

EARLIER THIS YEAR, BILLY BARR MINIMIZED THREATS OF VIOLENCE AGAINST JUDGES

Billy Barr lies, a lot.

One of the things he has lied about – first anonymously to irresponsible beat reporters and then repeatedly on the record – is that Amy Berman Jackson agreed with his sentencing recommendation in the Roger Stone case. To Steve Inskeep, for example, Barr first lied by hiding that he created a dispute by replacing Jesse Liu with his crony Timothy Shea so Shea could start disagreeing with prosecutors.

I was the decision maker in that case because there was a dispute. And usually what happens is, disputes, especially in high profile cases, come up to the attorney general. It's not unusual for there to be a dispute in a high-profile case and for it to be resolved by the attorney general. And what actually happened in that case is that the four prosecutors who had prosecuted the case, the first line, they wanted to recommend a seven to nine year sentence on Stone, and the U.S. attorney felt that was too severe and was not justified under the circumstances.

Barr then claimed that all he did, in replacing the sentencing memo written by prosecutors adhering to DOJ guidelines on calling for the maximum sentence with one calling for far less, was to lay out the relevant information and let Amy Berman Jackson decide.

And what I said was set forth all the relevant information and leave it to the judge's discretion to select the right decision, which is also not uncommon in

the department. And that judge actually gave the sentence that I thought was correct, which was half of what the line prosecutors were recommending. They could not point to any case even remotely close to the seven to nine year sentence. The cases were essentially centered on about two and a half to three years. The judge gave him three years and four months, which I thought was a fair sentence under the circumstances. And it was essentially what I was proposing, or thought was fair. And so the proof of the pudding is in the eating. I made that decision based on what I was felt was fair to that person.

Aaron Zelinsky has made it clear that, in fact, even in the first memo, prosecutors were ordered to downplay certain information.

The more important detail – given that an anti-feminist Trump supporter allegedly targeted the family of federal judge Esther Salas, killing her son and also shooting her spouse – is *how* he overrode the sentencing recommendation of prosecutors.

As I laid out in this post, prosecutors asked for the following enhancements:

- 8 levels for the physical threats against Randy Credico
- 3 levels for substantial interference
- 2 levels for the substantial scope of the interference
- 2 levels for obstructing the administration of justice

The last of these, per the original sentencing memo, had to do with Stone's threats against ABJ.

Finally, pursuant to U.S.S.G. § 3C1.1, two levels are added because the defendant “willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the prosecution of the instant offense of conviction.” Shortly after the case was indicted, Stone posted an image of the presiding judge with a crosshair next to her head. In a hearing to address, among other things, Stone’s ongoing pretrial release, Stone gave sworn testimony about this matter that was not credible. Stone then repeatedly violated a more specific court order by posting messages on social media about matters related to the case.

This enhancement is warranted based on that conduct. See U.S.S.G. § 3C1.C Cmt. 4(F) (“providing materially false information to a magistrate or judge”); see, e.g., *United States v. Lassequ*, 806 F.3d 618, 625 (1st Cir. 2015) (“Providing false information to a judge in the course of a bail hearing can serve as a basis for the obstruction of justice enhancement.”); *United States v. Jones*, 911 F. Supp. 54 (S.D.N.Y. 1996) (applying §3C1.1 enhancement to a defendant who submitted false information at hearing on modifying defendant’s conditions of release).

Barr’s memo got to the outcome he wanted by eliminating the 8-point enhancement for physically threatening Credico and the 2-point enhancement for threatening ABJ.

The memo suggested the 8-level enhancement shouldn’t apply, first, because doing so would double Stone’s exposure.

Notably, however, the Sentencing Guidelines enhancements in this

case—while perhaps technically applicable— more than double the defendant’s total offense level and, as a result, disproportionately escalate the defendant’s sentencing exposure to an offense level of 29, which typically applies in cases involving violent offenses, such as armed robbery, not obstruction cases. Cf. U.S.S.G. § 2B3.1(a)-(b). As explained below, removing these enhancements would have a significant effect on the defendant’s Guidelines range. For example, if the Court were not to apply the eight-level enhancement for threatening a witness with physical injury, it would result in the defendant receiving an advisory Guidelines range of 37 to 46 months, which as explained below is more in line with the typical sentences imposed in obstruction cases.

[snip]

Then, Barr’s memo argued (and this is the truly outrageous argument) that Stone’s attempts to obstruct his own prosecution overlapped with his efforts to obstruct the HPSCI investigation.

Second, the two-level enhancement for obstruction of justice (§ 3C1.1) overlaps to a degree with the offense conduct in this case. Moreover, it is unclear to what extent the [defendant’s obstructive conduct actually prejudiced the government at trial.]

Effectively, this language treated threats against a judge as unworthy of enhancement.

The Attorney General of the United States found a way to go easy on the President's life-long rat-fucker by downplaying the importance of threats against those participating in trials.

ABJ disagreed with both of those changes (though she did rule against the government's enhancement on scope), taking Credico's letter asking for leniency into account but also noting that in his grand jury testimony Credico had described being genuinely fearful of Stone's thuggish buddies, and insisting on the import of the threat against her.

She got to close to the same conclusion as Barr, however, because she believes that sentencing recommendations are too harsh.

On one side, Barr dismissed the import of physical threats against a witness and a judge (while otherwise backing harsh sentencing). On the other side, ABJ insisted in the import of threats to participants in the judicial system, while finding sentencing recommendations generally too harsh.

ABJ in no way agreed with Barr's logic, in part because she felt it important to punish threats against judges. Barr, however, thought it more important to go easy on Trump's rat-fucker than reinforce the danger of threats to judges.

Then Trump commuted Stone's sentence, showing that he doesn't much give a damn if people threaten witnesses and judges either (unsurprisingly, because he does so much of it himself).

In the wake of the attack on Salas, Barr has taken to the press, proclaiming how serious he thinks such attacks to be.

U.S. Attorney General Bill Barr also offered his condolences to Judge Salas and her family.

“This kind of lawless, evil action carried out against a member of the federal judiciary will not be tolerated, and I have ordered the full resources of the FBI and U.S. Marshals Service to investigate the matter,” Barr said in a statement.

Bullshit.

You don't get to proclaim how serious you think attacks on judges are if earlier this year you took extraordinary measures to minimize threats on a judge. The actions Barr and Trump took earlier this year sent the message that it doesn't much matter if someone undermines the entire judicial system by intimidating judges and witnesses – particularly if they're supporters of Trump.

Billy Barr wants you think he's a hard ass on such violence. But earlier this year, he took unprecedented action to dismiss the import of violence against judges. No credible journalist should print his statements without explaining that Barr is part of the problem.