

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

July 13, 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

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*.¹ 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.² 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.

¹ 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>.

² Transcribed Interview of Geoffrey Berman, Former U.S. Att'y, Southern District of N.Y. at 7. (Jul. 9, 2020) [hereinafter Berman TI].

Attorney for the Southern District of New York (SDNY).³ The Attorney General told 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.⁴

- 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.⁵ Berman testified that the Attorney General did not share any negative feedback or concerns about his job performance in office during the meeting.⁶ He stated:

I asked if [Barr] was dissatisfied in any way with my job as U.S. attorney, and he said that he was not at all dissatisfied. He was extremely complimentary to me in his press release on Friday evening. And, previously, both publicly and privately, he has been very complimentary of me and the job I was doing as U.S. attorney for the Southern District of New York.⁷

- 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.⁸
- Berman did not reciprocate the Attorney General's attempt to amicably manage the personnel change.⁹ Berman testified:

Q. But it seems like you're missing the whole point that, when a boss is trying to engineer a separation of an employee, of a report, that oftentimes the best way to facilitate that is amicably. And you meet with the employee and you say: Thanks for your service.

And that's . . . essentially what happened here, and yet . . . your statement makes it seem like you're . . . identifying . . . false statements that the Attorney General made when he was just giving you some platitudes and he was trying to engineer an amicable departure.

A. I disagree with that characterization.¹⁰

³ *Id.*

⁴ *Id.*

⁵ Berman TI at 34.

⁶ *Id.* at 29.

⁷ *Id.*

⁸ *Id.* at 8.

⁹ *Id.* at 69-70.

¹⁰ *Id.*

- 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.¹¹ 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.¹² 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. Berman testified:
 - Q. Did you ask [Barr] during that [7pm] call to wait until Monday to have another conversation on the subject?
 - A. Yes. I thought that the longer I could put off this kind of final conversation, the better. It would give the Attorney General an opportunity to reconsider his plan and back off, and it would give me an opportunity to prepare the office and my full executive staff for a possible disruption.¹³
 - 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.¹⁴ Berman stubbornly refused, believing that he was entitled to his SDNY position.¹⁵
- The Attorney General, apparently tired of Berman's intransigence, announced Berman's departure following the telephone call.¹⁶ The Attorney General also announced the President's intention to nominate Clayton for the permanent position.¹⁷ As a professional courtesy to Berman, the Attorney General offered mild platitudes about Berman's service in the announcement.¹⁸
- Shortly after the Attorney General's press release, Berman issued a public statement announcing that he had not resigned. Berman testified his position as U.S. Attorney required that he make a press statement on June 19 subsequent to Barr's press release. Berman testified:
 - Q. In Barr's June 20th letter to you, the day after your statement, he wrote, quote, "Unfortunately, with your statement of last night, you have chosen public spectacle over public service."

¹¹ *Id.* at 12-13.

¹² Berman TI at 19-20 & 71.

¹³ *Id.* at 19-20.

¹⁴ *Id.* at 9-10.

¹⁵ *Id.*

¹⁶ *Id.* at 10.

¹⁷ *Id.*

¹⁸ *Id.*

Sir, is that true? Were you choosing public spectacle over public service in your statement?

A. No.

Q. Why not?

A. I'd rather not comment on what Attorney General Barr said.

Q. I'm asking you what your intention was in writing that statement and whether you believe it was in the public service?

A. I believe that the statement I made on the evening of June 19th was not only consistent but required as a result of the position I held as United States attorney.¹⁹

- 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. He stated:

Q. Sir, I'm asking about the immediate circumstances of your removal. Do you know whether you were removed because of your concern about the office's cases continuing unimpeded?

A. I do not know what the Attorney General's motives were.²⁰

- After Berman resisted the Attorney General's efforts at a conciliatory outcome, the President fired Berman on June 20.²¹

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.²² Berman testified:

Q. You're not making any assertions of wrongdoing by anybody at Main Justice, though, right, about supervising your cases or trying to impede anything?

¹⁹ Berman TI pg. 25.

²⁰ Berman TI at 27.

²¹ Letter from Hon. William P. Barr, Att'y Gen., U.S. Dep't of Justice, to Mr. Geoffrey Berman, U.S. Attorney, Southern District of N.Y. (Jun. 20, 2020).

²² Berman TI at 44.

A. I'm not going to respond to that question.

Q. Your testimony here today, you are not making today any assertion of wrongdoing by any particular official at the Justice Department who supervised you on any of your cases?

