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A New Obstruction Case Against a Judge Proves William Barr's DOJ Is Now Just an Arm of President Donald Trump

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Attorney General William Barr arrives for a press conference about the release of the Mueller report at the Department of Justice on April 18.

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It took Attorney General William Barr only one week from the release of the Mueller report to bring obstruction of justice charges against two governmental officials for interfering in a federal investigation. But the charges have nothing to do with the special counsel's investigation into Russian interference in the election or the possible obstruction of that investigation.

Although the obstruction charges DOJ filed are not related to the Mueller report, they underscore just how far the attorney general bent over backward to spin the report in the president's favor and how partisan the Department of Justice has become. The disparities between the two cases highlight how the Department of Justice, under Barr's leadership, has become nothing more than a political arm of the Trump administration, particularly in its handling of possible obstruction charges stemming from the Mueller report.

The indictment against Judge Shelley Richmond Joseph, a Massachusetts district court judge, and Officer Wesley MacGregor, a Massachusetts trial court officer, alleges that the officers interfered with an Immigration and Customs Enforcement proceeding by preventing ICE from arresting an individual who was arrested on state charges and attended an arraignment hearing in state court. During the state court proceeding, Joseph asked an ICE officer to wait outside the courtroom while the court conducted the arraignment hearing. Earlier in the day, the judge had requested more information about one of the state charges in the case (a fugitive charge) after the prosecutor said the state would not seek to detain the defendant on the other charge (a drug charge).

After recalling the case, the judge observed that ICE was in the courthouse. The prosecutor then informed the court that the state did not

believe the defendant was the fugitive from Pennsylvania for whom there was an arrest warrant and therefore believed that the fugitive charge was an error, which would mean that the defendant would be free to leave. The defense attorney, however, noted that ICE was convinced otherwise and suggested they would likely take the client into custody. The defense attorney then suggested that “the best thing for us to do is to ... release him ... and hope that he can avoid ICE.”

At that point, the judge noted the other alternative was to recall the proceedings again the next day and asked “ICE is gonna get him?” before directing the clerk to go off the record. The recording was turned off for 52 seconds, and when it resumed, the prosecutor renewed the claim that the defendant was not the person with a Pennsylvania warrant out for his arrest and moved to dismiss the fugitive charge against him. Because the state had already stated it would not seek to detain the defendant on the drug charges, the defendant was released, and the trial court officer escorted him through the back door.

This evidence provided the basis for Barr's Department of Justice to indict the state judge and state officer for obstruction of justice and conspiracy to obstruct justice. Yet all of the reasons Barr has previously cited for opposing an obstruction investigation against the president suggest the Department of Justice should not have brought obstruction charges against Joseph and MacGregor either.

For example, in June, Barr wrote a memo as a private citizen arguing that obstruction laws should not “reach facially-lawful actions taken by the President in exercising the discretion vested in him by the Constitution.” Yet that is exactly what the obstruction-of-justice charges against Joseph and MacGregor cover. State judges do not persist with criminal charges that the district attorney has dropped, and state law does not require judges to detain individuals on the drug charges that remained. It was therefore “facially legitimate” and within the “discretion” of the judge not to detain the individual based on the drug charge. The judge also has total control of her courtroom and can decide through which doors to instruct people to come and go. And the state judge’s motive shouldn’t matter to the analysis because under Barr’s theory of obstruction, government officials can’t be charged with obstruction “based solely on his subjective state of mind” for “simply exercising his discretion in a facially lawful way.”

Or take Barr’s statement—given at a bizarre press conference just prior to the release of the Mueller report last week—that the president did not *corruptly* intend to obstruct the investigation because the president “was frustrated and angered by a sincere belief that the investigation was undermining his presidency.” A similar exculpatory argument could be made on behalf of Joseph and MacGregor. They, too, may have been “frustrated and angered by a sincere belief that” ICE’s investigations and presence in state courthouses undermined the integrity of state court proceedings. Or perhaps they were frustrated and angered by a sincere belief that ICE’s enforcement efforts were the result of the president’s apparent bias and animosity toward the Latino community.

Ultimately, the Justice Department's indictment of Joseph and MacGregor is a reminder about how aggressively the federal government often reads the federal obstruction statute. For example, the indictment confirms that obstruction does not have to be particularly sophisticated or successful in order to constitute a crime—the trial court officer merely let the defendant out the back door, and the defendant was subsequently apprehended and now faces deportation.

It also demonstrates a contrast in the kind of evidence that often suffices to establish an obstruction-of-justice charge. In the case of Joseph and MacGregor, DOJ has some snippets of a courtroom conversation that indicated the judge wanted to do something she did not want publicly recorded and less than a minute without a recording. In the case of President Donald Trump and his associates, special counsel Robert Mueller compiled dozens of witnesses, contemporaneous notes, 10 separate incidents, 182 pages of a report, multiple instances of officials lying to investigators or not being forthcoming with them, and several damning instances of the president lying in an apparent effort to cover his tracks. All of this led Barr to his four-page summary conclusion that Trump had not committed a crime—a conclusion that flew in the face of Mueller's findings.

The stark difference between the attorney general's treatment of the obstruction case against Joseph and MacGregor and the obstruction cases at the heart of the Mueller report serves as a pointed reminder that Barr's response to the obstruction issues raised by the Mueller report was partisan and unprincipled. 📌

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