Executive power. Again, you would think that the Senate would be interested in standing up for the prerogatives of the legislative body since we are the legislative body and we have a very long and proud tradition.

From that perspective, as a Senator and legislator, I look ahead, and I see constitutional battles. There are a lot of constitutional battles that I see coming. The first is going to be, if the President, when he gets or after he gets the budget measure that we have agreed to here—hopefully, we have agreed to here; I think it is done—if he decides that he is going to declare a national emergency and start moving money around between accounts in order to build his, as I affectionately refer to it, "big dumb wall," that is a constitutional problem, and article I of the Constitution says it is the legislature that has the power to appropriate and spend funds.

So if a President is going to use his own unilateral declaration of a national emergency to say to Congress "Sorry, your power of the purse is not actually all that real; it is the power of advice to me, and as soon as I declare a national emergency, I can spend your money where I want," that violates the separation of powers. That is a constitutional battle, and one can see it coming.

Executive privilege is a constant constitutional battle between Congress and the executive branch. Congress wants information; Congress seeks information; Congress needs information to perform its constitutional oversight function. But certain narrow communications within the executive branch are protected from Congress's right to do that in order to protect certain conversations and freedoms directly around the President of the United

States as he has conversations. That is the general understanding of how executive privilege works.

Well, this administration has a very different understanding of how executive privilege works. They think that you get to come into a Senate hearing and not answer a question because some day maybe somebody else might exert executive privilege as to what you have said. But there is no deadline ever; there is no check ever; there is no day of reckoning ever. They just assert it, and because we have not enforced our powers here, they have gotten away with it. So executive privilege has grown into a swamp of executive obstruction of congressional oversight. We have to bring executive privilege back to its true base and its true roots, and as we try to do that, guess what. That is going to be another battle between the legislative and executive branches—another constitutional battle.

The question of whether or not the President can be indicted by a grand jury is another constitutional battle we have coming, very likely. We will have to see what the special counsel and the other Department of Justice investigations into this President and the people around him reveal, but they could very well reveal sufficient evidence to justify an indictment of anyone else who is not the President.

Within the Department of Justice there is a group called the Office of Legal Counsel, which is kind of the legal advisor to the Department of Justice. The Office of Legal Counsel has decided that a Department of Justice cannot indict a sitting President. Here is the problem with that. The Office of Legal Counsel isn't elected by anybody. They are career people. They tend to be hypersmart, but their purpose in life in opining on the separation-of-powers questions is to describe the maximum possible credible scope of Executive power. They represent the executive branch, and when they are making these separation-of-powers decisions, they always veer to the maximum greatest Executive power that they can justify. That does not mean that a court would agree with them. That does not mean that a court would agree with them.

Ever since *Marbury v. Madison*, it has been the constitutional power of the courts, particularly the Supreme Court, to say what the law is. The question of whether a President can be indicted is a question of what the law is regarding the indictment of a President. So that question ought to be decided in a court, but as the Office of Legal Counsel is never going to let a case go forward, then how is the Department ever going to get that opinion that it has tested in court to get a real answer under the constitutional system? Well, they probably will not. It is going to be difficult. We are going to have to try to find a way, if they do assert that, to get that proposition tested in a court instead of relying on

the opinion of a group of lawyers within an executive branch Agency as to the relative powers of the courts and the executive branch.

The question of interference with these investigations by the President and the independence of those investigations also raises a variety of constitutional questions.

I have to say the top line of Mr. Barr on all of these issues was fantastic. I was kind of mentally cheering when he said some of the things he said about how he was going to keep his hands off, how he respected Mueller, how this was no witch hunt, how he was going to make sure it had full scope, how he was going to try to get the maximum transparency about the final report that he could—all of which was fine—and then we went into the weeds a little bit.

As the old saying goes, the devil is in the details. The question was serious enough that I raised it in the committee after the hearing because I was unsatisfied with his responses. Chairman GRAHAM was kind enough to acknowledge that those were pretty darn good questions, and I should get an answer to them. He said he would try to get an answer for me, and maybe we would get on the phone together to get Barr those answers. That did not come to pass.

Instead, I wrote Mr. Barr a letter, asking him to clarify his answers. I got back a letter that provided no clarification at all. So I have given him quite a few chances to try to answer these questions. I haven't gotten a straight answer back, which makes me a little bit worried.

Here is the problem—there are actually two problems. At the end of the day, whenever the Mueller report is concluded, that report can be provided to Congress, but there is considerable flexibility and considerable discretion within the Department of Justice and the Attorney General's office as to how much to give.

I will interrupt because I see the distinguished majority leader here.

I yield the floor to the distinguished majority leader.

Mr. MCCONNELL. I thank the Senator from Rhode Island.

