

## IDEAS

## Bill Barr Has Promised Transparency. He Deserves the Chance to Deliver.

Judge the attorney general by what he ultimately sends to Congress.

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YURI GRIPAS / REUTERS

Here's a radical idea: For the next two weeks, let's give Attorney General William Barr the benefit of the doubt.

I understand why so many people are suspicious of Barr and are lining up to denounce him—and there may well come a day, and it might come soon, when I will get in line and join them.

Barr's initial letter summarizing the top-line conclusions of Special Counsel Robert Mueller's investigation allowed President Donald Trump to claim exoneration and vilify those who had called for the investigation, even as it managed not to answer any substantive questions about L'Affaire Russe. What's more, the letter put the

attorney general's personal stamp on the exoneration of the president for obstruction of justice, an outcome that is apparently not what Mueller himself intended. It is not clear to me why Barr needed to do this, and it certainly had the effect of helping the president seize control of the narrative. So I understand why many people are suspicious.

*[ Quinta Jurecic: No one who matters has read the Mueller report yet ]*

Yet I am still inclined to give Barr the benefit of the doubt on the release of the Mueller report, if only in a kind of “trust but verify” sort of way. The reason, in short, is that Barr has promised numerous times to show his work. He has promised to do so in the short term. The equities he has insisted on protecting are, in my view, reasonable ones. And he has taken in his most recent letter an appropriate, even gutsy, stand on executive privilege with respect to the White House. He has, in short, described a reasonable process by which Congress and the public should shortly get access to Mueller's findings. I am inclined to assume him serious about this until he fails to deliver on what he has promised. There will be plenty of time to criticize his failures if and when they materialize.

Let's unpack this a bit.

Barr has said since his confirmation hearings that he is committed to maximum public access to Mueller's findings consistent with the law. Since Mueller delivered his report, he has stood by this and said he means to expeditiously review a 400-page document and release as much as he can. His time frame has clarified over the past week, from soon to “weeks not months” to “mid-April, if not sooner.” Congressional Democrats are demanding the report by Tuesday. This difference is not material. If the Justice Department releases Mueller's report in a capacious and reasonable fashion in mid-April, that is a perfectly fine outcome.

Barr has also laid out what material he believes he must redact from the document. On some of these matters, he is simply correct. For example, Barr says he means to remove grand-jury material; it is actually unlawful, criminal even, to disclose grand-jury material without the authorization of the court. In the short term, there is no way to give this material to Congress, let alone make it public; it would require substantial litigation to do so.

Moreover, Barr says he means to redact “material the intelligence community identifies as potentially compromising sensitive sources and methods.” Note that he is not saying he will redact all classified material. But it is quite irresponsible to demand that the attorney general dump in the public domain sensitive intelligence matters in a fashion that could burn collection capabilities or human sources. There is no way the attorney general is going to release a 400-page document summarizing a counterintelligence investigation without a careful review for national-security information. And going through a lengthy document with a lot of information from different sources in a review for both national-security and grand-jury material takes time—legitimately. Getting it done in a few short weeks would require having a team working on it around the clock.

[ *Ken White: Barr's startling and unseemly haste* ]

Barr also says he will redact “material that could affect other ongoing matters, including those that the Special Counsel has referred to other Department offices.” This strikes me as reasonable as well. Mueller has kicked a variety of matters back to the Justice Department. Do we really want Barr to screw up those investigations by prematurely releasing the department’s analysis of them? We didn’t want Mueller to do this. I don’t want Barr to, either. This category of redaction is potentially subject to abuse, but I am not going to assume preemptively that it will be abused.

Finally, Barr says he will redact “information that would unduly infringe on the personal privacy and reputational interests of peripheral third parties.” Depending on how one reads the words *unduly* and *peripheral*, this could either be a reasonable effort to protect drive-by reputational harm to people quite removed from the core public interest in this matter or it could be a loophole big enough to drive a truck through that could protect, say, the president’s kids. So again, could this be a mechanism to black out large segments of the report? Yes. But I see no reason to assume that this is what Barr wants to do, given his more general public commitments to maximum transparency in this matter.

One important area in which Barr has said publicly that he won’t be doing any redactions is the area of executive privilege. This is actually a big deal. The White House made noises about reviewing the document for supposedly privileged material. But on this point, Barr has publicly, if somewhat backhandedly, taken a

stand. In his letter on Friday, Barr wrote that “although the President would have the right to assert privilege over certain parts of the report, he has stated publicly that he intends to defer to me and, accordingly, there are no plans to submit the report to the White House for a privilege review.”

*[ Read: The critical part of Mueller’s report that Barr didn’t mention ]*

There are two ways to read this passage. One is as an invitation to the White House to assert privilege. The other is as a kind of dare—as putting the White House on notice that Barr takes the president’s public statement of deference to him on this subject as, well, a presidential statement that has resolved the matter. He thus has said publicly, in effect, that he won’t consider executive privilege a factor unless he is specifically instructed to do so.

In brief, then, Barr has laid out a short time frame in which he has promised to make a capacious set of disclosures subject to a few discrete areas of necessary confidentiality. While these are, to be sure, potentially abusable, they are on their own terms legitimate. And Barr has taken off the table executive privilege, at least as a default matter in the absence of presidential action. This all seems pretty reasonable to me.

If the Mueller report does not come out promptly in a form that allows the public to understand and evaluate its findings, there will be plenty of time to fight then over what was withheld and to fault Barr for removing too much, or for removing material in a politically inflected fashion. But until that happens, I’m going to assume his good faith.

Call me naive. Call me old school. Call me not in touch with the ethos of the moment. But I’ll assume that Barr’s oath of office meant something to him.

If that’s wrong, the plate of crow with my name on it will still be warm in mid-April—or maybe sooner.

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