A. In my testimony today, I have made no reference to that.²³

- 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. He stated:

Q. The Attorney General did not raise any pending cases with you, did he?

A. No.

Q. Was there any discussion of any particular witness that was appearing before the Southern District of New York, whether it was in the Epstein case or anything like that?

A. There was no discussion of any witness.²⁴

- 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.²⁵ Berman testified:

Q. And there was no discussion on the 19th of anything involving the President. Is that correct? Why the President wanted you to be removed or if the President wanted you to be removed?

A. No.²⁶

- 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.²⁷ He stated:

²³ *Id.*

²⁴ Berman TI at 33-36.

²⁵ *Id.* at 36.

²⁶ *Id.*

²⁷ *Id.* at 34.

Q. When you met with him at the hotel on the 19th, he didn't give you an opportunity to take a set of actions that would result in you keeping your job, did he?

A. No.

Q. Okay. So he didn't ask you to do anything differently with any of your cases or with any of the personnel on the cases, correct?

A. No.²⁸

- Berman testified that he did not know what Barr's reasons were for having him removed.²⁹ He did not seem to contemplate he presented numerous management challenges.
- Berman never suggested the prospect of a *quid pro quo* in his testimony.³⁰ 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.³¹ Berman testified:

Q. There was no quid pro quo proposed, correct –

A. You know, he wanted me to resign to take a position. I assume you could call that a quid pro quo. You resign and you get this, that would mean quid pro quo.

Q. When you met with the Attorney General on June 19th, he did not invite you to take a set of actions, whether it's on a case or whether it's with the operation of your office, and that doing that action would end up in you keeping your job?

A. He did not mention anything to that effect.

Q. So there was no quid pro quo for you getting to keep your job by doing something with respect to your office or one of the cases involved in the office?

A. There was no discussion to that effect.³²

²⁸ Berman TI at 34.

²⁹ *Id.* at 12-13.

³⁰ *Id.* at 34-36.

³¹ *Id.*

³² *Id.*

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.³³ Berman stated:

Q. So it's your legal position that you could not be removed outright by the Attorney General or the President?

A. Yes. And let me just say that it's not only my position that I couldn't be removed by the Attorney General, the Office of Legal Counsel has issued an opinion saying that a court-appointed U.S. attorney cannot be fired or removed by the Attorney General. It was my position and the position of the counsel that I spoke with that I could not be fired by the President either.

Q. But if the attorney general made the recommendation to the President, ultimately, did you agree that you could be removed by the President?

A. No.³⁴

- Berman reached this conclusion, he said, after consulting with more than one attorney.³⁵ Berman appeared before the Committee without an attorney, however. Berman testified:

Q. Did anyone tell you that you had a great likelihood of success on the merits if you were to litigate?

A. I liked my chances.

Q. But did any of these lawyers that you talked to tell you that you had a great chance of success?

A. I'm not going to talk about my discussions with my counsel. I will tell you that I believed my chances were good and that I would prevail.³⁶

- 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

³³ *Id.* at 30.

³⁴ Berman TI at 30.

³⁵ *Id.* at 42.

³⁶ *Id.* at 42-43.

U.S. federal district judges of the United States District Court for the Southern District of New York.³⁷ He testified:

Q. Did you believe it was your official duty to remain in your position as U.S. attorney pursuant to the court order appointing you until the vacancy for your position had been filled or that you were otherwise removed pursuant to the lawful basis?

A. Right. I just want to make clear that it was my position that I could neither be fired by the Attorney General nor the President. And so I could be removed by the court, which appointed me . . . or I could be removed if a nominee was confirmed by the Senate.³⁸

- 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.³⁹ 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.⁴⁰ He stated:

Q. There's a case out of the Southern District in 1963 that said the President gets to remove a court-appointed U.S. attorney. There's a . . . OLC opinion from 1979. There's a first circuit case from Maine. You don't believe that is binding authority?

A. Well, certainly it's not binding authority on the Southern District of New York. And I think those two cases you cited were wrongly decided.

Q. Okay.

A. And I think the OLC's opinion finding that I could not be fired by the Attorney General but I could be fired by the President, I think its conclusion with respect to the President was incorrect. And I don't believe the OLC decision has any binding authority on a court.⁴¹

³⁷ *Id.* at 17.

³⁸ Berman TI at 17.

³⁹ U.S. Attorneys—Removal of Court-Appointed U.S. Attorney (28 U.S.C. §§ 541, 546), 83 Op. O.L.C. 448, 449 (1979) (citing *U.S. v. Solomon*, 216 F. Supp. 835, 843 (S.D.N.Y. 1963)).

