

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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June 7, 2019

The Honorable Elijah E. Cummings  
Chairman  
Committee on Oversight and Reform  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

We received your letter, dated May 22, 2019, in which you excused and legitimized Michael Cohen's perjury-laden testimony to our Committee.<sup>1</sup> Cohen was the first announced witness of your chairmanship, who you invited to testify during a made-for-cable-news hearing to attack President Trump for political gain. While your defense of Cohen's testimony is perhaps unsurprising, it ignores information that does not support your analysis and fails to address the totality of lies that Cohen uttered under oath.

You waited to review Cohen's testimony before the House Permanent Select Committee on Intelligence (HPSCI) to determine whether he lied before *our* Committee. Now that HPSCI has released the testimony—following our request—we believe it does not change our earlier conclusions.<sup>2</sup> Indeed, the HPSCI testimony only reveals new information that is unhelpful and unflattering to you: that Cohen has no independent evidence to support his accusations, and that you engaged in *ex parte* preparation sessions with Cohen to help him to appear more credible before our Committee.

Today marks 100 days since Cohen's testimony. We are deeply disappointed that you have declined to hold Cohen accountable, despite your forceful promises to do so and contrary to Vice Chair Katie Hill's expectation that you would.<sup>3</sup> We can only assume that you worry that acknowledging Cohen's lies would undermine the investigations on which they are based and ultimately undercut your partisan attacks upon the President. We hope that you will reconsider your decision, put the institutional interests of the Committee ahead of your political goals, and do what you promised to do.

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<sup>1</sup> Letter from Elijah E. Cummings, Chairman, H. Comm. on Oversight & Reform, to Jim Jordan, Ranking Member, H. Comm. on Oversight & Reform (May 22, 2019).

<sup>2</sup> Letter from Jim Jordan & Mark Meadows, H. Comm. on Oversight & Reform, to Adam B. Schiff & Devin G. Nunes, H. Perm. Select Comm. on Intel. (April 2, 2019).

<sup>3</sup> Brett Samuels, *Oversight Dem: "I imagine" chairman will ask for investigation into Cohen for alleged perjury*, THE HILL (Mar. 10, 2019).

### **Cohen's HPSCI testimony shows that he lied about never seeking a pardon**

Your exoneration of Cohen narrowly focuses on only one of Cohen's lies: "I have never asked for, nor would I accept, a pardon from President Trump."<sup>4</sup> However, a straightforward reading of the sources cited in your May 22 letter—Cohen's attorneys' statements; Cohen's February 28 and March 6 HPSCI testimony; and Special Counsel Robert Mueller III's report—actually contradict your conclusion. These sources provide ample support that Cohen directed his attorneys to seek a pardon from the President, contrary to his sworn statement.

In all three sources Cohen admitted that he spoke, or directed his attorneys to speak, with the President's representatives about a pardon. The Special Counsel's report notes that "Cohen . . . recalled speaking with the President's personal counsel about pardons after the searches of his home and office had occurred . . . ."<sup>5</sup> In his testimony before HPSCI on March 6, Cohen admitted that he directed his then-attorney to discuss a pardon with President Trump's representatives and that he would have accepted it if offered. He testified:

**Mr. Cohen:** I asked Mr. [Stephen] Ryan [Cohen's former lawyer] to meet with Rudy Giuliani, and I don't recall if Jay [Sekulow] was a party to that, but it was to *explore the possibility of a pardon*, because that possibility was constantly being dangled in my face. *And, yes, I was 100 percent open to accepting it.* Anything to end this.<sup>6</sup>

When asked specifically to reconcile his denial to our Committee about ever seeking a pardon with his testimony to HPSCI, his response was nonsense. He claimed that his written statement to our Committee, which he later uttered aloud publicly under oath—"I have never asked for . . . a pardon from President Trump"—was actually meant to be a statement in the present tense. He said:

**Mr. Ratcliffe:** Okay. Did you ever make public statements that you would never accept a pardon from President Trump?

**Mr. Cohen:** I did. Yes, I made that statement.

**Mr. Ratcliffe:** How do you reconcile that statement with the one you just made?

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<sup>4</sup> *Hearing with Michael Cohen, Former Attorney for President Donald Trump: Hearing Before the H. Comm. on Oversight & Reform*, 116th Cong. 28 (Feb. 27, 2019); *Hearing with Michael Cohen, Former attorney for President Donald Trump: Hearing before the H. Comm. on Oversight & Reform*, 116<sup>th</sup> Cong. 19 (2019) (written testimony of Michael D. Cohen).

