

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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May 22, 2019

The Honorable Jim Jordan
Ranking Member
Committee on Oversight and Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Ranking Member Jordan:

I am writing in response to your multiple demands to join you in referring President Donald Trump's longtime former attorney, Michael Cohen, to the Department of Justice for criminal prosecution for perjury in connection with his testimony before our Committee on February 27, 2019. Specifically, you have alleged that Mr. Cohen intentionally lied to Congress when he stated, "I have never asked for, nor would I accept, a pardon from President Trump."¹

On March 12, 2019, Mr. Cohen's attorney sent a letter to the Committee clarifying his testimony. The letter acknowledged that "this sentence could have been clearer" and explained that he was referring to the timeframe after "Mr. Cohen's decision in June 2018 to leave the Trump Joint Defense Agreement." The letter explained further that "as a past member of the joint defense team, Mr. Cohen asked his then attorney to discuss with another Trump attorney possible pardon options consistent with the President's prior public declarations."²

With respect to your claim that Mr. Cohen lied to the Committee about his pardon discussions with the President's attorneys, I made clear to you and all Members of the Committee that I would review all of the evidence in a deliberative manner, including Mr. Cohen's statements to the Special Counsel's Office and his testimony before other committees, including the House Permanent Select Committee on Intelligence.³

¹ See, e.g., Letter from Ranking Member Jim Jordan, Committee on Oversight and Reform, and Ranking Member Mark Meadows, Subcommittee on Government Operations, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Mar. 13, 2019).

² Letter from Michael D. Monico, Monico & Spevack, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Mar. 12, 2019) (online at https://drive.google.com/file/d/1EI106Z0XyDmNomdIM1P0p8f_rgsbGPP3/view).

³ Committee on Oversight and Reform, *Cummings Responds to Letter from Cohen's Attorney Clarifying Pardon Testimony* (Mar. 13, 2019) (online at <https://oversight.house.gov/news/press-releases/cummings-responds-to-letter-from-cohen-s-attorney-clarifying-pardon-testimony>).

Last month, a redacted version of Special Counsel Mueller's report was made available to the public. In addition, the Intelligence Committee voted on Monday to make available the transcript of their interview with Mr. Cohen on February 28 and March 6, 2019. As a result, we now have access to much more information than we had before.

A careful review of these documents fully supports the explanation provided by Mr. Cohen's attorney to clarify his testimony. Mr. Cohen made clear repeatedly to investigators working for both the Special Counsel's Office and the Intelligence Committee that he engaged in pardon discussions prior to terminating his participation in the joint defense agreement. These facts indicate that Mr. Cohen was not concealing this information from prosecutors or Congress. They comport with his attorney's clarifying letter, and they undermine the claim that he intentionally lied to our Committee.

As I stated to Mr. Cohen at our hearing, I take very seriously the truthfulness of all witnesses who testify before our Committee. That burden is especially pronounced when a witness has made false statements to Congress in the past, as Mr. Cohen has admitted doing and for which he is now serving a federal prison sentence.

In this case, based on all the evidence before the Committee, I find that the clarifying statements by Mr. Cohen's attorney are fully borne out by multiple additional sources of information to which we now have access. As a result, I will not join your request to refer Mr. Cohen to the Department of Justice, and I now consider this matter closed.

Special Counsel Mueller's Report

On April 18, 2019, the Department of Justice released a redacted version of Special Counsel Robert Mueller's report. The report indicates that Mr. Cohen disclosed to Special Counsel Mueller's investigators that he engaged in pardon discussions prior to the termination of his joint defense agreement with the President. The report states:

Cohen also recalled speaking with the President's personal counsel about pardons after the searches of his home and office had occurred, at a time when the media had reported that pardon discussions were occurring at the White House. Cohen told the President's personal counsel he had been a loyal lawyer and servant, and he said that after the searches he was in an uncomfortable position and wanted to know what was in it for him.⁴

The Special Counsel's report continues:

According to Cohen, the President's personal counsel responded that Cohen should stay on message, that the investigation was a witch hunt, and that everything would be fine. Cohen understood based on this conversation and previous conversations about pardons

⁴ Special Counsel Robert S. Mueller, III, Department of Justice, *Report on the Investigation into Russian Interference in the 2016 Presidential Election* (Mar. 2019) (online at www.justice.gov/storage/report.pdf).

with the President's personal counsel that as long as he stayed on message, he would be taken care of by the President, either through a pardon or through the investigation being shut down.⁵

According to the report:

After it was reported that Cohen intended to cooperate with the government, however, the President accused Cohen of "mak[ing] up stories in order to get himself out of an unrelated jam (Taxi cabs maybe?)," called Cohen a "rat," and on multiple occasions publicly suggested that Cohen's family members had committed crimes. The evidence concerning this sequence of events could support an inference that the President used inducements in the form of positive messages in an effort to get Cohen not to cooperate, and then turned to attacks and intimidation to deter the provision of information or undermine Cohen's credibility once Cohen began cooperating.⁶

