

**U.S. House of Representatives**  
**Committee on the Judiciary**

Washington, DC 20515-6216  
One Hundred Sixteenth Congress

November 18, 2019

The Honorable Jerrold Nadler  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairman Nadler,

Today, I am writing to raise concerns regarding House Permanent Select Committee on Intelligence (“Intelligence Committee”) Chairman Adam Schiff’s role working in concert with certain witnesses to conceal basic and relevant facts during this sham impeachment process. There is also new concern regarding the credibility and judgment of one of the witnesses, Lieutenant Colonel Alexander S. Vindman.

**I. New Information from Mr. Morrison’s Deposition Released November 16**

On November 16, 2019, Chairman Schiff released the transcript of Tim Morrison’s deposition.<sup>1</sup> According to the transcript, officials on the National Security Council were concerned about Colonel Vindman’s judgment and about whether he may have leaked information. Following is the relevant portion of the exchange:

MR. CASTOR: Okay. It had nothing to do with your trust in Colonel Vindman?

MR. MORRISON: I had two motivations to do my best to protect my personnel from my concerns about this issue, the concerns that I weighed out about the Washington’s political environment.

MR. CASTOR: Uh-huh. ...

**MR. MORRISON: I had concerns about Lieutenant Colonel Vindman’s judgment.**

MR. CASTOR: Judgment with respect to what?

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<sup>1</sup> Deposition Transcript of Mr. Tim Morrison (Oct. 31, 2019).

MR. MORRISON: Among the discussions I had with Dr. Hill in the transition was our team, my team, its strengths and its weaknesses. And Fiona and others had raised concerns about Alex's judgment.

MR. CASTER: Okay. Did you ever have any concerns that he might leak something?

MR. MORRISON: No.

**MR. CASTOR: Did anyone ever bring concerns to you that they believed Colonel Vindman may have leaked something?**

**MR. MORRISON: Yes.<sup>2</sup>**

An in-depth review of Colonel Vindman's deposition transcript also reveals a reluctance to be forthcoming with the Intelligence Committee. The combination of questionable judgment, possible leaks, and his refusal to answer basic questions posed by Intelligence Committee counsel raise serious concerns about his trustworthiness and motives.

## **II. Chairman Schiff is Actively Suppressing Evidence Requested by Republicans**

On November 9, 2019, Intelligence Committee Ranking Member Devin Nunes wrote to Chairman Schiff about his alarming and biased behavior. He wrote:

During your closed-door proceedings, [Chairman Schiff] offered no due process protections for the President. [Chairman Schiff] directed witnesses called by the Democrats not to answer Republic questions. [Chairman Schiff] withheld deposition transcripts from Republican Members. [Chairman Schiff] leaked cherry-picked information to paint misleading public narratives about the facts.<sup>3</sup>

Chairman Schiff's conduct, while deeply troubling, is not surprising. As you will recall, Chairman Schiff told the American people repeatedly "there was 'ample evidence of collusion in plain sight'" regarding the President's 2016 campaign.<sup>4</sup> As a two-year investigation by Special Counsel Mueller found, however, no such collusion existed. More recently, Chairman Schiff parodied, into the record, a fictional version of the President's July 25, 2019 phone call with

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<sup>2</sup> *Id.* at 81-82 (emphasis added).

<sup>3</sup> Letter from Hon. Devin Nunes, Ranking Member, H. Permanent Select Comm. on Intelligence to Hon. Adam Schiff, Chairman, H. Permanent Select Comm. on Intelligence (Nov. 9, 2019).

<sup>4</sup> David Cohen, *Schiff: 'Ample evidence of collusion in plain sight,'* POLITICO (Apr. 21, 2019) (quoting Hon. Adam Schiff commenting on the Mueller investigation), Kent Forgy, *Schiff: There is still 'significant evidence of collusion,'* POLITICO (Mar. 24, 2019).

President Zelensky. These actions and disingenuous comments only further damage the credibility of this process.

Chairman Schiff's dishonest tactics were again on full display during Colonel Vindman's deposition. A thorough review of the October 29, 2019, transcript indicates Chairman Schiff, together with Colonel Vindman's counsel, worked to conceal certain relevant facts. Under the guise of protecting the whistleblower, the Chairman and the witness's counsel repeatedly shut down relevant questioning.<sup>5</sup> For example, on page 78 of a 340-page transcript, the witness's counsel objects to basic questions about who his client spoke with after the July 10 meeting between U.S. officials and Ukrainian officials.<sup>6</sup> As the Republican counsel explains, "I'm not asking for a list of names. I'm asking what about who he had communications with about the 7/10 meeting?"<sup>7</sup> This indicates counsel was probing the witness's impressions of conversations he was having after an important meeting involving Ambassador Bolton and Ukrainian officials.

