The senior assistant legislative clerk read as follows:

A bill (S. 464) to require the treatment of a lapse in appropriations as a mitigating condition when assessing financial considerations for security clearances, and for other purposes.

Mr. MCCONNELL. I ask for a second reading, and in order to place the bill on the calendar under the provisions rule XIV, I object to my own request.

The PRESIDING OFFICER. Objection is heard.

The bill will receive its second reading on the next legislative day.

ORDERS FOR WEDNESDAY, FEBRUARY 13, 2019

Mr. MCCONNELL. Madam President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m., Wednesday, February 13; further, that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and morning business be closed; further, that following leader remarks, the Senate proceed to executive session and resume consideration of the Barr nomination; finally, that all time during recess, adjournment, morning business, and leader remarks count postcloture on the Barr nomination.

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

ORDER FOR ADJOURNMENT

Mr. MCCONNELL. Madam President, if there is no further business to come before the Senate, I ask unanimous consent that it stand adjourned under the previous order following the remarks of Senator WHITEHOUSE.

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

NOMINATION OF WILLIAM BARR

Mr. WHITEHOUSE. Thank you, Leader.

Madam President, as I was wrapping up, I was pointing out that at some point there is likely to be a report that comes out of the special counsel's investigation, and there will be some material in that report that is properly stripped out of it before it is provided to the public.

The two things I concede are proper to strip out of it are classified national security information that could reveal sources and methods of our intelligence operations, and the second is private and personal information, particularly related to witnesses, that is not necessary to the public's understanding of the report—people's phone numbers, or email addresses, or other private information. Those are very clearly appropriate to redact from the report.

There are two other ways in which the Department of Justice could go into the Mueller report and just gouge great tranches of material out. One would be if an assertion by the President was made of executive privilege and if, without any contest or without any formative review or court review, the Attorney General simply agreed with the assertion of executive privilege by the President.

We have seen these extreme, almost wild, unlimited assertions of executive privilege by members of the Trump administration. There has never been any discipline or proper process about it. There has never been any enforcement. So it is a wide-open field for mischief if the President decides that big chunks of the Mueller report shouldn't be disclosed to the public because he asserts executive privilege. Then Attorney General Barr says: Good enough for me. I am not going to let any of that go to the public or to Congress.

That, to me, is a problem. That door is wide open, and it is the reason I have my opposition to this particular nominee.

There is a longstanding tradition at the Department of Justice that when you are undertaking a criminal investigation and you develop, in the course of that investigation, derogatory information about people—particularly about uncharged people—you don't get to just spill that out into the public record.

The bad deed that was done by Jim Comey was to violate that Department rule and disclose derogatory investigative information about an uncharged person—specifically, Mrs. Clinton. That violated longstanding procedures and principles in the Department and kicked up a lot of criticism, including by me right at the time and since and also by Attorney General Barr. He stands, I think, in the best traditions of the Department to condemn the release of derogatory investigative information about an uncharged person.

The rule as a prosecutor is, if you are going to say it, save your pleadings. Charge the guy. Put it in the indictment. Put it in the criminal information. Then defense can fairly react. Then you are accountable to the court for what you are saying, and then there is some discipline to it, but you don't get to describe unrelated or uncharged conduct that just happens to be derogatory.

That actually continues on through the whole criminal case. You are not supposed to do it at any point. If you have something to say about the evidence in the case, you plead it in a pleading before the court; otherwise, you keep your mouth shut, and you stand on your pleadings.

The problem comes when that rule gets applied in this case, and here is the circumstance: The Mueller report comes down, and it is full of derogatory information about the President and the people around him. But because the Office of Legal Counsel, as I described earlier, has decided that you can't charge a sitting President with a crime, now that President is an uncharged person—not because there wasn't an indictment to be brought against him, not because he didn't engage in criminal conduct, not because the government wouldn't ordinarily prosecute that case to the full extent of the law, but simply because of this little policy at the Office of Legal Counsel that you can't indict a sitting President—one that has never been tested in court and one that I think will fare badly in court if you look at the precedence of Nixon and Clinton and others.

So now, with the President an uncharged person, do you then call in this doctrine and say: Hey, all derogatory investigative information about this uncharged person is now no longer amenable to disclosure to Congress or the public.

It is a complicated situation, but it is easy to get there, and once you are there, the answer ought to be ''Well, obviously no,'' but I couldn't get that answer. I couldn't get a straight answer. Over and over again, despite the terrific top-line assertions Mr. BARR made, when you drilled down into the weeds, you couldn't get a straight answer, and when you tried, very often it was an easy answer to give, and you couldn't get that easy, straight answer. In those cases, it was a choice between the policies and the protocols and the propriety of the Department of Justice versus the political interests of the President's.

If I can't get a good answer to a simple hearing question that properly puts the weight where it belongs to support the protocols and the procedures and the propriety of the Department of Justice, then when it is not so public and when the pressure is really on and when hard decisions have to be made, it is impossible for me to believe that he won't lean toward yielding to the President rather than defending and honoring the Department. That, for me, is enough reason to oppose this nomination.

I yield the floor.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 10 a.m. tomorrow.

Thereupon, the Senate, at 6:13 p.m., adjourned until Wednesday, February 13, 2019, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate:

FARM CREDIT ADMINISTRATION

RODNEY K. BROWN, OF CALIFORNIA, TO BE A MEMBER OF THE FARM CREDIT ADMINISTRATION BOARD, FARM CREDIT ADMINISTRATION, FOR A TERM EXPIRING OCTOBER 13, 2024, VICE JEFFERY S. HALL, TERM EXPIRED.

DEPARTMENT OF COMMERCE

IAN PAUL STEFF, OF INDIANA, TO BE ASSISTANT SECRETARY OF COMMERCE AND DIRECTOR GENERAL OF THE UNITED STATES AND FOREIGN COMMERCIAL SERVICE, VICE ELIZABETH ERIN WALSH, RESIGNED.