The Special Counsel's report also cites Mr. Cohen's appearance *before our Committee* and references documents that appear to corroborate his testimony. For example, the Special Counsel's report cites telephone records to show that Mr. Cohen spoke with an unidentified individual at the White House in early 2018 around the time that the President's hush money payments became public. That reference appears to corroborate Mr. Cohen's testimony before our Committee that he spoke with the President about public messaging around these payments. The Special Counsel's report also cites a text message that Mr. Cohen received after a press report attributing the payments to Cohen, stating: "Client says thanks for what you do."⁷

Finally, the Special Counsel's report assesses Mr. Cohen's testimony to be reliable. The report notes: "Cohen met with our Office on multiple occasions for interviews and provided information that the Office has generally assessed to be reliable and that is included in this report."⁸ In court proceedings, the Special Counsel's Office has stated that Mr. Cohen had "provided valuable information ... while taking care and being careful to note what he knows and what he doesn't know."⁹

Intelligence Committee Transcript

One day after Mr. Cohen testified before our Committee, he voluntarily appeared before the Intelligence Committee in closed session. He then appeared again before the Intelligence Committee on March 6.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* (quoting Transcript at 19, *United States v. Michael Cohen*, 1:18-cr-850 (S.D.N.Y. Dec. 12, 2018)).

On April 2, 2019, you wrote to the Chairman and Ranking Member of the Intelligence Committee requesting that they provide access to the transcript of their interview with Mr. Cohen. You wrote: “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.”¹⁰

On Monday, the Intelligence Committee voted to release the transcript of Mr. Cohen’s interview. Like the Special Counsel’s report, the Intelligence Committee’s transcript shows that Mr. Cohen disclosed his pardon discussions with the President’s attorneys. It also provides significant additional details, specifically naming Jay Sekulow, as well as another attorney connected to Rudy Giuliani named Robert Costello.

Mr. Cohen testified in detail about his discussions with Mr. Sekulow. After Mr. Cohen testified falsely before the Intelligence Committee in 2017, Mr. Sekulow told Mr. Cohen that President Trump was thankful. According to Mr. Cohen, Mr. Sekulow stated: “He heard you did a great job. ... He loves you, don’t worry, everything’s going to be great.”¹¹

The Intelligence Committee transcript confirms that when asked about the timing of the pardon discussions, Mr. Cohen stated that they occurred prior to the termination of his participation in the joint defense agreement. For example, Mr. Cohen had the following exchange:

Q: So is it your testimony that you continued to have conversations with Jay Sekulow about the possibility of a pardon all the way up until July of 2018?

A: Yes, I wanted the matter to go away for me. Yes.¹²

Mr. Cohen explained that his discussions about a possible pardon ended when he left the joint defense agreement and authorized his representative, Lanny Davis, to make public statements to this effect on his behalf. Mr. Cohen stated:

And it was in July. Around July 2nd is when I had decided I was not going to be affiliated with the team any longer on that joint defense agreement, and I authorized Mr. Davis to make that statement.¹³

¹⁰ Letter from Ranking Member Jim Jordan, Committee on Oversight and Reform, and Ranking Member Mark Meadows, Subcommittee on Government Operations, to Chairman Adam B. Schiff and Ranking Member Devin G. Nunes, Permanent Select Committee on Intelligence (Apr. 2, 2019).

¹¹ House Permanent Select Committee on Intelligence, *Deposition of Michael Cohen, Part 1* (Feb. 28, 2019) (online at <https://docs.house.gov/meetings/IG/IG00/20190520/109549/HMTG-116-IG00-20190520-SD002.pdf>).

¹² House Permanent Select Committee on Intelligence, *Deposition of Michael Cohen, Part 2* (Mar. 6, 2019) (online at <https://docs.house.gov/meetings/IG/IG00/20190520/109549/HMTG-116-IG00-20190520-SD001.pdf>).

¹³ *Id.*

As Mr. Cohen described, during a subsequent press appearance on July 25, 2018, Mr. Davis was asked, “Is Mr. Cohen still seeking a pardon from Donald Trump?” He replied, “No.”¹⁴ Similarly, during a later press appearance on August 22, 2018, Mr. Davis was asked, “Would Michael Cohen accept a presidential pardon? Does he want one?” Mr. Davis responded, “He will not and does not want anything from Donald Trump.”¹⁵

Conclusion

Under the federal perjury statute, 18 U.S.C. section 1621, a witness must “willfully” testify to a “material matter” that they do “not believe to be true.” Under 18 U.S.C. section 1001, a witness must “knowingly and willfully” make a “materially false, fictitious, or fraudulent statement or representation.”

Based on a review of the Special Counsel’s redacted report and the Intelligence Committee’s transcript of Mr. Cohen’s interview, it is clear that Mr. Cohen disclosed his prior pardon discussions to both the Special Counsel’s Office and the Intelligence Committee. This information indicates that Mr. Cohen was not attempting to conceal this information when he testified before the Oversight Committee, and it fully supports the letter from Mr. Cohen’s counsel clarifying his testimony.

I hope this letter helps explain my thinking on this matter, and I thank you for your consideration.

Sincerely,



Elijah E. Cummings
Chairman

¹⁴ ABC News, *Good Morning America* (July 25, 2018) (online at www.youtube.com/watch?v=ATxORn7vM4Q).

¹⁵ ABC News, *Good Morning America* (Aug. 22, 2018) (online at www.youtube.com/watch?v=eS0MyOV6vIA).