PERMANENT SELECT COMMITTEE ON INTELLIGENCE,

joint with the

COMMITTEE ON OVERSIGHT AND REFORM

and the

COMMITTEE ON FOREIGN AFFAIRS,

U.S. HOUSE OF REPRESENTATIVES,

WASHINGTON, D.C.

DEPOSITION OF: JOHN EISENBERG

Monday, November 4, 2019

Washington, D.C.

The deposition in the above matter was held in Room HVC-304, Capitol Visitor Center, commencing at 9:06 a.m.

Present: Representatives Schiff and Demings.

Also Present: Representatives Raskin, Jordan, and Meadows.

Appearances:

For the PERMANENT SELECT COMMITTEE ON INTELLIGENCE:

[redacted]

For the COMMITTEE ON OVERSIGHT AND REFORM:

[redacted]

For the COMMITTEE ON FOREIGN AFFAIRS:

[redacted]

MR. GOLDMAN: Let's go on the record. This will begin the proceeding, the deposition of John Eisenberg.

At the request of the chair, we are going to recess this until 11:30 this morning, when we can record Mr. Eisenberg's nonappearance. So we are recessed until 11:30.

[Recess.]

[11:37 a.m.]

THE CHAIRMAN: This is a deposition of John Eisenberg, continued from earlier this morning, Deputy Counsel to the President for National Security Affairs and Legal Advisor to the National Security Council.

The deposition is conducted by the House Permanent Select Committee on Intelligence, in coordination with the Committees on Foreign Affairs and Oversight and Reform, pursuant to the impeachment inquiry announced by the Speaker of the House on September 24, 2019, and affirmed by House Resolution 660 on October 31, 2019.

On Wednesday, October 30, 2019, the committees sent a letter to Mr. Eisenberg requesting that he voluntarily appear for a deposition today, Monday, November 4, as part of this inquiry. Mr. Eisenberg never acknowledged receipt or otherwise responded to the committees' deposition request, nor did any official at the White House.

Because the committees never received any response, the Permanent Select Committee on Intelligence issued on November 1 a duly authorized subpoena on Mr. Eisenberg commanding his appearance today.

Despite his legal obligations to comply, Mr. Eisenberg is not present here today and has therefore defied a duly authorized congressional subpoena.

This morning, in an email received at 9:00 a.m., when the deposition was supposed to commence, Mr. Eisenberg's personal attorney sent a letter to the committee stating that President Trump had, quote, "instructed Mr. Eisenberg not to appear at the deposition," unquote.

The attorney attached correspondence from White House counsel

Pat Cipollone and a letter from the Office of Legal Counsel at Department of Justice. The OLC letter informs the White House that Mr. Eisenberg is purportedly, quote, "absolutely immune from compelled congressional testimony in his capacity as a senior advisor to the President," unquote.

Mr. Eisenberg's attorney concludes this letter by tying Mr. Eisenberg's posture to that of former Deputy National Security Advisor Charles Kupperman, who filed a nonjusticiable complaint in Federal court after receiving a subpoena to testify as part of the impeachment inquiry.

Dr. Kupperman's lawsuit is improper and legally deficient, as would any similar lawsuit filed by a witness to avoid compliance with a congressional subpoena. Such a lawsuit is therefore not a valid legal mechanism to challenge or defy a duly authorized congressional subpoena, particularly one issued pursuant to an impeachment inquiry.

Moreover, neither Congress nor the courts recognize a blanket, quote, "absolute immunity," unquote, as a basis to defy a congressional subpoena.

Mr. Eisenberg and the White House, therefore, have no basis for evading a lawful subpoena. As such, the President's direction to Mr. Eisenberg to defy a lawful compulsory process can only be construed as an effort to delay testimony and obstruct the inquiry, consistent with the White House counsel's letter dated October 8, 2019.

As Mr. Eisenberg was informed, the committees may consider his noncompliance with the subpoena as evidence in a future contempt

proceeding. His failure or refusal to appear, moreover, shall constitute evidence of obstruction of the House's impeachment inquiry and may be used as an adverse inference against the President.

The subpoena remains in full force.

The committees reserve all of their rights, including the right to raise this matter at a future Intelligence Committee proceeding, at the discretion of the chair of the committee.

Mr. Eisenberg's nonappearance today adds to a growing body of evidence of the White House seeking to obstruct the White House's impeachment inquiry.

To the extent the White House believes that an issue could be raised at the deposition that may implicate a valid claim of privilege, the White House may seek to assert that privilege with the committee in advance of the deposition. To date, as has been the case in every other deposition as part of the inquiry, the White House has not done so.

Mr. Eisenberg's failure to appear today also flies in the face of historical precedent. Even absent impeachment proceedings, congressional committees have deposed senior White House officials, including White House counsels and senior White House lawyers.

I am therefore entering into the record for the impeachment inquiry the following documents.

Exhibit 1 is the committee's October 30, 2019, letter to Mr. Eisenberg requesting his voluntary appearance at the deposition.

Exhibit 2 is the committee's cover letter to the subpoena dated

November 1, 2019.

Exhibit 3 is the Intelligence Committee's subpoena to Mr. Eisenberg, which was served on Mr. Eisenberg on November 1 and also sent to the White House Counsel's Office on November 3.

Exhibit 4 is the correspondence received from Mr. Eisenberg's attorney; his attorney's November 4, 2019, letter to the chairs of the committees; a November 3, 2019, letter from the White House counsel Cipollone to Mr. Eisenberg's attorney; and a November 3, 2019, letter from Assistant Attorney General Steven Engel to Mr. Cipollone regarding OLC's opinion.

[Majority Exhibit No. 1
was marked for identification.]

[Majority Exhibit No. 2
was marked for identification.]

[Majority Exhibit No. 3
was marked for identification.]

[Majority Exhibit No. 4
was marked for identification.]

THE CHAIRMAN: Mr. Eisenberg's role in facilitating the White House's obstruction of the impeachment inquiry does not occur in a vacuum. Over the past several weeks, we have gathered extensive evidence of the President's abuse of power related to pressuring Ukraine to initiate investigations that would benefit the President personally and politically and sacrifice the national interest in attempting to do so.

Some of that evidence has revealed that Mr. Eisenberg was a percipient witness to certain misconduct and may have had a role in certain actions under investigation, including particular efforts to withhold or conceal from Congress evidence of the President's conduct.

We can only infer, therefore, that Mr. Eisenberg's refusal to testify is intended to prevent the committees from learning additional evidence of Presidential misconduct and that Mr. Eisenberg's testimony would corroborate and confirm other witnesses' accounts of such misconduct.

At this point, I'm happy to yield to minority counsel.

[redacted]: Thank you, Mr. Chairman. Given the room is pretty much empty except us lawyers, I will yield back.

THE CHAIRMAN: Okay. I thank you.

That concludes the deposition proceedings for these two witnesses this morning.

Anything further, counsel?

Okay. Then we are adjourned.

[Whereupon, at 11:43 a.m., the deposition was concluded.]