MORNING BUSINESS

Mr. MCCONNELL. Madam President, I ask unanimous consent that the Senate be in a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRIBUTE TO EMILIA DiSANTO

Mr. GRASSLEY. Madam President, today I wish to acknowledge Emilia DiSanto, an outstanding civil servant who is retiring after almost 36 years of distinguished service in the Federal Government, 16 of which were here on Capitol Hill.

Emilia is a proud New Yorker, who graduated from Fordham Law School. She served in the Department of Energy, at the Legal Services Corporation, in both the House and Senate, and she worked for inspectors general.

Emilia is the ultimate civil servant who worked in both the executive and legislative branches of government. During her 16-year career on Capitol Hill, Emilia worked for, among others, Speaker Newt Gingrich and former Representative Bill Goodling, Henry Hyde, Bill McCollum, and Ambassador Pete Hoekstra. In the Senate, Emilia served as staff director for the Small Business Committee for Senator Kit Bond and, later, Senator Olympia Snow.

I had the pleasure of having Emilia on my staff in two different capacities. First, as the chief investigative counsel for the Special Committee on Aging where she conducted oversight of the nursing and funeral home industries. Emilia later served on the Finance Committee as my chief investigative counsel and special counsel and tackled such issues as drug and device safety, medical conflicts of interest, and other healthcare issues. She is known to be trustworthy, bold, honest, and bipartisan. Emilia has boundless energy and good judgment, and she is deeply committed to the interests of the American people. The American people are better off because of her public service.

CENTRE COLLEGE BICENTENNIAL

Mr. MCCONNELL. Madam President, Kentucky's rich history brings many causes of reflection and celebration. For 200 years, Centre College has been a premier setting for liberal arts education in Kentucky, earning nationwide acclaim and respect. So today I would like to commemorate the bicentennial of one of the Commonwealth's most treasured institutions.

In 1819, the Kentucky Legislature formally established the school in Danville, giving it a name inspired by its central geographic location. Overseeing the school was a board of trustees filled with notable Kentuckians, including our first Governor, Isaac Shelby, as its chairman and Ephraim McDowell, the famed frontier surgeon who performed the first successful ovariectomy. Construction began shortly after on the school's first building, which was completed the next year and stands to this day with the name "Old Centre." Classes began that fall with two professors and five pupils. With a commitment to classical liberal arts education, the curriculum focused on topics such as Latin, Greek, rhetoric, and logic.

Encountering financial difficulties in subsequent years, Kentucky ceded administration of Centre to a Presbyterian denomination but the legislature ensured that the school would remain accessible to students and faculty of all faiths. In 1830, a new president

took the reins of the school. Twenty-seven-year-old John C. Young, a minister, teacher, and administrator, expanded the college and helped advance it toward distinction. At the end of his 27 years of leadership, the school boasted a 200-plus student body, secured an endowment of more than \$100,000, and employed a renowned faculty.

Through the following decades, the school continued to grow in excellence and impact. Although the Civil War caused a temporary drop in the number of graduates—and the successive occupations of Old Centre by Confederate and Union forces—Centre's commitment to its liberal arts mission never wavered. The school had gained such great national distinction that the president of Princeton University, also the future President of the United States Woodrow Wilson, is said to have remarked in 1903 that, "There is a little college down in Kentucky which, in her sixty years, has graduated more men who have acquired prominence and fame than has Princeton in her 150 years."

Centre's reputation for excellence has reached beyond the classroom. In what the New York Times would later call "Football's Upset of the Century," the Praying Colonels scored an unlikely victory over the top-ranked Harvard University football team in 1921. Not long after, Centre officially became coeducational in 1926. The following decades saw the integration of the school, the expansion of the campus to include new buildings, and the establishment of a chapter of the prestigious Phi Beta Kappa honor society.

One of the greatest measures of a college are the alumni it has produced. Centre graduates can be found in a wide range of distinguished fields, including the highest levels of the U.S. Government. Vice Presidents John C. Breckinridge and Adlai Stevenson both held diplomas from the school, as did Supreme Court Chief Justice Fred Vinson and Associate Justice John Marshall Harlan. More than a dozen U.S. Senators, scores of Congressmen, and 11 Governors have also graduated from the school, as have leaders in business, medicine, law, and journalism. Perhaps it was the school's history of producing Vice Presidents and other prominent figures that led to its hosting of not one, but two Vice Presidential debates, in 2000 and 2012.

For such an impressive milestone, Centre has planned a year of celebratory events to mark its history and to herald its potential for the future. With President John Roush, the faculty, staff, students, and one of the most engaged alumni bases in the country, I am proud to mark Centre College's bicentennial. They all deserve the Senate's congratulations and best wishes for the future of liberal arts education in Kentucky.