

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: CHARLES KUPPERMAN

Monday, October 28, 2019

Washington, D.C.

The deposition in the above matter was held in Room HVC-304,  
Capitol Visitor Center, commencing at 9:37 a.m.

Present: Representatives Schiff, Swalwell, and Conaway.

Also Present: Representatives Maloney, Raskin, Jordan, and  
Meadows.

Appearances:

For the PERMANENT SELECT COMMITTEE ON INTELLIGENCE:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

For the COMMITTEE ON OVERSIGHT AND REFORM:

[REDACTED]

For the COMMITTEE ON FOREIGN AFFAIRS:

[REDACTED]

THE CHAIRMAN: Okay. The deposition will come to order. We will now begin today's proceeding.

This is a deposition of Dr. Charles Kupperman, the former Deputy National Security Advisor, 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.

On October 16, 2019, the committee sent a letter to Dr. Kupperman requesting that he voluntarily appear for a deposition as part of this inquiry. Through his counsel, Dr. Kupperman indicated to the committees that he would require a subpoena in order to testify.

On Friday afternoon, October 25, the Intelligence Committee served a duly authorized subpoena on Dr. Kupperman requiring his appearance today.

The few hours later, on Friday evening, counsel for Dr. Kupperman forwarded to the committees a 17-page complaint filed on behalf of Dr. Kupperman in Federal court here in Washington, D.C. The lawsuit alleged that the President had directed Dr. Kupperman to defy the subpoena and not appear for his deposition.

According to a letter from the White House Counsel, Pat Cipollone, the Office of Legal Counsel at the Department of Justice had issued an opinion that very same day, on October 25, that asserted that Dr. Kupperman was absolutely immune from compelled congressional testimony despite being a private citizen.

Citing the President's direction, Dr. Kupperman brought suit

against the President, the Speaker of the House, and the chairs of the three committees undertaking this investigation as part of the impeachment inquiry. Dr. Kupperman sought a declaratory judgment from the court regarding whether he was obligated to comply with the congressional subpoena in light of the White House's direction.

In a letter on Saturday, October 27, 2019, the committees informed Dr. Kupperman that his lawsuit was improper and legally deficient. The lawsuit is a legal nullity that cannot be decided by any court. Such a lawsuit is not a valid legal mechanism to challenge or defy a duly authorized congressional subpoena of any sort and particularly one pertaining to an impeachment inquiry.

The committees also explained that neither Congress nor the courts recognize a blanket absolute immunity as a basis to defy a congressional subpoena.

The committees noted that the White House's role could only be construed as an effort to delay testimony and obstruct the inquiry, consistent with the White House Counsel's letter October 8, 2019. Dr. Kupperman, therefore, remained obligated to appear this morning.

In a response late Saturday night, October 27, counsel for Dr. Kupperman persisted in claiming that a court would need to decide whether he should comply with the subpoena without addressing the lawsuit's procedural deficiency. In a response yesterday, the committees once again reiterated that Dr. Kupperman remained obligated to appear today pursuant to a congressional subpoena and failure to appear could be used as evidence in a contempt proceeding.

I am therefore entering into the record for the impeachment inquiry the correspondence between the committees and Dr. Kupperman's attorneys. Exhibit 1 is the committee's Saturday, October 26, 2019, letter in response to the lawsuit filed by Dr. Kupperman. Exhibit 2 is Dr. Kupperman's attorney's response to the committee the same evening, on October 26. Exhibit 3 is the committee's final letter on Sunday, October 27. And Exhibit 4 is a short letter from Dr. Kupperman's attorney last night.

[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: The mere act of filing a suit in court does not absolve Dr. Kupperman of his legal obligation under the subpoena to appear today. Only a court order could have done that, and he did not even attempt to obtain such an order prior to today, much less actually receive one.

