

BILL BARR DEFENDED YEVGENIY PRIGOZHIN LAST NIGHT

While he didn't do so explicitly and may not have the clarity of thought to even realize it, but in his screed at radical right wing Hillsdale College, Bill Barr effectively defended Yevgeniy Prigozhin's attempts to interfere in American elections.

That's because – in a speech attacking Robert Mueller's work – he took an extended swipe at exotic interpretations of law.

In recent years, the Justice Department has sometimes acted more like a trade association for federal prosecutors than the administrator of a fair system of justice based on clear and sensible legal rules. In case after case, we have advanced and defended hyper-aggressive extensions of the criminal law. This is wrong and we must stop doing it.

The rule of law requires that the law be clear, that it be communicated to the public, and that we respect its limits. We are the Department of Justice, not the Department of Prosecution.

We should want a fair system with clear rules that the people can understand. It does not serve the ends of justice to advocate for fuzzy and manipulable criminal prohibitions that maximize our options as prosecutors. Preventing that sort of pro-prosecutor uncertainty is what the ancient rule of lenity is all about. That rule should likewise inform how we at the Justice Department think about the criminal law.

Advocating for clear and defined prohibitions will sometimes mean we

cannot bring charges against someone whom we believe engaged in questionable conduct. But that is what it means to have a government of laws and not of men. We cannot let our desire to prosecute "bad" people turn us into the functional equivalent of the mad Emperor Caligula, who inscribed criminal laws in tiny script atop a tall pillar where nobody could see them.

To be clear, what I am describing is not the Al Capone situation – where you have someone who committed countless crimes and you decide to prosecute him for only the clearest violation that carries a sufficient penalty. I am talking about taking vague statutory language and then applying it to a criminal target in a novel way that is, at a minimum, hardly the clear consequence of the statutory text.

[snip]

The Justice Department abets this culture of criminalization when we are not disciplined about what charges we will bring and what legal theories we will bless. Rather than root out true crimes – while leaving ethically dubious conduct to the voters – our prosecutors have all too often inserted themselves into the political process based on the flimsiest of legal theories. We have seen this time and again, with prosecutors bringing ill-conceived charges against prominent political figures, or launching debilitating investigations that thrust the Justice Department into the middle of the political process and preempt the ability of the people to decide.

This criminalization of politics will only worsen until we change the culture of concocting new legal theories to criminalize all manner of questionable

conduct. Smart, ambitious lawyers have sought to amass glory by prosecuting prominent public figures since the Roman Republic. It is utterly unsurprising that prosecutors continue to do so today to the extent the Justice Department's leaders will permit it.

As long as I am Attorney General, we will not.

Our job is to prosecute people who commit clear crimes. It is not to use vague criminal statutes to police the mores of politics or general conduct of the citizenry. Indulging fanciful legal theories may seem right in a particular case under particular circumstances with a particularly unsavory defendant—but the systemic cost to our justice system is too much to bear.

He even ad-libbed a comment to more specifically attack Michael Dreeben, the top member of the Solicitor General's office, who was a member of the Mueller team.

The Obama administration had some of the people who were in Mueller's office writing their briefs in the Supreme Court, so maybe that explains something.

Mueller considered a range of exotic applications of law.

He considered charging Don Jr for accessing a private website using the password provided by people associated with WikiLeaks. But he didn't charge the failson, arguing the intent wasn't there.

He considered charging Don Jr. for accepting an offer of campaign dirt from a foreigner, Aras Agalarov. He didn't charge it, in part, because Don Jr is too stupid to know that accepting campaign help from foreigners is illegal.

Mueller considered charging Roger Stone for

accepting campaign assistance from foreigners Julian Assange and the GRU in the form of stolen emails. He didn't charge it, in part for First Amendment reasons.

Every other charge, save one, was a routine application of law:

- George Papadopoulos, for lying to the FBI about when he got offered campaign dirt
- Mike Flynn, for lying to the FBI about undermining sanctions imposed on Russia for interfering in the election and lying to DOJ about having secretly worked for the Turkish government
- Paul Manafort and Rick Gates, for money laundering, cheating his taxes, lying to DOJ on a FARA form, and (in Manafort's case) trying to get witnesses to lie
- Michael Cohen, for lying to Congress about the lucrative business deal Trump was chasing during the election
- Roger Stone, for lying to Congress about a lot of things, including that he kept the campaign informed of his efforts to optimize the data stolen by Russian intelligence officers, as well as for threatening Randy Credico
- Alex Van der Zwaan, for lying to the FBI about

Gates' ongoing ties to Russian intelligence officer Konstantin Kilimnik

- Richard Pinedo, for stealing the identities of other Americans and selling them, including to Russian trolls
- A bunch of GRU officers, for hacking the DNC and other targets
- A bunch of paid trolls, for stealing the identities of American people and hiding their own true identity while paying for trolling infrastructure

The single indictment that Mueller brought that was a hyperextension of criminal law was against Yevgeniy Prigozhin, his trolls, his troll farm, and his shell companies for engaging in political activities in the US without registering; the theory of the case evolved over time to include getting unsuspecting Americans to engage in politics on behalf of foreign actors. Those are the charges that DOJ dropped (and I defended the decision, even though Barr's rant makes me think questions about politicization may have merit). My suspicion is that Mueller charged it, in part, to be able to incorporate Prigozhin (and by extension, Vladimir Putin) into the indictment. But it was a stretch. Just what Barr says: a legal theory crafted – probably in part to establish a precedent for future tampering using social media – to go after a bad person, Prigozhin. The two subsequent complaints against Prigozhin's trolls have not included the FARA charge.

But if Barr is speaking about Prigozhin, here, it raises real questions about why Interpol dropped the Red Notice against Prigozhin. Did Barr drop that request?

There's one more investigation into foreigners helping Trump that Barr seems to be defending. Barr's complaint that people in Mueller's office wrote briefs for the Supreme Court also seems to suggest Barr disapproves of the Mystery Appellant case, which is understood to involve a bribe. That was the only case argued to the Supreme Court.

Mueller won that legal fight, even if the mystery foreign company who challenged a subpoena effectively avoided complying by lying anyway.

But by invoking Dreeben – one of the most respected Appellate lawyers in the country – Barr seems to be complaining that Trump might be investigated for accepting a bribe.