Chairman Schiff ruled "the witness may refrain from identifying any employee, detailee, or contractor of the Intelligence Community."<sup>8</sup> This is a sweeping edict covering numerous agencies and concealing relevant facts. It is also clear from the transcript that the witness's counsel had concocted this plan to conceal information with Chairman Schiff's staff, in advance of the deposition. Chairman Schiff stated: "You may continue with the advisory that pursuant to the instruction of the witness' counsel he will not go into questions about Intelligence Community employees, detailees, or contractors."<sup>9</sup>

Chairman Schiff both allowed and condoned contemptuous behavior on the part of the witness and his counsel. Much later in the deposition, Intelligence Committee Member Jim Jordan tried to introduce a modicum of fairness to the process. He said:

MR. JORDAN: Mr. Chairman, if I could, just for the second here, we just got a resolution that I think is going to be voted on Thursday, and it says at some point in that resolution, whatever winds up happening here is going to go to the Judiciary Committee. They are going to want to call witnesses at some point.

We would like to give them some help in who they want to call. One of the things you do to determine that is ask the who, what, when, where, why questions of whatever witnesses you allow us to have in here. **And all we've been asking is, who did Colonel Vindman talk to after important events that happened this past July?** That's all we're asking.

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<sup>5</sup> Deposition Transcript of Lieutenant Colonel Alexander S. Vindman [hereinafter Vindman Deposition] (Oct. 29, 2019).

<sup>6</sup> *Id.* at 78.

<sup>7</sup> *Id.* at 78.

<sup>8</sup> *Id.* at 80.

<sup>9</sup> *Id.* at 82.

**And you're saying you're not going to let him answer, not based on any classification concern, solely because you have some concern that we're trying to get to the whistleblower, which isn't the case. We're trying to get to a list of witnesses that we think will be helpful at some point if, in fact, this goes to the Judiciary Committee.**

**THE CHAIRMAN: I've made my ruling.**<sup>10</sup>

In short, Chairman Schiff is ignoring existing procedures, making up new rules, and suppressing valid questions from the minority side of the aisle.

#### **A. Colonel Vindman's Counsel Refuses to Allow Any Rational Workarounds**

At one point during the closed-door deposition, counsel for the minority tried to ask basic factual questions, and Chairman Schiff rejected these. He did not even allow a sensible workaround—the witness could identify people as “Person 1, Person 2,” and so forth. Below is the pertinent portion of the transcript:

**MR. JORDAN:** Colonel Vindman, the question from Counsel Castor is real simple: How many individuals did you talk to after the July 25th call after your meeting with Mr. Eisenberg, and how many times did you talk to them? So that's what we're looking for, how many people and how many times?

**MR. CASTOR:** So person one, two, three, four -- just let me finish and then person one, two, three, four, or person one, and then communication one, two, three, four. Was it one person, one communication?

**MR. VOLKOV:** Yeah, and we'll object to that. He's already testified as to one conversation that he did have, which was with the -- Mr. Kent, okay, from the State Department.<sup>11</sup>

In a matter as serious as an impeachment inquiry—even this one-sided inquiry—it is unbelievable the Chairman would condone such contemptuous behavior—unless, he is afraid of the truth. The totality of the transcript, and the severity of the Chairman's refusal to permit basic lines of inquiry, indicate there is more to the story than the Chairman wishes to make known. This is entirely consistent, of course, with the Chairman's practice of selectively leaking details he finds favorable.

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<sup>10</sup> *Id.* at 276 (emphasis added).

<sup>11</sup> *Id.* at 278 (emphasis added).

### **B. Colonel Vindman's Counsel Allows his Client to Engage in Contemptuous Behavior**

A witness compelled to appear before Congress must answer the question propounded.<sup>12</sup> The level of obstruction by Colonel Vindman's counsel did not wane as the deposition proceeded. In fact, the Chairman's ruling was expanded. The witness was prohibited from answering the number of people with whom he discussed the July 25 phone call between President Trump and President Zelensky, much less their identities.<sup>13</sup> Following is the relevant portion of the transcript:

MR. CASTOR: We're just trying to find out if it's one person or five people.

