

THREE TIMES WILLIAM BARR SAID TRADING PARDONS FOR FALSE TESTIMONY WAS OBSTRUCTION OF JUSTICE

In the discussion of the Bill Barr memo in the last two days, the discussion of Barr's claimed views on obstruction have mostly focused on the crazier parts of the memo that got him the job, and not even the passage at the bottom of the first page where he claimed to believe that if a President suborned perjury, it'd be a crime for him just as it would be for anyone else.

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.

There has been far less attention to what he said in his confirmation hearing (where Lindsey Graham did not put him under oath). There were three substantive exchanges about what might constitute obstruction of justice for a President. And all of them get perilously close to behavior that Barr, now ensconced as Attorney General, claimed Sunday did *not* amount to obstruction of justice.

When Barr answered these questions, he appeared to have little awareness that Trump had floated pardons to – at least – Paul Manafort, Mike

Flynn, and Michael Cohen. The first time he got asked about a pardon for false testimony, he stated clearly that would be a crime.

Patrick Leahy, specifically invoking Barr's sanction of the Caspar Weinberger pardon that squelched the Iran-Contra investigation, asked Barr about pardons.

Leahy: Do you believe a president could lawfully issue a pardon in exchange for the recipient's promise to not incriminate him?

Barr: No, that would be a crime.

Then, in this exchange from Amy Klobuchar, it appeared to take Barr several questions before he realized she knew more about the evidence than he did, and started couching his answers.

Klobuchar: You wrote on page one that a President persuading a person to commit perjury would be obstruction. Is that right?

Barr: [Pause] Yes. Any person who persuades another –

Klobuchar: Okay. You also said that a President or any person convincing a witness to change testimony would be obstruction. Is that right?

Barr: Yes.

Klobuchar: And on page two, you said that a President deliberately impairing the integrity or availability of evidence would be an obstruction. Is that correct?

Barr: Yes.

Klobuchar: OK. And so what if a President told a witness not to cooperate with an investigation or hinted at a pardon?

Barr: I'd have to know the specifics

facts, I'd have to know the specific facts.

Klobuchar: OK. And you wrote on page one that if a President knowingly destroys or alters evidence, that would be obstruction?

Barr: Yes.

Klobuchar: OK. So what if a President drafted a misleading statement to conceal the purpose of a meeting. Would that be obstruction?

Barr: Again, I'd have to know the specifics.

Shortly after that exchange, Lindsey Graham tried to clarify the issue, asking the pardon question at a more basic level, coaching another not to testify, as Trump has done on Twitter repeatedly.

Lindsey: So if there was some reason to believe that the President tried to coach somebody not to testify or testify falsely, that could be obstruction of justice?

Barr: Yes, under that, under an obstruction statute, yes.

Lindsey: So if there's some evidence that the President tried to conceal evidence? That would be obstruction of justice, potentially?

Barr: [nods]

Admittedly, by the third exchange, both Lindsey and Barr were hedging far more carefully about the set of facts.

But on three different occasions during his confirmation hearing, Barr made some kind of statement that said floating pardons for false testimony would be a crime.

And then, on Sunday, he said it wasn't a crime.

As I disclosed last 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.