

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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April 2, 2019

The Honorable Adam B. Schiff
Chairman
Permanent Select Committee on Intelligence
Washington, D.C. 20515

The Honorable Devin G. Nunes
Ranking Member
Permanent Select Committee on Intelligence
Washington, D.C. 20515

Dear Chairman Schiff and Ranking Member Nunes:

Pursuant to Rules of Procedure for the Permanent Select Committee on Intelligence (HPSCI), we write to request access to the transcripts of Michael Cohen's closed-door testimony before HPSCI on February 28, 2019, and March 6, 2019.

Cohen lied under oath several times before our Committee on February 27, 2019. Chairman Elijah E. Cummings promised to hold Cohen accountable if he lied, and Vice Chair Katie Hill said Cohen should be referred to the Justice Department.¹ Chairman Cummings is now delaying action on referring Cohen on the purported basis that he first needs to review Cohen's HPSCI testimony. However, we understand that Chairman Cummings has not made a written request to review Cohen's HPSCI transcripts as required by HPSCI Rule 14(f). Although we do not believe it is necessary to review HPSCI's transcripts to determine whether Cohen lied to our Committee, we respectfully request that HPSCI vote to permit us access to the transcripts of Cohen's HPSCI appearances to help assuage Chairman Cummings's concerns.

As we outlined in our letter of February 28, 2019, to Attorney General William Barr referring Cohen for investigation and potential prosecution, Cohen made demonstrably false statements during his testimony before our Committee.² We believe Cohen lied at least seven times, two of which are indisputable:

¹ Brett Samuels, *Oversight Dem: "I imagine" chairman will ask for investigation into Cohen for alleged perjury*, THE HILL (Mar. 10, 2019).

² Letter from Jim Jordan & Mark Meadows, H. Comm. on Oversight & Reform, to William P. Barr, Att'y Gen., Dep't of Justice (Feb. 28, 2019).

- In his testimony, Cohen unequivocally denied that he wanted or sought a job in President Trump’s White House.³ However, the prosecutors at the United States Attorney’s Office for the Southern District of New York (SDNY) cited documentary evidence of Cohen’s strong desire “to be given a prominent role and title in the new administration.”⁴ In addition, several other individuals with direct knowledge of Cohen’s thinking at the time disputed his assertion.⁵ Even CNN journalist Dana Bash disputed Cohen’s assertion on live television, saying that CNN’s reporting showed Cohen “very much wanted a job in the White House.”⁶
- Cohen also testified that he “never asked for, nor would [he] accept” a presidential pardon.⁷ His own lawyers later contradicted him, revealing that Cohen had directed his attorney to inquire about receiving a pardon.⁸ Although Cohen’s lawyer wrote to Chairman Cummings that Cohen’s statement was not accurate and “could have been clearer,”⁹ Cohen’s denial as uttered under oath at our hearing was absolute and unequivocal. Cohen’s attorney’s *ex post* explanation cannot cure his prior false statement under oath.

In advance of Cohen’s testimony, Chairman Cummings expressly warned Cohen not to lie. Chairman Cummings even promised to be the “first” to refer Cohen to the Justice Department if he falsely testified before our Committee, stating:

I have made it abundantly clear to Mr. Cohen that if he comes here today and he does not tell him the truth—tell us the truth, I will be the first one to refer that—those untruthful statements to DOJ. So when people say he doesn’t have anything to lose, he does have a lot to lose if he lies.¹⁰

³ *Hearing with Michael Cohen, Former Attorney for President Donald Trump: Hearing Before the H. Comm. on Oversight & Reform*, 116th Cong. 37, 96 (2019).

⁴ The Government’s Sentencing Memorandum at 25, *United States v. Cohen*, 18-cr-602 (S.D.N.Y. Dec. 7, 2018).

⁵ *See, e.g.*, Bo Dietl (@BoDietl), Twitter, (Feb. 27, 2019, 11:13 AM), <https://twitter.com/BoDietl/status/1100790950203478018>; Dr. Darrell Scott (@PastorDScott), Twitter, (Feb. 27, 2019, 3:44 PM), <https://twitter.com/PastorDScott/status/1100859134948315138>; Bruce LeVell (@Bruce_LeVell), TWITTER, (Feb. 27, 2019, 3:47 PM), https://twitter.com/Bruce_LeVell/status/1100860065786007565; David Bossie (@David_Bossie), Twitter, (Feb. 27, 2019, 5:12 PM), https://twitter.com/David_Bossie/status/1100926661397278723.

⁶ CNN Newsroom (@CNNnewsroom), Twitter (Feb. 27, 2019, 9:25 AM), <https://twitter.com/CNNnewsroom/status/1100809107026538496>.

⁷ *Hearing with Michael Cohen, Former attorney for President Donald Trump: Hearing before the H. Comm. on Oversight & Reform*, 116th Cong. (2019) (written testimony of Michael D. Cohen); *Hearing with Michael Cohen, Former Attorney for President Donald Trump: Hearing Before the H. Comm. on Oversight & Reform*, 116th Cong. 28 (2019) (“And I have never asked for, nor would I accept a pardon from President Trump.”).