MR. VOLKOV: Look, I was a prosecutor for 25 years, sir, okay? I handled confidential informants. I handled very risky situations. What these questions are designed to do, you've already -- you don't need this. You don't need to go down this. And, look, you guys can -- if you want to ask, you can ask questions about his conversation with Mr. Kent. That's it. We're not answering any others.<sup>14</sup>

This level of obstruction continued as counsel instructed his client to withhold important information from Members and staff. To allow this level of contempt by a witness, under subpoena, is unprecedented. Case law permits witnesses before Congress to decline to answer certain questions that would infringe on their First Amendment rights or those of another group related to the witness.<sup>15</sup> Of course, if a witness makes a valid assertion of his or her Fifth Amendment privilege, the congressional witness can avoid questions.<sup>16</sup> Here, those constitutional privileges did not apply. The witness cannot decline to answer basic questions without asserting a valid constitutional objection or a privilege recognized by the Intelligence Committee, as noted by Majority counsel at the beginning of the hearing.<sup>17</sup>

### **III. Conclusion and Questions for the Chairman**

On December 18, 1998, now-Speaker Pelosi stood in the well of the House and said the following:

Today, the Republican majority is not judging the President with fairness but impeaching him with a vengeance. In the investigation of the President fundamental principles of which Americans hold dear: privacy, fairness,

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<sup>12</sup> *Rumely v. U.S.*, 345 U.S. 41, 48 (1953) (determining the contours of a citizen's duty to comply with a congressional subpoena).

<sup>13</sup> Vindman Deposition at 280-281.

<sup>14</sup> *Id.* At 280.

<sup>15</sup> See generally *Rumely v. U.S.*, 345 U.S. 41 (1953).

<sup>16</sup> See *Watkins v. United States*, 354 U.S. 178 (1957); See also *Quinn v. United States*, 349 U.S. 155, 162 (1955).

<sup>17</sup> See Vindman Deposition at 11-12, Remarks by Counsel Daniel Goldman. ("You may only refuse to answer a question to preserve a privilege recognized by the committee. If you refuse to answer a question on the basis of privilege, staff may either proceed with the deposition or seek a ruling from the chairman on the objection. If the chairman overrules any such objection, you are required to answer the question.").

checks and balances have been seriously violated ... we are here today because the Republicans in the House are paralyzed with hatred of President Clinton.<sup>18</sup>

These same remarks could be applied to the process transpiring today. However, as I detailed in my previous letters to you, this Democrat impeachment crusade *lacks* the due process protections afforded in all past presidential impeachments, including those protections afforded to President Clinton by Republicans. It is an unfair process for many other reasons, chief among them the fact that minority questions are not being answered in depositions and the President's counsel has had no voice in the fact-gathering phase of this impeachment inquiry. To rectify these deficiencies, please provide answers to the following questions:

1. Will you demand Chairman Schiff provide all evidence in the Intelligence Committee's custody to the Judiciary Committee, including unredacted transcripts of depositions?
2. Will you require that certain witnesses answer pertinent questions they were previously directed by Chairman Schiff not to answer?
3. Will you commit to allowing the President's counsel to call witnesses?
4. With regard to Colonel Vindman, when this matter is committed to Judiciary, will you require that he answer all relevant, factual minority questions, including those not previously answered?

As noted in my prior, unanswered letters, I reserve the right to request documents, additional witnesses, and participation of the President's counsel. Democrats have been fond of accusing the Administration of obstruction throughout this so-called "impeachment inquiry." In that vein, I will consider a failure to respond to my questions as evidence of your intent to continue with this denial of fundamental fairness.<sup>19</sup> I look forward to your response to my November 12, 14, and today's letter.

Sincerely,



Doug Collins  
Ranking Member

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<sup>18</sup> Remarks of Hon. Nancy Pelosi, House of Representatives, Dec. 18, 1998. *available at* <https://www.c-span.org/video/?c4818805/user-clip-pelosi-impeachment-1998>.

<sup>19</sup> *See also* Letter from Hon. Devin Nunes, Ranking Member, H. Permanent Select Comm. on Intelligence to Hon. Adam Schiff, Chairman, H. Permanent Select Comm. on Intelligence (Nov. 9, 2019).