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Democracy Dies in Darkness

House is investigating whether Trump lied to Mueller, its general counsel told a federal appeals court

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House investigators are examining whether President Trump lied to former special counsel Robert S. Mueller III, the House general counsel told a federal appeals court Monday in Washington.

The statement came during arguments over Congress's demand for the urgent release of secret grand jury evidence from Mueller's probe of Russia's 2016 election interference, with House lawyers detailing fresh concerns about Trump's truthfulness that could become part of the impeachment inquiry.

The hearing followed Friday's conviction of longtime Trump friend Roger Stone for lying to Congress. Testimony and evidence at his trial appeared to cast doubt on Trump's written answers to Mueller's questions, specifically about whether the president was aware of his campaign's attempts to learn about the release of hacked Democratic emails by the anti-secrecy group WikiLeaks.



impeachment inquiry



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“Did the president lie? Was the president not truthful in his responses to the Mueller investigation?” General Counsel Douglas N. Letter said in court.

“The House is now trying to determine whether the current president should remain in office,” Letter added. “This is something that is unbelievably serious and it’s happening right now, very fast.”

The U.S. Court of Appeals for the D.C. Circuit is reviewing a lower court’s ruling that orders the Justice Department to disclose evidence the House says it needs as it holds public hearings about Trump’s alleged effort to pressure his Ukrainian counterpart to investigate a potential 2020 political rival, former vice president Joe Biden, and his son Hunter Biden.

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Last month, Chief U.S. District Judge Beryl A. Howell for the District of Columbia found that the House was legally engaged in a judicial process that exempts Congress from the secrecy rules that shield grand jury materials.

By day's end, the appeals court in a brief order said it would not immediately release the documents "pending further order of the court." The court also asked the House and the Justice Department for more briefings and set a Jan. 3 date for another hearing.

For weeks now, senior Democrats have been privately playing down the suggestion that Mueller's investigation is likely to be part of articles of impeachment against Trump, noting that it's merely a legal tactic to get information from the executive branch to inform other investigations.

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Behind the scenes, there's been debate among Democratic lawmakers about whether articles of impeachment should include obstruction of justice allegations detailed in Mueller's report. House Speaker Nancy Pelosi of California and her leadership team have wanted to keep the focus on Ukraine, according to four aides who spoke on the condition of anonymity to talk candidly. But some more liberal members, including several lawmakers on the House Judiciary panel, want to include charges surrounding Mueller's inquiry.

In asking the court to move swiftly because of the impeachment hearings, Letter said redacted sections of Mueller's report relating to former Trump campaign chairman Paul Manafort were critical to the House's inquiry into whether Trump had been truthful.

Letter also referred broadly to the recent evidence from Stone's trial concerning Manafort, without citing specific details.

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At trial, former Trump deputy campaign manager Rick Gates testified that Stone spoke to then-candidate Trump about Stone's efforts to learn about WikiLeaks' plans, and that Manafort directed Gates to stay in touch with Stone so that Manafort could update the campaign, including Trump. Stephen K. Bannon, a onetime chief strategist for Trump, also testified at that trial about regularly discussing WikiLeaks with Stone.

In written responses to Mueller's questions, Trump said he had "no recollection of the specifics of any conversations" with Stone during that period or of Stone's communications with his campaign.

"I do not recall discussing WikiLeaks with him, nor do I recall being aware of Mr. Stone having discussed WikiLeaks with individuals associated with my campaign, although I was aware that WikiLeaks was the subject of media reporting and campaign-related discussion at the time," according to the president's written answers.

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Trump said Monday he will “strongly consider” testifying in writing as part of the impeachment inquiry at the outset of a week in which eight current and former officials are scheduled to publicly testify about his controversial actions regarding Ukraine.

In morning tweets, Trump said he might take up Pelosi on a suggestion she made over the weekend.

The appeals case argued Monday is one of several separation-of-powers battles teed up for the Supreme Court. Trump’s private lawyers last week asked the high court to block a subpoena for his tax records from New York prosecutors and to stop a separate House subpoena for his personal and business records.

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At oral argument Monday, a majority of the three-member panel of Judges Judith W. Rogers, Thomas B. Griffith and Neomi Rao seemed inclined to uphold the House’s authority to obtain the grand jury records. But the judges also raised the possibility of putting the release on hold and having the House provide a lower court behind closed doors a more detailed showing of why it needed each disclosure it seeks.

Justice Department attorneys say the material should be off-limits because impeachment trials are not “judicial proceedings” but a legislative function. In opposing the release, department lawyers have said a Watergate-era court ruling was wrongly decided in finding impeachment proceedings exempt from grand jury secrecy rules.

In court, Rogers was openly skeptical of the Justice Department’s argument that the House request was too broad. She repeatedly questioned how the House could have been more specific when the underlying material is secret.

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“They were quite clear what they were seeking,” said Rogers, a 1994 Bill Clinton nominee. “If it is secret, how can they say more than they did?”

Griffith, a 2005 George W. Bush appointee who served as Senate legal counsel during Clinton’s impeachment trial, appeared to agree, suggesting that at least House lawyers should get to view disputed material to argue whether the committee needed to see it.

“How would the Judiciary Committee be able to show particularized need without looking at the material?” Griffith said.

Rao, a former Trump administration official nominated by the president, asked Justice Department attorney Mark Freeman whether it was even appropriate for the court to wade into the battle between Congress and the White House. “Would that impermissibly involve this court in an impeachment proceeding?” Rao asked.

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Freeman said the Justice Department was not suggesting the courts have no jurisdiction to even consider such questions.

In her 75-page opinion, Howell said the Judiciary Committee and the House, in determining whether to recommend articles of impeachment, are serving like a grand jury.

“In carrying out the weighty constitutional duty of determining whether impeachment of the President is warranted, Congress need not redo the nearly two years of effort spent on the Special Counsel’s investigation, nor risk being misled by witnesses, who may have provided information to the grand jury and the Special Counsel that varies from what they tell” the House, Howell wrote.

Howell, a former Democratic Senate Judiciary Committee counsel and a 2010 nominee of Barack Obama, said the need for continued secrecy was “minimal” because the Justice Department already had made redacted portions of the Mueller report available to certain members of Congress and because the Judiciary Committee agreed to negotiations to prevent release of information that would harm any ongoing investigations.

At Stone’s trial this month, Gates testified that Trump and Stone spoke by phone about WikiLeaks’ plans on July 31, 2016, as the candidate rode in an SUV to a New York City airport, accompanied by Gates. He also testified that Manafort directed him to follow up and stay in contact with Stone for further developments.

According to the Mueller report, Manafort also stated that he spoke to Trump around that time, days after WikiLeaks released a batch of hacked emails timed for the beginning of the Democratic presidential nominating convention.

“Manafort recalled that Trump responded that Manafort should [redacted] keep Trump updated,” Mueller’s report states, with the redacted passage referring to Stone’s then-ongoing prosecution.

In court Monday, Letter referred specifically to the House’s need to review grand jury testimony from Manafort, who is serving a 7 ¹/₂-year prison sentence for conspiracy, fraud and tax violations.

“The Manafort situation shows so clearly that there is evidence, very sadly, that the president might have provided untruthful answers,” Letter said.

