

THE SIGNIFICANCE OF TOM BARRACK'S OBSTRUCTION AND FALSE STATEMENTS CHARGES

I want to expand on something I said in this post about Tom Barrack's charges: the obstruction and false statements charges against Trump's big fundraiser make this case much more solid than many in the press (usually the same people claiming it's a FARA case) are suggesting.

In a June 20, 2019 interview with the FBI, the indictment alleges that Barrack lied about whether:

- 1. Al Malik asked Barrack to do things for UAE*
- 2. Barrack downloaded an encrypted app to use to communicate with MbZ and other Emirati officials*
- 3. Barrack set up a meeting between MbZ and Trump and, generally, whether he had a role in facilitating communications between them*
- 4. He had a role in prepping MbZ for a September 2017 meeting with Trump*

Curiously, the detention memo mentions two more lies that aren't included in

the indictment:

(1) writing a draft of a speech to be delivered by the Candidate in May 2016; (2) reviewing a PowerPoint presentation to be delivered to senior UAE officials on how to increase the UAE's influence in the United States with his assistance;

In any case, this structure makes it easy to hold Barrack accountable at least via his lies to the FBI, and *that* he allegedly lied is powerful evidence that the full scope of the relationship was meant to be secret.

The headline charges are the foreign agent and conspiracy charges. But in addition to those charges, Barrack is also charged with obstruction and false statements. Most likely, if he were found guilty only on those charges, he'd face less time than from the foreign agent charge, but he'd still face prison.

Here's what we know of the timeline: According to the Rashid Al Malik complaint, he was interviewed by the FBI on April 5, 2018. If the Intercept's report that Mueller's team conducted this interview is correct, this is likely his almost entirely redacted 302 (for an investigation that was ongoing in September 2020). Three days earlier, someone represented (as Barrack was) by Steptoe and Johnson had a pre-grand jury interview led by Zainab Ahmad that Andrew Weissmann joined while in progress. On April 8, three days after his own interview, Al Malik left the country and has been gone ever since.

In early 2019, Mueller's team started handing off referrals, which may be why, in February 2019, the FBI sent subpoenas to Colony Capital.

In or about February 2019, Federal Bureau of Investigation ("FBI") special

agents served federal grand jury subpoenas on several individuals employed by or associated with Company A, including individuals that reported directly to the defendant THOMAS JOSEPH BARRACK, in connection with the criminal investigation of the activities of the defendants RASHID SULTAN AL MALIK ALSHAHHI, BARRACK, and MATTHEW GRIMES.

Following the service of these federal grand jury subpoenas, the defendant THOMAS JOSEPH BARRACK volunteered to speak with FBI special agents. On or about June 20, 2019, FBI special agents interviewed BARRACK, in the presence of counsel, regarding the activities of the defendant RASHID SULTAN AL MALIK ALSHAHHI, BARRACK, and the defendant MATTHEW GRIMES. At the outset of the interview, United States government officials advised BARRACK, and confirmed that he understood, that lying to federal agents is a federal crime. Thereafter, during the course of the interview, BARRACK knowingly made numerous materially false statements relating to the activities of ALSHAHHI, BARRACK, and GRIMES.

At the time, of course, Barrack's close ally was still President and Bill Barr was newly installed at the helm of DOJ, working hard to cover up the true results of the Mueller investigation and even beginning to take steps to protect Rudy Giuliani from his own foreign agent charges. Why *wouldn't* Barrack lie?

Interestingly, the obstruction charge against Barrack suggests others were part of this.

On or about June 20, 2019, within the Eastern District of New York and elsewhere, the defendant THOMAS JOSEPH BARRACK, together with others, did knowingly, intentionally and corruptly obstruct, influence and impede, and

attempt to obstruction, influence and impede, an official proceeding, to wit: a Federal Grand Jury.

In any case, Barrack is well-resourced and he'll no doubt offer some solid defenses here, possibly including that he had earlier told the truth about some of this stuff, and so, any inaccuracies in his 2019 interview weren't material.