⁴⁰ Berman TI at 30-31.

⁴¹ *Id.*

- Berman had significant difficulty testifying about the working and reporting relationship that he maintained with the Attorney General and the Deputy Attorney General. Berman testified:

Q. The Attorney General is your supervisor?

A. The Attorney General –

Q. Ultimately?

A. My boss is the deputy Attorney General, and the Attorney General is my boss' boss.

Q. Right. But the Attorney General is ultimately your supervisor, right?

A. He's my boss' boss.⁴²

- While some joke that “SDNY” stands for the “Sovereign District of New York,”⁴³ 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.⁴⁴ Berman testified:

Q. How does the supervision work at the Justice Department between—you said you report directly into the DAG. What does that mean, for all intents and purposes? Like, at Main Justice . . . they have supervisory authority over the U.S. attorneys nationwide, right?

A. Well, the powers of the U.S. attorneys are statutory, and it's provided by 28 U.S.C. Section 547, where the Attorney General has delegated responsibility and authority to U.S. attorneys over matters in their districts. It states that the U.S. attorneys may make reports to the Attorney General as he or she may direct.

Q. Right. But in your day-to-day, without looking at the statute, in your just day-to-day experience, what type of supervision were you given by the Justice Department? Like, what was your obligation to your boss?

A. The relationship between the Southern District of New York

⁴² Berman TI at 29.

⁴³ Matthew Chayes, *U.S. attorney for Southern District of New York refuses to resign*, NEWSDAY (Jun. 20, 2020), <https://www.newsday.com/news/new-york/geoffrey-berman-u-s-attorney-1.45910086>.

⁴⁴ Berman TI at 43.

and Main Justice is complex and very much specific to the matters being investigated. And so this discussion would be outside the scope of my testimony.⁴⁵

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"⁴⁶ and said that having an "outsider" leading SDNY as an interim U.S. Attorney would cause unspecified disruptions and delays with pending cases;⁴⁷ however, Berman was unable to offer specific evidence to support this conclusory assertion.⁴⁸

Q. And your concerns about delays, disruptions, and what you characterize as an irregular and unexplained . . . decision to remove you, you didn't have any testimony that you're prepared to offer here today relating to a specific case that sort of puts meat on those bones?

A. That would be outside the parameters established for the interview.⁴⁹

- 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.⁵⁰
- 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.⁵¹
- 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.⁵²

⁴⁵ *Id.*

⁴⁶ Berman TI at 39-40.

⁴⁷ *Id.* at 22.

⁴⁸ *Id.* at 64-67.

⁴⁹ *Id.* at 67.

⁵⁰ *Id.* at 22.

⁵¹ See Berman TI at 53 ("Q: Carpenito also had no experience in the Southern District of New York, correct? A: Correct."); see also Berman TI at 40 ("Q: And why did you fear outsiders? What was the harm they were going to do, in your mind? A: The problem with someone coming in as acting and bypassing the normal process of the deputy, the problem with that, it would inevitably cause disruption and delay in the ongoing investigations.").

⁵² Berman TI at 65 & 67.

Q. When you took over as the interim U.S. attorney in the beginning of 2018, were there any delays to the cases of the Southern District?

A. I'm going to decline to answer that question because it's outside of the parameters.

Q. Okay. Any disruptions?

A. I'm going to decline to answer that question.⁵³

- Berman believed that only one person—his deputy, Audrey Strauss—was the appropriate and legal replacement for him.⁵⁴ 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.⁵⁵ 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.⁵⁶

- Berman also quibbled over whether Strauss holds the title of “Acting” U.S. Attorney or “Interim” U.S. Attorney.⁵⁷ 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.⁵⁸ Berman testified:

Q. From an interim perspective, though, what's the acceptable pool?

A. You know the acceptable pool is the normal process, as the Attorney General recognized in his own letter, where he said, under operation of law, it would be Audrey Strauss, the deputy. That would be normal operation of law.

Q. But under . . . 28 United States Code 546, the Attorney General also has the legal authority to name an interim U.S. attorney, correct?

⁵³ *Id.* at 67.

⁵⁴ *Id.* at 61-63.

⁵⁵ *See, e.g.*, 28 U.S.C. § 546 (2007).

⁵⁶ Berman TI at 61-63.

⁵⁷ *Id.*

⁵⁸ *Id.*

A. But the Attorney General named Audrey Strauss. I didn't name Audrey Strauss. The Attorney General named Audrey Strauss.

