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# Committee Outlines Regulations for Release of Special Counsel Reports

During Bill Barr’s hearing on January 15, Democrats repeatedly asked him to commit to publicly releasing any reports that are ultimately prepared by Special Counsel Bob Mueller. These questions make it seem as though an Attorney General can do whatever he or she wants with the report. But that’s not true. Regulations enacted by the Clinton administration—the same regulations that prohibit firing the special counsel without cause—govern how the Attorney General must treat special counsel reports. Those regulations reflect decades of experience with independent and special counsels under administrations of both parties, and it’s worth clarifying how those detailed regulations work.

The regulations provide that the special counsel must submit a report to the Attorney General at the conclusion of the special counsel’s investigation explaining the special counsel’s prosecutorial decisions—including any decisions not to prosecute. Under the regulations, that report is strictly “**confidential**.” As the Clinton Justice Department explained when it proposed the regulations, the “report will be handled as a confidential document” just like “internal documents relating to any federal criminal investigation.” This confidentiality rule was designed to avoid the problems experienced under the old Independent Counsel statute, which—in contrast to today’s special counsel regulations—provided for the public release of independent counsel reports. Specifically, the Clinton Justice Department chose confidentiality because public disclosure created “an incentive to over-investigate, in order to avoid potential public criticism for not having turned over every stone, and creates potential harm to individual privacy interests.”

That does not mean information relating to the special counsel's work will not be made public. Under the special counsel regulations, at the conclusion of the investigation, the Attorney General must notify the Chairs and Ranking Members of the House and Senate Judiciary Committees that the investigation has concluded. The regulations' commentary explains that this is supposed to be a "brief notification" containing "an outline of the actions and the reasons for them." The regulations authorize the Attorney General to make that notification public only if doing so (1) would be in the public interest, and (2) would comply with applicable legal restrictions. Thus, for example, the Attorney General could not release grand-jury information or classified materials because of other laws prohibiting their public disclosure. The Clinton administration's regulations expressly recognize that the "interests of the public in being informed of and understanding the reasons for the actions of the Special Counsel will be addressed in" the Attorney General's report, not in the special counsel's "confidential" report.

Americans want an Attorney General who will make decisions based on the law rather than political pressure from Congress, the President, or anyone else. Mr. Barr made crystal clear that he will scrupulously follow the law when it comes to releasing information relating to the special counsel's work. Mr. Barr told the Committee that, if confirmed, he intended to consult with Special Counsel Mueller and Deputy Attorney General Rosenstein regarding publication of any reports and that his ultimate "goal will be to provide as much transparency as I can, consistent with the law." He promised to make his judgments "based solely on the law," and made clear he would "not let personal, political, or other improper interests influence my decision." He promised that he would not allow the President or his lawyers to edit his report before he sent it to Congress. And when Democrats pressed him for commitments, he said that he could not make any promise to the Committee on how he would handle the report any more than he could make a promise to the President. Mr. Barr promised the most he could under the law—that he would "carry out [his] responsibilities under the regulations" honestly and in good faith, and that he would be as transparent as possible.

The special counsel regulations—enacted nearly two decades ago—are important and should be followed in their entirety. Mr. Barr promised to do so. The Senate can ask no more. Bill Barr is committed to following the law. He is precisely the man Americans want and need for this job. He should be swiftly confirmed.

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