Despite his legal obligations to comply, Dr. Kupperman is not present here today and, therefore, has defied a duly authorized congressional subpoena. Through this written correspondence, the committee has given Dr. Kupperman, through his counsel, ample

opportunity to reverse his position and appear. As his counsel was informed, the committees may therefore consider Dr. Kupperman's defiance of the subpoena as evidence in a future contempt proceeding.

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

One final note: The White House directed Dr. Kupperman, a former White House official, not to appear based on an extraordinary claim of absolute immunity, which the Congress does not recognize and which the sole court to consider it has rejected.

Historical precedent is clear. History is replete with examples of senior White House officials testifying before Congress as part of congressional investigations into misconduct, abuse of power, and other topics. This includes testimony before Congress by three chiefs of staff of President Clinton and other senior officials during his impeachment proceedings as well as numerous senior White House officials during the impeachment proceedings of President Nixon.

Moreover, a court has previously ruled that Harriet Miers, former White House Counsel to President George W. Bush, was required to abide by a subpoena and appear before Congress notwithstanding a similar argument of absolute immunity.

This effort by the President to attempt to block Dr. Kupperman from appearing can therefore only be interpreted as a further effort by the President and the White House to obstruct the impeachment inquiry.

and Congress's lawful 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 Dr. Kupperman was a percipient witness to the President's misconduct. We can only infer, therefore, that the White House efforts to block Dr. Kupperman from testifying are to prevent the committees from learning additional evidence of Presidential misconduct and that Dr. Kupperman's testimony would corroborate and confirm other witnesses' accounts of that misconduct.

At this point, I am happy to yield to the ranking member of the Intel Committee or, in his absence, one of the other Republican Members.

MR. JORDAN: Thank you, Mr. Chairman.

I want to thank you for entering in the record the response from Dr. Kupperman's -- the two responses from Dr. Kupperman's attorney, Mr. Cooper.

I would just highlight the most recent correspondence from Dr. Kupperman's counsel to Mr. Noble, counsel for the majority of this committee, where he says: "If your client's position on the merits of the issue is correct, it will prevail in court and Dr. Kupperman, I assure you again, will comply with the court's judgment."



So if, in fact, the court agrees with the position that you articulated in your opening statement, Dr. Kupperman is going to be here. He's just waiting to see this -- this dilemma between the President telling him not to come and the subpoena from Congress. So he's more than willing to come, and I'm sure he will be, if that, in fact, is the decision of the court.

With that, I yield back.

MR. CONAWAY: Mr. Chairman, what time was the subpoena served Friday afternoon?

THE CHAIRMAN: Four o'clock in the afternoon.

MR. CONAWAY: Friday afternoon?

THE CHAIRMAN: Yes.

MR. CONAWAY: This past Friday afternoon?

THE CHAIRMAN: Yes.

MR. CONAWAY: Demanding his appearance at 9:30 on Monday?

THE CHAIRMAN: Correct.

MR. CONAWAY: And you expected all of that legal stuff to have gone on over the weekend, on a Sunday as well, and that in y'all's mind it was reasonable to expect all of that could've all gotten done on a Saturday and a Sunday.

THE CHAIRMAN: Well, I think you make a very good point, Mr. Conaway, and that is, the Office of Legal Counsel prepared an opinion that day --

MR. CONAWAY: I'm talking about the courts.

THE CHAIRMAN: I know what you're talking about. But I think

it's important to note, the Official of Legal Counsel of the Justice Department had prepared this for Dr. Kupperman so that he could incorporate it into this lawsuit, and that was all done on the same day. So it certainly appears to be a coordinated effort led by the White House.

MR. CONAWAY: I'm not referencing that. I'm just referencing our conduct as a committee on demanding that a witness show up 60 hours after the subpoena, actually, on a weekend, and that we could've remotely prepared --

THE CHAIRMAN: Well, it is designed to avoid just this kind of White House obstruction.

