

**U.S. House of Representatives**  
**Committee on the Judiciary**  
Washington, DC 20515-6216  
One Hundred Sixteenth Congress

July 10, 2020

**To:** Republican Members of the Committee on the Judiciary  
**From:** Republican Staff  
**Re:** Key Takeaways from the Committee's Transcribed Interview of Geoffrey Berman

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On July 9, 2020, former United States Attorney for the Southern District of New York Geoffrey Berman appeared before the Committee for a closed-door transcribed interview. Following the interview, Chairman Jerrold Nadler and Committee Democrats selectively released cherry-picked information trying to paint a misleading and one-sided view of Berman's testimony. This summary corrects the record on the Democrats' inaccurate and misleading portrayal of the testimony.

Chairman Nadler and Committee Democrats remain obsessed with attacking the President and Attorney General for political gain. This singular obsession has clouded their judgment and colored their opinions. In fact, Chairman Nadler left yesterday's interview and promptly accused the Attorney General—without evidence—of attempted “bribery” and a *quid pro quo*.<sup>1</sup> Sadly, Berman's interview was just another Democrat attempt to manufacture a scandal where one does not exist.

Contrary to Chairman Nadler's portrayal, the interview proved that Attorney General Barr acted appropriately at all times, including and especially in his interactions with Berman. The interview uncovered no evidence of misconduct, wrongdoing, or criminality. The interview uncovered no nefarious plot to stifle ongoing investigations in the Southern District of New York or anywhere else. If there is any clear conclusion from the interview, it is that Berman believed himself to be independent of and immune from Departmental oversight.

**I. Berman stubbornly resisted the Attorney General's attempts at an amicable transition for Berman out of his position in favor of a Senate-confirmed United States Attorney for the Southern District of New York**

- On June 19, 2020, Attorney General Barr met with Berman in New York. Attorney General Barr informed Berman that the President intended to nominate current Securities and Exchange Commission (SEC) Chairman Jay Clayton to be the permanent U.S. Attorney for the Southern District of New York (SDNY). The Attorney General told

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<sup>1</sup> Mike Lillis, *Nadler: Barr dealings with Berman came 'awfully close to bribery'*, THE HILL (Jul. 9, 2020), <https://thehill.com/homenews/house/506650-nadler-barr-dealings-with-berman-came-awfully-close-to-bribery>.

Berman, who had been appointed U.S. Attorney by the court pursuant to a special provision of U.S. law, that his service was no longer necessary.

- The Attorney General had decided to replace Berman prior to the meeting on June 19. The meeting was not a counseling session or an opportunity to present Berman with a performance improvement plan. Berman testified the Attorney General did not share any negative feedback or concerns about his job performance in office during the meeting.
- During the course of the conversation, the Attorney General offered Berman an opportunity to remain in the Department as the Assistant Attorney General for the Civil Division.
- Berman did not reciprocate the Attorney General's attempt to amicably manage the personnel change. Instead, Berman dug in and decided that he would not leave his position without a fight. Berman informed the Attorney General that he would not resign and preferred not to leave his position. Berman testified that he believed he could convince the Attorney General to change his mind to allow him to stay in his position as U.S. Attorney. The Attorney General graciously agreed to speak again with Berman.
- The Attorney General subsequently telephoned Berman on the evening of June 19, at which time Berman again requested to remain at SDNY. The Attorney General again mentioned other opportunities that would allow Berman to remain in the Administration, including the prospect of being considered for SEC chairmanship. Berman stubbornly refused, believing that he was entitled to his SDNY position.
- The Attorney General, apparently tired of Berman's intransigence, announced Berman's departure following the telephone call. The Attorney General also announced the President's intention to nominate Clayton for the permanent position. As a professional courtesy to Berman, the Attorney General offered mild platitudes about Berman's service in the announcement.
- Although Committee Democrats half-heartedly allege the Attorney General's offer of other positions in the Administration proves a nefarious but unspecified plot, Berman testified that his removal was not related to concerns the Attorney General had with his management of any cases run by the SDNY.
- After Berman resisted the Attorney General's efforts at a conciliatory outcome, the President fired Berman on June 20.

## **II. Berman did not testify that any specific wrongdoing, misconduct, or other impropriety occurred during his dismissal by the Attorney General**

- Berman provided no specific testimony about any inappropriate actions taken by any Justice Department official, on June 19, June 20, or at any time.

- Berman testified that the Attorney General did not mention any specific witnesses, defendants, or cases as reasons for why he was asking Berman to resign as U.S. Attorney.
- Berman testified that the Attorney General did not mention the President as a reason why he was asking him to resign as U.S. Attorney.
- Berman testified that the Attorney General never indicated that there were certain actions that Berman could take with respect to ongoing cases that would allow him to keep his position as U.S. Attorney. In this respect, there was no suggestion of a *quid pro quo* between Berman's official duties and his continuation as U.S. Attorney.
- Berman testified that he did not know what Barr's reasons were for having him removed. He did not seem to contemplate he presented numerous management challenges.
- Berman never suggested the prospect of a *quid pro quo* concerning his duties as U.S. Attorney for the SDNY. Although Berman briefly suggested that he thought the Attorney General's offer for a different position could be considered a *quid pro quo*, the evidence does not support an exchange of any real value. The Attorney General had decided to replace Berman and merely offered him the opportunity to continue his service with the Department at the Civil Division out of a desire to achieve an amicable transition.

