

HOW TO BE A HANDMAIDEN TO CORRUPTION, BARR MEMO PRESS COVERAGE EDITION

Much of the coverage of the Barr Memo – written over a weekend after a 7-hour review of the Mueller Report to justify a public statement to Congress exonerating the former President – continues to magnify the corruption of Barr's act, rather than expose it.

The memo makes numerous factual errors (errors that can be easily documented thanks to a public record liberated by Jason Leopold). One Judge – Amy Berman Jackson – issued a ruling saying that the memo doesn't do what it claimed it did (deliberate about whether Trump could be charged). She even included a timeline to show her work. Three more Circuit Judges agreed with ABJ's opinion that DOJ misrepresented what they claimed they had done – by saying they were making a prosecutorial decision rather than a public messaging decision – in an attempt to keep the memo under wraps.

You'd think that after four judges had called out DOJ for shenanigans with this memo, anyone remotely interested in performing the function of journalism would explain why those judges found the project so suspect, and the import of that to the actual claims made in the memo. CREW spent years doing the hard work of liberating the memo to make it easy for journalists!

Instead, numerous outlets simply parroted the language of the memo that four judges had ruled to be a messaging project, thereby treating the memo as a valid exercise of legal analysis and not a performance of corruption.

I'd like to pay tribute to some of the outlets that chose to be a handmaiden to corruption

rather than journalists.

I should say, while I bitched about it the day of the release, the NYT improved their story by adding the work of Charlie Savage. (early version; later version) It still treats the focus on Don McGahn as real rather than tactical and chooses to primarily quote experts explaining the problems with the memo rather than lay that out directly. But it notes (as I did) that the memo doesn't explain something that was at the core of Mueller's obstruction analysis – pardons. It provides actual reporting explaining that Merrick Garland's DOJ wasn't hiding the substance of this when they fought to keep it sealed last year, they were making a "narrower legal" argument – presumably trying to preserve the exemption it had been sealed under (the b5A deliberative privilege).

After losing in court on Friday, the Justice Department had the option to appeal the case. But the department's senior leadership decided to release the document, according to a senior official in federal law enforcement. The leadership never opposed airing its contents, but had contested its release on narrower legal grounds, the person added.

Compare that with some of the stenography that remains untouched.

Eric Tucker, Memo sheds light on decision to clear Trump in Russia probe (AP)

Unsurprisingly, Eric Tucker ignores the opinions from four judges who called out this memo and spends three paragraphs ignoring the evidence that this was a hash job instead describing it as a record of "how two of the department's senior-most leaders arrived at that conclusion," something the judicial record says it's not. He then spends seven paragraphs rehashing part of Steven Engel and Ed O'Callaghan's argument, never calling out factual errors and ignoring

their even more problematic treatment of witness tampering. Only after that does Tucker explain that two courts (he only mentions the Circuit) deemed that it had been improperly withheld, without explaining why. Finally, in the last two paragraphs, he quotes from CREW about the substance of the memo, as if he doesn't have the competence to assess it himself.

Ryan Lucas, DOJ releases a Mueller-era memo to Barr on the decision not to prosecute Trump (NPR)

Unlike the AP, NPR didn't claim, in its headline, that this memo actually did represent the decision-making process. But Ryan Lucas dedicated much of his story on the memo – paragraphs three and four, and then nine through eleven – parroting the claimed rationale of the lawyers. It describes the rebukes from the judges this way: "A district court judge and a panel of circuit court judges disagreed and ordered its release." That leaves him free to pitch the question of Barr's exoneration of Trump (which he calls "declin[ing] to prosecute Trump") as a he-said, she-said affair, pitting CREW and 1,000 former prosecutors against Trump and his supporters. Lucas ends the piece by describing the current investigation into whether Trump violated the Espionage Act and obstructed an investigation by refusing to return classified documents an investigation into "storing presidential documents at his Mar-a-Lago residence."

Robert Legare, Government lawyers advised Barr not to bring obstruction charges against Trump after Mueller report, newly-released memo reveals (CBS)

Of 28 paragraphs in this story, twelve report the claimed analysis of the memo unfiltered, as if it really was a predecisional declination memo, as if it really did analyze the entirety of the report, as if it was factually accurate. It dedicates four paragraphs to more recent efforts of Barr and the others involved to justify their decisions or separate themselves

from Trump. Rather than describing the years-long fight featuring judges repeatedly calling out both the project of the memo itself and the means by which it was hidden, Legare described only that it, "was ordered unsealed by an Appeals Court after a FOIA request and subsequent lawsuit were filed seeking its release." Ultimately, then, this article treats the memo as something the judges say it's not – a view that would be reinforced by an assessment of the actual claims made against the now-public record of the investigation itself.

Ryan J. Reilly and Dareh Gregorian, DOJ releases unredacted memo to Barr on Trump, obstruction in Mueller probe (NBC)

Reilly interrupted breaking a story about an important January 6 militia arrest the other day to cover this live and did a pretty good job on the air. But in the write-up with Dareh Gregorian, they spend paragraphs three through eight quoting at length from the memo. Along the way, they claim the memo "dismiss[ed] Mueller's concerns about Trump's ... dangling of pardons to some witnesses," rather than calling it out for ignoring pardons entirely. While the piece noted that Barr "announced that the Justice Department would not prosecute the case the same day the memo was sent to him" and described ABJ's ruling that, "Barr's mind had already been made up before the memo was written," thereby hinting that the memo was just a messaging project, they don't consider the import of that sequence for the analysis itself. And rather than identifying the problems of the memo themselves, they describe that, "many people strongly disagreed with the analysis laid out in the memo," and explicitly identify CREW as "left-leaning," treating the actual substance as something inaccessible to them and so just a matter for ongoing political dispute.

Alexander Mallin, DOJ releases memo behind Barr's decision not to prosecute Trump for obstruction (ABC)

To his credit, in the five paragraphs describing

what led to the release of the memo with which Alexander Malin starts his coverage, he describes the judges concluding that, "Barr and other DOJ officials were not candid in their statements about the role the memo played in their decision to not charge Trump." Which makes it all the more mystifying why he dedicates eleven paragraphs of his story quoting the memo at length, with no fact-checking or push-back, as if it the memo really was real analysis that led to Barr's decision to make an announcement that he wouldn't have charged Trump if he could have.

I get it. This memo came out amid a flood of news, especially for those of us on the DOJ beat. I get that people rushed to do quick analyses so they could go back to watching dockets in Florida, Georgia, and DC.

But what happened with this memo – four judges overriding a b5 exemption based on their assessment that DOJ misrepresented the function of the memo – is virtually unprecedented. That, by itself, should lead reporters to scrutinize the memo (or at least the process) for the kind of dishonesty the judges judged it was, rather than treating it as a transparent record of legal analysis that ABJ already showed it's not. All the more so when, as is the case here, thousands of pages recording the underlying evidence (evidence that the authors of the memo explicitly say they're not going to cite) are publicly available.

If you're reporting on a document that DOJ made false claims in an attempt to keep secret, parroting what it says at length, with no discussion of *why* DOJ made misrepresentations to keep it secret, with no effort on your own to test whether *what* it says is any more true than *what* was said to keep it hidden, you're doing readers a disservice.

Four judges and CREW (plus Leopold, with his earlier Mueller Report FOIA) have given you an easy way to reassess what Bill Barr did to preempt the results of the Mueller Report in 2019.

To instead simply repeat his past claims or those whom he ordered (and worked with) to justify a pre-ordained result is not journalism.