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 DUFFEY

Tuesday, November 5, 2019

Washington, D.C.

The deposition in the above matter was held in Room HVC-304, Capitol Visitor Center, commencing at 2:02 p.m.

Present: Representatives Schiff and Quigley.

Also Present: Representatives Raskin, Maloney, 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: The committee will come to order. We'll begin today's proceeding.

This is a deposition of Associate Director Michael Duffey 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 October 11, 2019, the committees sent a letter to Mr. Duffey requesting that he voluntarily appear for a deposition on October 23, 2019.

On October 21, 2019, the Office of Management and Budget informed the committees that Mr. Duffey would not voluntarily appear at a deposition per the White House counsel's October 8, 2019, letter.

As a result, on October 25, 2019, the committees issued a subpoena compelling Mr. Duffey's mandatory appearance at a deposition today.

Yesterday, OMB reasserted its position that, quote, "as directed by the White House counsel's October 8, 2019, letter, OMB will not participate in this partisan, unfair impeachment inquiry," unquote. OMB argues that the impeachment inquiry lacks basic due-process protections and relies on an Office of Legal Counsel opinion that the committee cannot lawfully bar agency counsel from depositions.

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. Duffey.

Other than the White House counsel's objection to longstanding congressional practice, the committees are aware of no other valid constitutional privilege asserted by the White House to direct

Mr. Duffey 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 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.

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

Exhibit 1 is the committee's letter dated October 11 requesting that Mr. Duffey voluntarily appear for a deposition.

Exhibit 2 is the committee's cover letter to the subpoena dated October 25.

Exhibit 3 is the Intelligence Committee's subpoena to Mr. Duffey, which was served on October 25.

Exhibit 4 is OMB's letter to the committees dated November 4 stating that the White House instructed him not to appear.

[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. Duffey 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. Duffey is not present here today and has therefore defied a duly authorized congressional subpoena. The committees may consider Mr. Duffey's defiance of his subpoena as evidence in a future contempt proceeding.

This 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.

This effort by the President to attempt to block Mr. Duffey 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. Duffey was a percipient witness to misconduct, which may include the President's misconduct, including President Trump's decision to place a hold on Ukraine security assistance and concerns about the legality of the

hold.

We can only infer, therefore, that the White House's efforts to block Mr. Duffey from testifying is to prevent the committees from learning additional evidence of Presidential misconduct and that Mr. Duffey's testimony would corroborate and confirm other witnesses' accounts of such misconduct, including Mr. Mulvaney's admission from the White House Briefing Room that the Ukraine military aid was frozen by the President in order to pressure Ukraine into initiating investigations into the Bidens and the 2016 election.

With that, I'm happy to yield to Mr. Meadows.

Minority counsel?

MR. CASTOR: I just want to note for the record that some of these witnesses that have not had the ability to hire personal counsel may have been able to participate if they were accompanied by agency counsel.

If there's a concern about them being represented by agency counsel from their own agency, there are workarounds that we've done in the past, where they get a government lawyer from DOJ to join them. And that might be an opportunity -- you know, a lawyer not connected with the investigation, not connected with the agency under investigation. That may be a way to get some of these witnesses in the door and get additional facts for the investigation but not compromise some of the issues you mentioned.

So thank you.

THE CHAIRMAN: I appreciate that, counsel. I would just say for

the record that, to my knowledge, this witness has indicated no issue in terms of finding counsel. Their objection is merely the one transmitted by the White House.

And, with that, the proceedings are concluded and we are adjourned.

[Whereupon, at 2:08 p.m., the deposition was concluded.]