<sup>5</sup> SPECIAL COUNSEL ROBERT S. MUELLER, III, *Report On The Investigation Into Russian Interference In The 2016 Presidential Election*, 147, Vol. 2 (2019); see Letter from Elijah E. Cummings, Chairman, H. Comm. on Oversight & Reform, to Jim Jordan, Ranking Member, H. Comm. on Oversight & Reform (May 22, 2019).

<sup>6</sup> *Deposition of Michael Cohen, Executive Session before the Perm. Select Comm. on Intel.*, 116<sup>th</sup> Cong. 115-116 (March 6, 2019) (emphasis added).

**Mr. Cohen:** Because I was talking about in the present tense, I wasn't talking about in the past tense when I was writing my statement.<sup>7</sup>

Following Cohen's March 6 HPSCI testimony, Cohen's lawyers began to spin his closed-door testimony about the pardon. On March 7, Cohen lawyer and media advisor Lanny Davis admitted that Cohen "directed his attorney to explore possibilities of a pardon at one point with Trump lawyer Rudy Giuliani as well as other lawyers advising President Trump."<sup>8</sup> On March 12, a second Cohen attorney, Michael Monico, acknowledged that Cohen "asked his then attorney to discuss with another Trump attorney possible pardon options . . . ."<sup>9</sup> Cohen's attorneys still maintained, however, that Cohen did not lie.

Cohen's spin is unconvincing and we are troubled that you have parroted it so readily. Cohen's denial of ever seeking a pardon was unequivocal and unambiguous. It contained no temporal constraints and no qualifications. Cohen's explanation that he was speaking in the present tense is unpersuasive because he specifically included the word "never," which by definition means at no time and under no conditions.<sup>10</sup> Cohen included "never" in his written statement, which he testified that he spent considerable time crafting, meaning that his blanket denial was deliberate and willful.<sup>11</sup> Cohen's denial is material in that it goes directly to Cohen's credibility as a witness.

No reasonable person could hear an unequivocal denial containing the word "never" and believe the speaker was referring only to his current actions and state of mind. We are troubled that you could accept this absurd explanation.

### **Your exoneration of Cohen failed to address his other lies to the Committee**

During the Committee's hearing, you warned that "if [Cohen] 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."<sup>12</sup> We have identified at least seven problematic areas of Cohen's testimony

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<sup>7</sup> *Id.* at 116.

<sup>8</sup> Andrew Desiderio, *Michael Cohen previously asked Trump attorneys about pardon, his lawyer says*, POLITICO (March 7, 2019).

<sup>9</sup> Letter from Michael Monico, attorney to Michael Cohen, to Elijah Cummings, Chairman, H. Comm. on Oversight & Reform (March 12, 2019).

<sup>10</sup> *See, e.g., Never*, Merriam-Webster Dictionary (11<sup>th</sup> ed. 2016).

<sup>11</sup> *Hearing with Michael Cohen, Former Attorney for President Donald Trump: Hearing Before the H. Comm. on Oversight & Reform*, 116<sup>th</sup> Cong. 12 (Feb. 27, 2019) (statement of Michael Cohen) ("We were making edits all the way through the night."); Email from Lanny Davis, attorney to Michael Cohen, to H. Comm. on Oversight & Reform staff (Feb. 26, 2019 at 10:08 p.m.).

<sup>12</sup> *Hearing with Michael Cohen, Former Attorney for President Donald Trump: Hearing Before the H. Comm. on Oversight & Reform*, 116<sup>th</sup> Cong. 12 (Feb. 27, 2019).

that require investigation for potential perjury.<sup>13</sup> However, your letter of May 22 failed to address Cohen's other false statements, including but not limited to the following:

- Cohen's repeated denials of wanting a job in the White House, which is contrary to court documents submitted by the United States Attorney's Office for the Southern District of New York;<sup>14</sup>
- Cohen's assertion that he "never defrauded any bank," despite pleading guilty to bank fraud;<sup>15</sup> and
- Cohen's denial of originating the twitter account, @WomenForCohen, which contrary to the assertion of the owner of an IT firm who recounted that Cohen directed him to create the account.<sup>16</sup>

Your refusal to address the entirety of Cohen's false statements—and instead to focus only on the one statement that Cohen's attorneys chose to address—speaks volumes. Clearly, you cannot defend all of Cohen's reckless statements. Cohen has gone so far as to dispute assertions made by a federal judge in open court and to deny that he committed a crime to which he pled guilty.<sup>17</sup> These false statements remain unaddressed and, left uncontested, they will continue to tarnish the Committee's integrity and credibility.

