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: MICHAEL ELLIS

Monday, November 4, 2019

Washington, D.C.

The deposition in the above matter was held in Room HVC-304,

Capitol Visitor Center, commencing at 2:06 p.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]

THE CHAIRMAN: All right. Let's come to order. We'll now begin today's proceeding.

This is a deposition of Michael Ellis, Senior Associate Counsel to the President and Deputy Legal Advisor to the National Security Council, conducted by the House Permanent Select Committee on Intelligence in coordination with the Committees on Foreign Affairs and Oversight and Reform, pursuant to an impeachment inquiry announced by the Speaker of the House on September 24, 2019, and affirmed by House Resolution 660 on October 31, 2019.

On October 30, 2019, the committees sent a letter to Mr. Ellis requesting that he voluntarily appear for a deposition as part of this inquiry. Through his counsel, on November 2, Mr. Ellis indicated that he had received guidance from the Department of Justice's Office of Legal Counsel and, on the basis of that guidance, Mr. Ellis would not appear for a deposition, even under a subpoena.

On November 3, the Intelligence Committee served through Mr. Ellis's counsel a duly authorized subpoena compelling Mr. Ellis's appearance for a deposition today.

Earlier today, at approximately 1:00 p.m., Mr. Ellis's counsel sent a letter to the committee stating that, quote, "Mr. Ellis has been directed by the White House not to appear for this deposition," unquote, based upon guidance from the Office of Legal Counsel stating that, quote, "failure to permit relevant executive branch agency counsel to attend any deposition of Mr. Ellis would not allow for sufficient protection of relevant privileges and would therefore render any

subpoena constitutionally invalid," unquote.

Although the committee has requested a copy of the correspondence from the White House and the Department of Justice, Mr. Ellis's counsel did not provide it to the committees.

This new and shifting rationale from the White House, like the others it has used to attempt to block witnesses from appearing to provide testimony about the President's misconduct, has no basis in law or the Constitution and is a serious affront to decades of precedent in which Republicans and Democrats have used exactly the same procedures to depose executive branch officials without agency counsel present, including some of the most senior aides to multiple previous Presidents.

I would note for my Republican colleagues that this rule was supported by Acting White House Chief of Staff Mick Mulvaney when he served as a member of the Oversight Committee and by Secretary of State Mike Pompeo when he served as a member of the Benghazi Select Committee.

In fact, some of the same Members and staff currently conducting depositions as part of the present impeachment inquiry participated directly in depositions without agency counsel during the Clinton, Bush, and Obama administrations.

The basis for this process is straightforward. It ensures that the committees are able to depose witnesses in furtherance of our investigation without having representatives of the agency or office under investigation in the room to interfere or improperly learn details about the investigation.

The rule nevertheless protects the rights of witnesses by allowing them to be accompanied in the deposition by personal counsel, which was offered to Mr. Ellis, who has personal counsel.

Other than the White House's objections to longstanding congressional practice, the committees are aware of no other valid constitutional privilege asserted by the White House to direct Mr. Ellis to defy this subpoena.

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 this inquiry, the White House has not done so.

Yesterday, on November 3, 2019, the Intelligence Committee issued a subpoena for Mr. Ellis's appearance this afternoon, and Mr. Ellis remained obligated to appear.

The cover letter to the subpoena outlines in some detail the numerous times that Republican- and Democratic-controlled committees conducted depositions of executive branch officials, including senior White House officials, without agency counsel present.

I am therefore entering into the record for the impeachment inquiry the following exhibits: Exhibit 1 is the committee's letter dated October 30 requesting Mr. Ellis's voluntary deposition; exhibit 2 is the committee's letter dated November 3 to Mr. Ellis's counsel transmitting a subpoena; exhibit 3 is the subpoena issued to Mr. Ellis

and served on his counsel on November 3 that commanded his appearance here today; and exhibit 4 is the letter received from Mr. Ellis's counsel at approximately 1:00 p.m. today.

[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. Ellis has neither presented a valid constitutional reason to defy a duly authorized subpoena, nor have the committees received a court order relieving him of his obligation to appear today.

Despite his legal obligations to appear, Mr. Ellis is not present here today and has therefore defied the duly authorized congressional subpoena.

As his counsel was informed in both the October 30 request for testimony and the November 3 letter, the committees may therefore consider Mr. Ellis's defiance of a subpoena as evidence in a future contempt proceeding.

The subpoena remains in full force.

The committee reserves all of its rights, including the right to raise this matter at a future Intelligence Committee proceeding, at

the discretion of the chair of the committee.

One final note. The White House's last and latest rationale for directing a White House official not to appear, even though two current White House officials and one former White House official have already testified in this inquiry, may be a newly created rationale to block additional witnesses from testifying.

Mr. Ellis is not absolved of responsibility here, as he is willfully abiding by this clearly deficient basis to defy a duly authorized subpoena. This is particularly disappointing coming from someone who previously provided service on this very committee.

Nevertheless, this effort by the President to block Mr. Ellis from appearing can only be interpreted as a further effort by the President and the White House to obstruct the impeachment inquiry and Congress's lawful and constitutional functions.

Moreover, the obstruction does not exist 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. Ellis was a percipient witness to the misconduct. We can only infer, therefore, that the White House efforts to block Mr. Ellis from testifying is to prevent the committees from learning additional evidence of Presidential misconduct and that Mr. Ellis's testimony would corroborate and

confirm other witnesses' accounts of this misconduct, including testimony that the call record of the July 25 conversation between President Trump and President Zelensky was improperly placed in a highly classified system in order to conceal the call.

At this point, I will yield to the ranking member of the Intelligence Committee or, in his absence, one of the other ranking Republicans.

MR. JORDAN: No, we're fine.

THE CHAIRMAN: Okay.

That concludes the deposition proceeding regarding Michael Ellis. We will now turn to the deposition proceeding pertaining to Brian McCormack.

[Whereupon, at 2:13 p.m., the deposition was concluded.]