

EMMET FLOOD STEPS IN IT AGAIN: WILLIAM BARR'S MEMO MAKES COMPELLING CASE THAT TRUMP MUST BE IMPEACHED

Back when Emmet Flood got Jeff Sessions replaced with big dick toilet salesman Matt Whitaker, I asked why the normally superb White House Counsel had done something that posed such a likelihood of causing chaos.

Maybe it's just the Trump effect, in which normally competent people become bumlbers in Trump's aura, or maybe it's just the unique difficulties of trying to defend the guy, but I think Flood has fucked up again. That's because of the specific content of a William Barr memo sent to Rod Rosenstein, first reported by WSJ last night. While I'm certain Barr didn't intend to do so, the memo makes a compelling case that Trump must be impeached.

The memo is long, lacks pagination, and presents an alarming view of unitary executive power. Barr also adopts the logically and ethically problematic stance of assuming, in a memo that states, "I realize I am in the dark about many facts" in the second sentence, that he knows what Mueller is up to, repeating over and over claims about what theory of obstruction he knows Mueller is pursuing.

Yet even before Barr finishes the first page, he states something that poses serious problems for the White House.

Obviously, the President and any other official can commit obstruction in this classic sense of sabotaging a proceeding's truth-finding function. Thus, for example, if a President

knowingly destroys or alters evidence, suborns perjury, or induces a witness to change testimony, or commits any act deliberately impairing the integrity or availability of evidence, then he, like anyone else, commits the crime of obstruction.

Probably by the time Mueller's office captured Peter Strzok's testimony on July 19, 2017 – and almost certainly by the time they obtained Transition emails on August 23, 2017 (perhaps not coincidentally the day after Strzok's 302 was formalized) showing Trump's orchestration of Mike Flynn's calls with Sergei Kislyak – Mueller has almost certainly had evidence that Trump suborned false statements from Mike Flynn. So even before he finishes the first page, Trump's hand-picked guy to be Attorney General has made the argument that Trump broke the law and Mueller's obstruction investigation is appropriate.

Even if Barr hadn't indicted the President on page one of his memo, on page three he completely invalidates the rest of his argument when he argues he would be wrong if Trump actually had engaged in "illegal collusion."

[E]ven if one were to indulge [what Barr invents as] Mueller's obstruction theory, in the particular circumstances here, the President's motive in removing Comey and commenting on Flynn could not have been "corrupt" unless the President and his campaign were actually guilty of illegal collusion.

Much later he says that obstruction becomes ripe after the underlying conspiracy (which he again calls collusion) has been established.

[T]he predicate for finding any corruption would be first finding that the President had engaged in the wrongdoing he was allegedly trying to

cover up. Under the particular circumstances here, the issue of obstruction becomes ripe after the alleged collusion by the President or his campaign is established first.

By June 2018, by the time Barr wrote this, I'm fairly certain Mueller had the goods on an illegal conspiracy between Trump and the Russians, even if all the witnesses to it had not yet signed up as cooperating witnesses against the President. So again, because he writes about something he doesn't understand, he has accidentally made the case that the President has broken the law and should be investigated for doing so.

And I'm not the only one who seems to think that. After giving the WSJ an anodyne quote on all this last night, Rod Rosenstein gave a far more interesting statement today, saying, "Our decisions are informed by our knowledge of the actual facts of the case, which Mr. Barr didn't have." The only way Mueller's known obstruction inquiry could be consistent with Rosenstein's comment is if my two observations are correct: that Mueller had reason to pursue Trump for obstruction, and that he has evidence that Trump's campaign entered into an illegal conspiracy.

Which is a bummer for the President because, over and over, Barr points to the role of impeachment in a case where the President abuses his plenary prosecutorial powers like Trump has. Most notably, he tries to distinguish the Nixon and Clinton impeachments (the latter, bizarrely, given that it doesn't remotely fit his standards for acceptable investigations of the President) from Trump's behavior by arguing that, "the acts of obstruction alleged against Presidents Nixon and Clinton in their respective impeachments were all such 'bad acts' involving the impairment of evidence." While the evidence suggests Trump is also exposed in the conspiracy case, Barr argues here that *just Trump's acts of obstruction are sufficient to impeach him.*

And here's why I blame this all on Emmet Flood. As the updated WSJ story now makes clear, Barr sent a copy to Emmet Flood.

But people familiar with the matter said Mr. Barr did send a copy to Emmet Flood, the White House lawyer handling the Mueller probe.

If Flood read this memo (at a time, mind you, when Barr was under consideration to serve on Trump's defense team), then it is malpractice to then appoint Barr, knowing the memo would come out.

Then there's the fact that the memo got reported and released now. Apparently, while Trump has not yet officially appointed Barr (he may be trying to play games with Matt Whitaker's status as Acting Attorney General), the White House has started to share background information, which may be how this memo got liberated. While White House Counsel Pat Cipollone presumably has resumed control over nominations process, but since Flood was involved in finding a new AG (and since so much of the AG hiring seems to be focused on getting Trump out of his legal problems with Mueller), Flood was likely in the loop on that decision.

Whatever the case, the fact that Barr wrote all this down and then it got liberated will make it a lot harder for Barr to invent some other reason to do what he helped Poppy Bush do, pardon his way out of a serious legal problem with Iran-Contra.

Indeed, the hullabaloo around this memo now – and Democrats' opportunity to get Barr to confirm that if there is evidence that Trump told Flynn what lies to tell about the Russian sanctions conversation (more evidence is likely to be public by that point) – then an obstruction investigation would be valid and impeachment would be the logical recourse. That may make Barr problematic *for Trump*. If Dems on Senate Judiciary Committee are worth their salt

(and several of them are more than up to this task), they will be able to talk the incoming Attorney General into backing the logic of the Mueller probe *and* impeachment in a very public way.

Trump might try to prevent that by failing to nominate Barr, but if he did, it'd make it more clear that his sole criterion for an Attorney General at this point is someone who'll help him out of his legal woes.

That may be why Matt Whitaker has finally taken the Hail Mary step of – six weeks into his tenure as “Acting” Attorney General – decide to forgo the ethical review for recusal on the Mueller probe that DOJ's ethical advisor told him would result in a recommendation that he recuse.

Update: This post has been updated to reflect WSJ's clarification that Emmet Flood did receive the memo. Earlier, WSJ subsequently quietly added a sentence (which it has subsequently removed, though it a google search on the sentence still brings up the article) noting that Barr had shared his treatise with “the top lawyer representing the White House in the Mueller probe,” which in context would seem to mean Emmet Flood.

As I disclosed in July, I provided information to the FBI on issues related to the Mueller investigation, so I'm going to include disclosure statements on Mueller investigation posts from here on out. I will include the disclosure whether or not the stuff I shared with the FBI pertains to the subject of the post.