But I would ask my colleagues this, and particularly the ranking member on the Oversight Committee: Do you countenance a Presidential claim of absolute immunity? Do you want to, in the future, allow Presidents to prevent witnesses from coming forward in cases of misconduct? Is that the position of the GOP leaders of the Oversight Committee?

MR. JORDAN: It's happened before. Our counsel tells me that President Obama blocked David Simas, a counselor for political affairs at the White House, so --

THE CHAIRMAN: And you support that position?

MR. JORDAN: No, what I'm saying is, there's a question, and Dr. Kupperman, through his counsel, has went to court to get an answer. And Dr. Kupperman has said, through his counsel, if, in fact, the court rules as you indicated you think they will, then he'll be here, and

we'll sit down and you'll read some other statement, and Dr. Kupperman will answer our questions for 7, 8 hours, whatever it ends up being.

THE CHAIRMAN: I don't think my colleague has answered my question. Is it the Republican position that a White House can prevent senior administration officials from coming in in cases involving either impeachment or misconduct and simply refuse to testify, claiming absolute immunity? Is that now the Republican position?

MR. JORDAN: We're saying that there is a question between close counselors of the President and information they may have shared and talked about with the President and the subpoenas that are issued from a separate branch of government, the legislative branch. And as we've said now several times, Dr. Kupperman wants to get an answer to that before he comes in and testifies. That's all we're saying.

THE CHAIRMAN: That is a remarkable surrender of the congressional prerogative by the GOP.

MR. JORDAN: That's your words; that's not my words. I'm saying --

THE CHAIRMAN: No, but it is the effect of your words.

I would only say this. I conducted a deposition of Karl Rove, one of the closest advisors to President Bush, as we were looking into allegations of misconduct concerning the firing of U.S. attorneys.

MR. JORDAN: Uh-huh.

THE CHAIRMAN: George Bush did not make this assertion. And when he did with Harriet Miers, it went to court, and the White House lost. That's the only case that's been litigated.

MR. JORDAN: And, Mr. Chairman, if that's the case here, then Dr. Kupperman is going to be here.

THE CHAIRMAN: So it's, further, the Republican position now that anyone who's given a congressional subpoena can file a suit against Congress to prevent enforcement of the subpoena? Is that --

MR. JORDAN: I'm not saying that at all. I mean, you can continue to try to put words in my mouth. All I'm saying is, the situation we're in today is Dr. Kupperman has went to court and he has said, whatever the court says, that's what he'll abide by. So if you're right, if you're right, he'll be here and we'll ask him questions and we'll get answers.

THE CHAIRMAN: Well, I would only say to my colleague -- and then I think we can wrap up here -- as my colleague should know, no one has standing to sue the Congress to prevent the execution of a subpoena. It is nonjusticiable. And I think my colleagues know that.

This is merely an obstruction tactic by the White House, which apparently my colleagues are countenancing. And I think we know why. The testimony that we have heard over the past 2 weeks has been damning. Dr. Kupperman would provide important corroboratory information which the White House and apparently some Republican Members of Congress do not want the Congress to hear.

MR. CONAWAY: It's not lost on us, Mr. Chairman, that you continue to testify on behalf of your side of the arguments. And you're laying it out great. It's going to be in the record. That's terrific. But you're simply just testifying on behalf of what your positions are.

Is it also --

THE CHAIRMAN: And, Mr. Conaway --

MR. CONAWAY: -- the Democrats' position that Eric Holder should continue to defy the contempt-of-Congress charge against him? Was that your position then?

And so, you know, each side has its own issues. But I appreciate you continuing to testify --

THE CHAIRMAN: And, you know, I appreciate, during that investigation, the Obama administration provided thousands and thousands of documents to Congress. We have yet to receive a single document from the Trump State Department.

But, apparently, the Republican position now is that the administration can withhold documents from Congress, it can withhold --

MR. JORDAN: Maybe the chairman --

THE CHAIRMAN: -- witnesses from Congress, if it serves the President's interest. And I think that is a very --

MR. JORDAN: Maybe the chairman --

THE CHAIRMAN: -- a very short-sighted policy for a Republican Oversight Committee ranking member to take.