### **Cohen's HPSCI testimony shows that he cannot support his accusations with evidence**

The transcripts of Cohen's HPSCI testimony reveal he is incapable of supporting the accusations that he has levied against the President and the President's advisors. In particular, Cohen could not provide any documentary evidence related to his accusations that Jay Sekulow helped Cohen craft his false statements to HPSCI in 2017.<sup>18</sup> Cohen also admitted in his

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<sup>13</sup> See 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).

<sup>14</sup> Compare Hearing with Michael Cohen, Former Attorney for President Donald Trump: Hearing Before the H. Comm. on Oversight & Reform, 116th Cong. 96 (Feb. 27, 2019) with The Government's Sentencing Memorandum at 25, United States v. Cohen, 18-cr-602 (S.D.N.Y. Dec. 7, 2018).

<sup>15</sup> Compare Hearing with Michael Cohen, Former Attorney for President Donald Trump: Hearing Before the H. Comm. on Oversight & Reform, 116th Cong. 49 (Feb. 27, 2019) with Plea Agreement at 3 n.2, United States v. Michael Cohen, 18-cr-602 (S.D.N.Y. Aug. 21, 2018).

<sup>16</sup> Compare Hearing with Michael Cohen, Former Attorney for President Donald Trump: Hearing Before the H. Comm. on Oversight & Reform, 116th Cong. 35 (Feb. 27, 2019) with Michael Rothfeld, *Cohen Hired IT Firm to Rig Early CNBC, Drudge Polls to Favor Trump*, WALL STREET J. (Jan. 17, 2019).

<sup>17</sup> Compare Statement of Michael Cohen, United States v. Cohen, Nos. 18-cr-602, 18-cr-850, at 27 (S.D.N.Y. Dec. 12, 2018) (sentencing hearing) ("...blind loyalty to this man that led me to choose a path of darkness over light.") with, Statement of Judge William H. Pauley III, United States v. Cohen, Nos. 18-cr-602, 18-cr-850, at 31 (S.D.N.Y. Dec. 12, 2018) (sentencing hearing) ("Each of the crimes involved deception and each appears to have been motivated by personal greed and ambition.") and The Government's Sentencing Memorandum at 25, United States v. Cohen, 18-cr-602 (S.D.N.Y. Dec. 7, 2018) ("This was not a blind act of loyalty, as Cohen has also suggested."); see Plea Agreement at 3 n.2, United States v. Michael Cohen, 18-cr-602 (S.D.N.Y. Aug. 21, 2018).

<sup>18</sup> See Deposition of Michael Cohen, Executive Session before the Perm. Select Comm. on Intel., 116th Cong. 10 (March 6, 2019) ("Q Mr. Cohen, one thing that we did not receive from you were any written communications between you and Jay Sekulow. Were you able to find any? COHEN: I have not been able to locate, as of yet, and the search is continuing."); Deposition of Michael Cohen, Executive Session before the Perm. Select Comm. on Intel.,

testimony to HPSCI that many of the exhibits Cohen presented to our Committee, such as President Trump's financial statements, were not in fact evidence of a crime:

**Mr. Ratcliffe:** Well, to be fair, Mr. Cohen, this is your statement which you gave to Congress. And I'm asking you why you submitted these documents. Do you believe - all I'm asking you -- again, this is not a trick question. Do you believe that these documents evidence some crime?

**Mr. Cohen:** I don't believe, sir, in my statement I reference the 2011 through 2013 financial statements as evidence of any crime.

**Mr. Ratcliffe:** That's what I'm asking.

**Mr. Cohen:** Right. The statement reads for itself.

**Mr. Ratcliffe:** You just submitted that for informational purposes.

**Mr. Cohen:** That's correct.

**Mr. Ratcliffe:** Okay. All right. So the next item, a copy of an article with Mr. Trump's handwriting on it that reported on the auction of a portrait of himself, that he arranged a bidder ahead of time and then reimbursed the bidder from the account for his nonprofit charitable foundation, with the picture now hanging in one of his country clubs. Did you submit that because you believe it's in evidence of some crime by Mr. Trump? And if so, what crime would that be related to?

**Mr. Cohen:** Well, I did it, again, for informational purposes. Plus, could be issues regarding the foundation, improper usage of the foundation.

