

AMY BERMAN JACKSON ACCUSES BILL BARR OF A PREEMPTIVE STRIKE ON THE MUELLER REPORT

I was down so many rabbit holes today I forgot to link to Amy Berman Jackson's unsealed opinion, which she released today (here's the redacted version).

Much of what had previously been redacted pertained to the first section, which got released last night. Otherwise, there's ABJ's accusation that DOJ was hiding that Bill Barr launched a pre-emptive strike on the Mueller Report.

Given the fact that the review of the document *in camera* reveals that there was no decision actually being made as to whether the then-President should be prosecuted, but the agency was girding for a preemptive strike on the Mueller report instead, the Court is not persuaded that the agency has met its burden to demonstrate that the memorandum was transmitted for the purpose of providing legal advice, as opposed to the strategic and policy advice that falls outside the scope of the privilege. Section I of the memo, which was entirely redacted with no separate justification, contains no legal advice at all, but it offers only strategic, political, and public relations advice, so this explanation is entirely deficient to justify the withholding of that portion of the document.

But given ABJ's notice that she's still considering whether to grant the government a stay, I think this footnote (the bold was formerly redacted) is of interest.

18 There is no need for the Court to determine what its ruling would have been had the agency candidly informed it that the purpose of the document **was to provide legal analysis to help shape the assessment of the Special Counsel's report that the Attorney General was planning to announce for the reasons set forth in Section I of the memorandum.** It is the government's burden to support its withholdings.

This is the question before her now, whether the advice in the redacted section is so tainted by its purpose that she'll release the full memo.

My guess is she won't – unless there's something about the analysis itself, such as that it obviously replicates Barr's opinion about the investigation that he used to get hired, or if it misrepresents the results of the investigation (remember, ABJ presided over Paul Manafort's DC proceedings and Roger Stone's trial, so she knows what Mueller found as well as anyone). And the pardons Trump has since offered the people whose lies he guaranteed by dangling those pardons may alter this calculus, particularly if the analysis contradicts Barr's agreement, offered three times in his confirmation hearing, that dangling pardons for false testimony would be obstruction.

Until then, DOJ has already launched its appeal.