MR. JORDAN: Maybe the chairman should follow his own rules. Every single deposition, when it ends, you tell us, this is -- under the deposition rules, we're not supposed to go out and share information.

But on Sunday, on a national news channel, Sunday morning, you said: concerned that people in the State Department, Ambassador

Sondland and others, Mulvaney, were cooking up a drug deal. And by that, you meant -- he meant a corrupt deal involving withholding White House -- you referenced direct testimony from an individual in this deposition, and you went on a Sunday show and directly quoted what that person said in his testimony.

So maybe if we're talking about rules and procedure and process and everything else, maybe you should follow what you tell us every single day when we leave these depositions, that we are not to go out and share substantive comments from the witness. And yet you did that just yesterday morning. Maybe that's the rule we need to be focused on.

THE CHAIRMAN: Mr. Jordan, I appreciate -- no one has appeared before the cameras more than you to discuss these proceedings.

MR. JORDAN: No, you have. You have --

THE CHAIRMAN: No, I think you have well outdone me, Mr. Jordan, and will continue to do so.

But let me just say this. If you wish to take this position, obviously we can't stop you. It will have no effect, however, on the legal force of the subpoena. But I think that you do great damage to this institution, I think you do great damage to your credibility, to take the position that a President can withhold from Congress documents and key witnesses in an impeachment inquiry where you have already heard substantial evidence of Presidential misconduct. You will weaken this institution indefinitely by taking that position.

And I hope you realize that, that the short-term political

advantage that you take in seeking this position will do long-term damage to the institution, to your credibility, to your ability to do oversight --

MR. JORDAN: If we're going to talk about weakening this institution --

THE CHAIRMAN: -- should you ever be in the majority again. I think that is the case.

MR. JORDAN: -- we're going to talk about the guy, the guy who had his staff talk with the whistleblower, and you didn't tell -- we're going to talk about weakening this institution, when only 1 Member of 435 knows who the whistleblower is and who the people are, the sources -- are we going to talk about that?

THE CHAIRMAN: Mr. Jordan, you keep making that --

MR. JORDAN: Are you serious?

THE CHAIRMAN: You keep making that false statement. You keep making that false statement.

MR. JORDAN: What false statement?

THE CHAIRMAN: The one you just made.

MR. JORDAN: Your staff didn't talk with the whistleblower?

THE CHAIRMAN: The one you just made.

MR. JORDAN: What false statement?

THE CHAIRMAN: That I know who the whistleblower is. That is a false --

MR. JORDAN: Your staff met with him.

THE CHAIRMAN: That is a false statement.

MR. JORDAN: My staff didn't meet with him.

THE CHAIRMAN: Mr. Jordan, you keep repeating that false statement.

MR. JORDAN: Oversight staff didn't meet with him. Mr. Castor didn't meet with him.

THE CHAIRMAN: Mr. Jordan, you --

MR. JORDAN: No, you brought it up. Look, I was ready to just enter this in the --

THE CHAIRMAN: -- you should do better --

MR. JORDAN: -- record, and you had to start going --

THE CHAIRMAN: -- than that.

MR. JORDAN: -- and you had to start accusing Republicans of weakening this institution.

All I'm telling you is you're the one guy --

THE CHAIRMAN: Mr. Jordan --

MR. JORDAN: -- in the Congress who knows who this person is. First you said he was going to testify, and now you said, no, it's --

THE CHAIRMAN: Mr. Jordan, your repeating the same false statement doesn't make it any truer than the first time you made it.

MR. JORDAN: It's not a false statement.

THE CHAIRMAN: We're going to bring these proceedings to a close. We're going to bring these proceedings to a close. One false statement from you is enough.

This meeting is adjourned.

[Whereupon, at 9:53 a.m., the deposition was concluded.]