**Mr. Ratcliffe:** Okay. And, finally, the last item that you submitted were copies of letters that you wrote at Mr. Trump's direction that threatened his high school, colleges, and the College Board not to release his grades or SAT scores. Again, was that submitted because you believe it's

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116<sup>th</sup> Cong. 10 (Feb. 28, 2019) ("MR. QUIGLEY: Who else might corroborate the allegations you've made this week? MR. COHEN: Well, the conversations, unfortunately, between Jay Sekulow and I were just the two of us.").

evidence of some crime, or was it just for informational purposes?

**Mr. Cohen:** Informational.

Although Cohen admitted the documents he provided to the Committee were not evidence of a crime—but instead just meant to be “informational”—you still used them as the basis for your unprecedented and unilateral subpoena to Mazars USA LLP (Mazars) for President Trump’s sensitive, personal financial documents. In a memorandum justifying your subpoena to Mazars, you boldly alleged that “the President may have engaged in illegal conduct before and during his tenure in office”<sup>19</sup>—although Cohen very clearly said that the information he provided the Committee was not evidence of a crime.

### **Cohen’s HPSCI testimony shows that Cohen coordinated with Oversight Committee Democrats on his testimony**

Finally, we learned through the release of these HPSCI transcripts that Cohen engaged in extensive and exclusive strategy sessions with Oversight Committee Democrats before his testimony to our Committee to preemptively address Cohen’s credibility problems.<sup>20</sup> This information just reinforces our longstanding concerns that Cohen’s testimony was not legitimate oversight but merely an episode of political theater proposed and produced by a prominent Democrat operative.

It is disappointing you shut out minority participation from your pre-hearing meetings with Cohen. This exclusion is especially disappointing in light of our letter, dated January 11, 2019, in which we urged you to conduct a bipartisan transcribed interview with Cohen before the hearing.<sup>21</sup> Instead of choosing to hold a bipartisan interview with Cohen, you chose to meet alone with him to discuss how Republicans could question Cohen’s credibility. These actions are not indicative of the serious, fact-based oversight that you promised.

\* \* \*

Your entire course of conduct with respect to Michael Cohen has been deeply troubling. You allowed a prominent Democrat operative to use the Committee for an orchestrated partisan attack on the President. You declined to follow up on your promises to hold Cohen accountable for his lies to the Committee. You declined to hold a Committee vote on Cohen’s lies. You deferred action on Cohen’s lies until you reviewed his HPSCI testimony, but you never requested access to HPSCI’s transcripts. You admitted to considering writing a letter of

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<sup>19</sup> Memorandum from Elijah E. Cummings to Members of the H. Comm. on Oversight & Reform, *Notice of Intent to Issue Subpoena to Mazars USA LLP* (April 12, 2019).

<sup>20</sup> See *Deposition of Michael Cohen, Executive Session before the Perm. Select Comm. on Intel.*, 116<sup>th</sup> Cong. 78 (March 6, 2019).

<sup>21</sup> Letter from Jim Jordan & Mark Meadows, H. Comm. on Oversight & Reform, to Elijah E. Cummings, Chairman, H. Comm. on Oversight & Reform (Jan. 11, 2019).

The Honorable Elijah E. Cummings

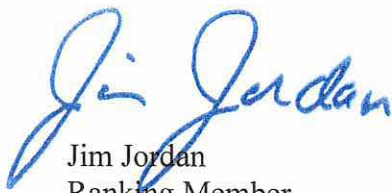
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commendation on behalf of Cohen to reduce his prison sentence.<sup>22</sup> You admitted to speaking on the phone with Cohen before he began his prison sentence, but you have not informed the Committee about the substance of your phone call.<sup>23</sup>

You may consider this matter “closed” because you want it to go away. But respectfully, you invited Michael Cohen before the Committee and you must live with the consequences. We warned you about the dangers of showcasing the testimony of a convicted liar. The stain of Cohen’s testimony will continue to tarnish the Committee’s reputation and that of your chairmanship until you accept the overwhelming evidence that he lied and act to hold him accountable.

Sincerely,



Jim Jordan  
Ranking Member



Mark Meadows  
Ranking Member  
Subcommittee on Government Operations

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<sup>22</sup> Manu Raju (@mkraju), Twitter, (April 9, 2019, 11:58 AM)  
<https://twitter.com/mkraju/status/1115690562303094784?s=11>.

<sup>23</sup> Manu Raju (@mkraju), Twitter, (May 7, 2019, 4:03 PM),  
<https://twitter.com/mkraju/status/1125899040288329731>.