### **III. Berman believed himself to be independent of supervision from superior officers in the Executive Branch and immune from removal from his position**

- Berman testified that he did not believe the President could lawfully remove him as U.S. Attorney for SDNY and that, if he were to litigate the matter, he would prevail. Berman reached this conclusion, he said, after consulting with more than one attorney. Berman appeared before the Committee without an attorney, however.
  - Berman testified that he believed the only way he could be removed was if the United States Senate confirmed a presidential appointee for the position, or by removal of the U.S. federal district judges of the United States District Court for the Southern District of New York.
  - Berman cited no legal authority for his extraordinary position. To the contrary, the existing legal doctrine in this area is persuasively and decisively of the view that the President has the power to remove court-appointed U.S. Attorneys. Berman testified that he believes that both the Justice Department's Office of Legal Counsel opinion and relevant case law are incorrect, and that he would prevail if he litigated the matter. Berman has not brought suit, however.
- Berman had significant difficulty testifying about the working and reporting relationship that he maintained with the Attorney General and the Deputy Attorney General. While some joke that "SDNY" stands for the "Sovereign District of New York," Berman would not concede that SDNY under his leadership operated under the supervisory authority of

superior officers at the Department of Justice—specifically the Attorney General and Deputy Attorney General.

#### **IV. Berman’s purported concerns about the Attorney General’s actions are unfounded, vague, and lacking specific evidence**

- Berman disagreed with the Attorney General’s choice of Craig Carpenito, the U.S. Attorney for the District of New Jersey, as interim replacement for Berman during Clayton’s confirmation. Berman called Carpenito an “outsider” and said that having an “outsider” leading SDNY as an interim U.S. Attorney would cause unspecified disruptions and delays with pending cases; however, Berman was unable to offer specific evidence to support this conclusory assertion.
  - Berman testified that he was not questioning Carpenito’s honesty or integrity, but that he believes that abrupt changes in leadership from outside a U.S. Attorney’s office inherently causes delay and disruption.
  - Berman chafed at the fact that Carpenito would have been responsible for running both the U.S. Attorney’s Office for the District of New Jersey and the SDNY, saying that Carpenito was unqualified for the position even though he runs a U.S. Attorney’s Office in a neighboring jurisdiction.
  - Berman himself initially started serving as the U.S. Attorney for SDNY on an interim basis. But Berman refused to answer what, if any, delays and disruptions occurred when he was appointed to lead the SDNY as interim U.S. Attorney.
- Berman believed that only one person—his deputy, Audrey Strauss—was the appropriate and legal replacement for him. While federal law makes Strauss the Acting U.S. Attorney by operation of law, it also allows the President to choose other senior federal officials to serve in that position. Berman was unable to explain with specificity how or why Strauss was the only person he believed could serve as U.S. Attorney and why the President could not select someone else.
  - Berman also quibbled over whether Strauss holds the title of “Acting” U.S. Attorney or “Interim” U.S. Attorney. While an Acting U.S. Attorney comes into his or her position as a matter of law, an Interim U.S. Attorney is appointed by the Attorney General (28 U.S.C. § 546). When asked if he thought that the Attorney General could now appoint an interim U.S. Attorney under § 546(c), Berman asserted—without providing a rationale—that he did not think § 546(c) applied in this instance.
- Berman did not believe the President’s intended permanent choice for U.S. Attorney, SEC Chairman Clayton, was qualified for the position. However, Berman acknowledged that Clayton has extensive financial regulatory experience relevant to the Office’s caseload and that Clayton is an experienced manager. Despite questioning Clayton’s qualifications, Berman also testified that if Clayton were confirmed by the Senate he would have left the SDNY office without causing a commotion.

- Berman inaccurately testified that no U.S. Attorney in modern history who had left or been removed had been replaced by someone from outside the U.S. Attorney’s office. This belief appeared to form the basis for Berman’s claim that the Attorney General’s plan to have Carpenito succeed him was “unprecedented.”
  - However, in 1989, then-U.S. Attorney for the SDNY Rudy Giuliani was replaced by Benito Romano, a lawyer in private practice.<sup>2</sup> When confronted with this fact, Berman asserted that Romano was not an “outsider” because he had previously served in the SDNY office—even though Romano had not served in the office in approximately 18 months and had no familiarity with ongoing investigations or prosecutions.
- Berman did not concede that he could be removed for any reason, and he did not seem to understand that the Attorney General acts on behalf of the President with respect to managing the personnel of the Department of Justice. The reality that presidents rely on their attorneys general when it comes to managing personnel decisions within the Department of Justice and U.S. Attorney offices seemed foreign to Berman.
- Berman’s testimony was limited by his self-dictated terms of appearance. He only agreed to discuss matters that occurred on June 19 and June 20, relating to his departure from SDNY. He only agreed to testify for two hours.
  - Citing this narrow scope, Berman repeatedly refused to answer basic questions about publicly available information about his tenure in office.
  - Berman did not discuss current or past cases. He repeated a prepared statement dozens of times when specific cases arose in questioning, asserting that they were beyond his self-imposed parameters for the interview.

For more information about the transcribed interview or Committee Democrats’ ongoing obsession with attacking Attorney General Barr for political gain, please contact Committee staff at (202) 225-6906.

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<sup>2</sup> Dennis Hevesi, *Interim U.S. Attorney: ‘Street smart’ and fair*, N.Y. TIMES (Jan. 11, 1989), <https://www.nytimes.com/1989/01/11/nyregion/interim-us-attorney-street-smart-and-fair.html>.