

What to do about Attorney General William Barr, the door? | Opinion

Frank Askin

Ahead of a House Judiciary Committee vote to hold Attorney General William Barr in contempt of Congress, Chairman Jerrold Nadler said President Trump's executive privilege assertion is an escalation of his "blanket defiance" of Congress.

Meet William Barr the door, the U.S. attorney general who apparently believes his main duty is to block any attempts to undermine or make disparaging remarks about his mentor, President Donald Trump.

In his recent appearance before the U.S. Senate, Barr totally distorted the critique of the president in the report issued by Special Counsel Robert Mueller and refused to make public the itemized summaries Mueller requested that he release. Barr then accused the Democrats investigating Trump's efforts to obstruct justice as "spying," and insisted there was nothing "pejorative" in that ludicrous designation.

Now Barr is refusing to appear before the House Committee because it wants to have lawyers questioning him. A totally frivolous objection.

Barr even falsely claimed that President Trump had "fully cooperated" with the Mueller investigation in the face of a ton of evidence that Trump made numerous attempts to thwart the investigation and refused to be interviewed by the prosecutors.

So what are the Democrats to do? The normal response would be to hold Barr in contempt of Congress and have the Attorney General of the United States enforce the contempt citation. But it is obvious that Attorney General Barr is not going to sue himself for contempt.

But there may be other options.

Congress might try to hold him in civil contempt and fine him for each day of refusal. But that would be appealed and by the time the case was decided, the congressional session may have ended and with it the citation.

There is another option. From the Republic's earliest days, Congress has had the right to hold recalcitrant witnesses in "contempt" – and even imprison them – all by itself. The practice is known as "inherent contempt."

In 1795, shortly after the Constitution was ratified, the House ordered its Sergeant -at Arms to arrest and detain two men accused of trying to bribe members of Congress. The House held a trial and convicted one of them. In approving the practice in 1821, the Supreme Court explained

that without this power, Congress would “be exposed to every indignity and interruption, that rudeness, caprice, or even conspiracy, may mediate against it.”

In a 1927 case, arising from the Teapot Dome Scandal, the Court upheld the Senate’s arrest of the brother of a former attorney general for ignoring a subpoena to testify. The Congressional Research Service has described the process as follows: “The individual is brought before the House or Senate, tried before the bar of the body, and can be imprisoned in the District of Columbia jail.”

The defendant would then have the right to challenge confinement by filing a petition for habeas corpus in a federal court. The process has not been employed since 1935, but it is presumably still viable.

What a curious picture: the attorney general of the United States being hauled away by the sergeant at arms and imprisoned in the Capitol hoosegow.

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