⁸ *See* Letter from Michael Monico, attorney to Michael Cohen, to Elijah Cummings, Chairman, H. Comm. on Oversight & Reform (March 12, 2019); Andrew Desiderio, *Michael Cohen previously asked Trump attorneys about pardon, his lawyer says*, POLITICO (March 7, 2019).

⁹ Letter from Michael Monico to Elijah E. Cummings, Chairman, H. Comm. on Oversight & Reform (Mar. 12, 2019).

¹⁰ *Hearing with Michael Cohen, Former Attorney for President Donald Trump: Hearing Before the H. Comm. on Oversight & Reform*, 116th Cong. 12 (2019).

Later in the hearing, Chairman Cummings forcefully admonished Cohen on the repercussions of lying:

Chairman Cummings. First of all, let me be clear, I said to Mr. Cohen that if he came in here and lied I would nail him to the cross. Didn't I, did I tell you that?

Mr. Cohen. Yes, you did more than once.¹¹

Chairman Cummings's fervor to hold Cohen accountable for lying has not materialized. He now claims he must review Cohen's testimony before HPSCI to determine whether Cohen lied to us, as he explained in a press statement on March 13:

Our practice on this Committee is to give witnesses an opportunity to clarify their testimony, and that is what Mr. Cohen has done. I do not see the need for further action—at least at this time. However, I understand that Mr. Cohen may have answered more detailed questions on this same topic the day after our hearing when the Intelligence Committee had him in for a closed session. *We will review that transcript when it becomes available and determine whether any additional steps are required.*¹²

For weeks Chairman Cummings has claimed that he needs to review the transcripts of Cohen's HPSCI testimony before making a final decision on whether to refer Cohen for lying to our Committee. At various times, Chairman Cummings has told the press that he needs to carefully "look at," "study," and "review" Cohen's HPSCI testimony.¹³ However, it does not appear that Chairman Cummings has made a request to review the transcripts, as required under HPSCI rules.

Specifically, HPSCI Rule 14(f) requires non-HPSCI Members seeking closed-door transcripts to submit a request in writing and then receive approval by a recorded vote. We have

¹¹ *Id.* at 171.

¹² Press Release, H. Comm. on Oversight & Reform, Cummings Responds to Letter from Cohen's Attorney Clarifying Pardon Testimony (March 13, 2019).

¹³ See Chad Pergram (@ChadPergram), Twitter, (March 11, 2019, 4:37 PM), <https://twitter.com/ChadPergram/status/1105251492615897093> ("Cummings on if he would send a criminal referral to DoJ on Cohen: It's impossible unless I take a look at the transcript from Intelligence Committee..."); Chad Pergram (@ChadPergram), Twitter, (March 13, 2019, 10:38 AM), <https://twitter.com/ChadPergram/status/1105885870379462656> ("Cummings to Cohen atty: I understand that Mr. Cohen may have answered more detailed questions on this same topic the day after our hearing when the Intelligence Committee had him in for a closed session. We will review that transcript when it becomes available."); *Erin Burnett OutFront* (CNN Television broadcast March 8, 2019) (Rep. Brenda Lawrence (D-MI): "Our Chairman, Mr. Cummings, we are deliberately reviewing all of the testimony..."); *Erin Burnett OutFront* (CNN Television broadcast March 7, 2019) (Kara Scannell stated, "Elijah Cummings, had said that he will hold Cohen accountable to this and he will study the transcript of these other—of his testimony and then of the House Intelligence Committee...").

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not been copied on any written request from Chairman Cummings or any Democrat Committee Members requesting access to the transcripts of Cohen's HPSCI testimony.

We also understand that HPSCI has not yet scheduled a business meeting to consider allowing any non-HPSCI Members access to these transcripts. Therefore, pursuant to HPSCI Rule 14(f), we respectfully request that HPSCI grant us access to the transcripts of Cohen's testimony before HPSCI on February 28, 2019, and March 6, 2019. To assuage Chairman Cummings's desire to review Cohen's HPSCI testimony, therefore, we respectfully request you schedule a business meeting as soon as possible to promptly consider this request.¹⁴

Every Member of the House of Representatives—whether Republican or Democrat—should not tolerate witnesses who lie before Congress. This is a matter that goes directly to the integrity and credibility of the institution. Although we believe there is extensive evidence from Cohen's Oversight Committee testimony to support a referral to the Justice Department, Chairman Cummings has been reluctant to accept the fact that the first announced witness of his chairmanship repeatedly lied to our Committee. We trust that you will provide us access to the transcripts of Cohen's HPSCI testimony to defend the integrity and credibility of the Committee on Oversight and Reform.

If you have any questions, please contact us directly or ask your staff to contact Committee staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,



Jim Jordan
Ranking Member



Mark Meadows
Ranking Member
Subcommittee on Government Operations

cc: The Honorable Elijah E. Cummings, Committee on Oversight and Reform

¹⁴ We understand that a HPSCI vote must occur following a notice of at least three days pursuant to House rules. House rule XI, clause 2(g)(3(A)(ii); *see also* House rule X, clause 11(d)(1).