Q. No, but if he wanted to go with Carpenito?

A. I don't think—I'm not sure whether Craig Carpenito was being appointed pursuant to 546.

Q. He was going to serve as the interim U.S. attorney. Was that your understanding?

A. No. My understanding was that Craig Carpenito was coming in as the acting U.S. attorney, and the normal process for acting would be the deputy.

Interim is a different process, and you can appoint someone from the outside. So, for example, I was an interim U.S. attorney appointed in January by Attorney General Sessions. And then in April, when my term was up as interim, I was appointed by the court as U.S. attorney.

Q. So if the Attorney General had suggested that he was going to name an interim, pursuant to 28 United States Code 546, would that have been acceptable to you?

A. I don't think that that process was applicable. That's what I'm saying. I can't answer that question, because I'm not sure Section 546 even applies to this situation.⁵⁹

- Berman did not believe the President's intended permanent choice for U.S. Attorney, SEC Chairman Clayton, was qualified for the position.⁶⁰ However, Berman acknowledged that Clayton has extensive financial regulatory experience relevant to the Office's caseload and that Clayton is an experienced manager.⁶¹ 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.⁶²

Q. You indicated Jay Clayton wouldn't be a good pick to be the U.S. attorney for the Southern District of New York because he didn't have experience with the office, but would you agree that having - - that he had sophisticated financial experience, correct?

⁵⁹ Berman TI at 61-63.

⁶⁰ *Id.* at 17.

⁶¹ *Id.* at 61.

⁶² *Id.*

A. I don't dispute that.

Q. And you agree that he's got significant management experience?

A. I don't dispute that.

Q. I mean, he runs the SEC, which has a lot of complicated financial, regulatory, and enforcement proceedings, correct?

A. Agreed.

Q. And he practiced law for a number of years in Manhattan, correct?

A. Agreed. Look, he's a distinguished practitioner. My issue with Mr. Clayton was that he had no prior criminal experience, either on the government side or the defense side. But, as I told the Attorney General, nominate him, have him confirmed, you won't hear a peep out of me. I'll leave without a sound.⁶³

- 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.⁶⁴ This belief appeared to form the basis for Berman's claim that the Attorney General's plan to have Carpenito succeed him was "unprecedented."⁶⁵
 - However, in 1989, then-U.S. Attorney for the SDNY Rudy Giuliani was replaced by Benito Romano, a lawyer in private practice.⁶⁶ 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.⁶⁷ Berman testified:

Q. . . . I gave you The New York Times article. W[e] can mark it if we want, but Romano had been gone from the office for 18 months.

⁶³ *Id.*

⁶⁴ *Id.* at 37.

⁶⁵ *See, e.g.*, Berman TI at 15.

⁶⁶ 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>.

⁶⁷ Berman TI at 64-67.

A. I see that here. My point when I began the—after the break, I wanted to put on the record that I didn't recall—first of all, I know Benito Romano. He's a wonderful person and a great lawyer. I did not recall that he actually had a period where he left the office briefly and returned, but my understanding was that he was the handpicked successor by Mr. Giuliani, and that, as the article confirms, he was the chief of the corruption unit under Mr. Giuliani, and that is one of the most important units in the office. So I –

Q. Nobody is saying Mr. Romano wasn't qualified, but –

A. No. No. But he was not an outsider, is my point. He was not in any way an outsider from the office.

Q. . . . [Y]our testimony today, you talk about if you were subbed out, if you were replaced, there would be significant delays and disruptions to cases. That was your concern, right?

A. Yes.

Q. . . . [Y]ou have a lot of knowledge about the history of the Southern District of New York. Do you know if, when Mr. Romano took over after he had been gone from the office for 18 months, whether, you know that or any other . . . case where a U.S. attorney was replaced led to significant disruptions or delays?

A. I don't know what happened with respect to Mr. Romano. That was before I joined the office.⁶⁸

- 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.⁶⁹ 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.⁷⁰

⁶⁸ Berman TI at 64-67.

⁶⁹ *Id.* at 30-31 & 38-39.

⁷⁰ Berman TI at 65-66.

- Citing this narrow scope, Berman repeatedly refused to answer basic questions about publicly available information about his tenure in office.⁷¹
- 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.⁷²

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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⁷¹ See, e.g., Berman TI at 58.

⁷² See, e.g., Berman TI at 52-59 (wherein Berman refused to answer approximately 27 questions).