But assuming the FBI didn't charge a billionaire with false statements without having him dead to rights on the charges, by June 2019, the FBI foreclosed several of the defenses that Barrack might offer going forward: that he was doing all this as a legal commercial transaction (which is exempt from the foreign agent charges) or that he wasn't really working for UAE, he just thought the alliance really served US interests and indulged the Emiratis by referring to MbZ as "boss." By denying very basic things that the FBI appears to have records for, then, Barrack made it a lot harder to argue – in 2021 – that's there's an innocent explanation for all this.

Five days after Barrack's interview, the FBI obtained an arrest warrant for Al Malik, one that made Al Malik look like the bad guy here, taking advantage of poor Tom Barrack and poor Paulie Manafort.

But then DOJ kept investigating Barrack's role in all this. According to CNN, before this time last year, EDNY prosecutors believed they had enough to add Barrack to the charges, but the appointed US Attorney "expressed misgivings."

Federal prosecutors in Brooklyn investigating Tom Barrack, a prominent ally to former President Donald Trump, for allegedly violating foreign lobbying laws had enough evidence to bring charges last year, but held off doing so until the arrival of the new presidential administration, according to people briefed on the matter.

Prosecutors wanted to move forward on the case and believed they could obtain an indictment, one source familiar with the matter said. The source said the investigation was mostly done well before the time period when prosecutors are discouraged from advancing politically sensitive matters ahead of an election.

But two sources tell CNN the US attorney in Brooklyn at the time, Richard Donoghue, expressed misgivings about the case. It's unclear if he delayed the case outright or if prosecutors chose not to move forward at the time knowing the US attorney would not support it.

Then-Attorney General William Barr was also known inside the department to have reservations, in general, about foreign lobbying cases, which the Justice Department has struggled to prosecute in the past.

A spokesman for the Brooklyn US attorney's office declined to comment.
[my emphasis]

This is a hugely important report, but it also lets the Barr DOJ off easy. That's true, first of all, because this is not a *foreign lobbying case* (this is one of the many reasons I harp on the import of getting the charge right here). DOJ hasn't struggled to prosecute 951 cases, though at the time prosecutors deferred these charges, Barr was busy letting Mike Flynn blow up the Bijan Kian case, which included both FARA and 951 in the conspiracy charge, along with 951 separately, but which charged only Ekim Alptekin with false statements. Had Mike Flynn held to the terms of his plea agreement, that case likely would have been a far easier guilty verdict.

What happened last year, though, is that after EDNY prosecutors had continued to investigate

for a year after discovering that Barrack was in no way the innocent victim of accused foreign agent Rashid Al Malik and were prepared to try to hold Barrack, as well, accountable for a pretty dramatic undisclosed role in setting a pro-UAE foreign policy, Richard Donoghue, faced with evidence that one of Trump's closest advisors wasn't telling the truth about why he was doing the things he was doing (or even, *that* he was doing them), "had misgivings."

Or maybe he had misgivings about how Trump and Barr would respond if he approved this.

In fact, all this must have happened *more* than a year ago, because on July 10, 2020, Barr announced he was swapping Donoghue for Seth DuCharme, his DOJ fixer. This CNN report doesn't explain why this didn't get charged under DuCharme, but maybe that's the point.

So Donoghue – or maybe DuCharme – left all the repercussions to US foreign policy of Barrack's undisclosed actions earlier in the Trump Administration remain in place.

Frankly, it's not surprising that Donoghue and DuCharme – who were, at the time, also in charge of limiting any damage to Rudy for his undisclosed influence-peddling – didn't approve this prosecution. That's their job.

What may be the most interesting detail is that whereas Lisa Monaco approved the raid on Rudy on her first day in office, this prosecution has taken three more months to charge.

This case will sink or swim on the strength of the false statements charges, because if Barrack's alleged lies in June 2019 were clearcut, when he presumably believed he would be protected by Barr and Trump, then it makes several likely defenses a lot harder to pull off now. It's possible there's some complicating factor (again, I think it possible that he told the truth about some of these questions when interviewed by Mueller in December 2017). But if not, then the alleged lies become the building blocks to proving the Foreign Agent charges.

In any case, the alleged false statements charges make the questions about why Barr's DOJ thought it was okay to keep these secrets all the more important.