

BUSINESS MEETING

Tuesday, September 17, 2019

U.S. House of Representatives,
Permanent Select Committee on Intelligence,
Washington, D.C.

The committee met, pursuant to call, at 6:30 p.m., in Room HVC-304, Capitol Visitor Center, the Honorable Adam Schiff (chairman of the committee) presiding.

Present: Representatives Schiff, Himes, Sewell, Carson, Speier, Quigley, Swalwell, Castro, Heck, Welch, Maloney, Demings, Krishnamoorthi, Nunes, Conaway, Turner, Wenstrup, Stewart, Crawford, Stefanik, Hurd, and Ratcliffe.

Staff Present: Timothy Bergreen, Staff Director; Maher Bitar, General Counsel; Carly Blake, Deputy Staff Director; Thomas Eager, Professional Staff Member; William Evans, Oversight Counsel; Patrick Fallon, Senior Investigator; Daniel Goldman, Senior

Advisor and Director of Investigations; Abigail Grace, Professional Staff Member; Nicolas Mitchell, Investigative Counsel; Daniel Noble, Senior Investigative Counsel; Diana Pilipenko, Professional Staff Member; Kathy Suber, Subcommittee Staff Director; Aaron Thurman, Subcommittee Staff Director; Raffaella Wakeman, Professional Staff Member and Counsel; Rheanne Wirkkala, Deputy Director for Investigations; Laura Casulli, Deputy General Counsel, Minority; Nick Ciarlante, Budget Director and Investigations Coordinator, Minority; William Flanigan, Professional Staff Member, Minority; Meghan Green, Senior Counsel, Minority; and Allen Souza, Staff Director and Deputy General Counsel, Minority.

THE CHAIRMAN: All right. Okay. A quorum being present, the Committee will come order. Without objection, the chair is authorized to declare a recess at any time.

We have one order of business today, which is a motion to release certain executive session materials, specifically, certain transcripts of witness interviews conducted during the 115th Congress.

If we have time also, I would love to give the Committee a bit of an update on the whistleblower complaint issue. But let's see if we can get through the first motion hopefully quickly.

By way of background during the last Congress, the Committee conducted numerous witness interviews as part of its authorized investigation into Russian interference in the U.S. election. The interviews are of significant public interest and national importance, many of these were conducted behind closed doors, but were transcribed for future release.

At a business meeting September 28, 2018, the Committee voted to transmit 53 executive session transcripts to the Office of Director of National Intelligence for the sole purpose of a classification review, and for the public release of those transcripts following the completion of ODNI's classification review. Specifically, that mode in September authorized the public release of all the transcripts in one batch. Following the receipt of all the transcripts in the ODNI's classification review and resolution of any proposed redactions. The then majority transmitted the 53 transcripts to ODNI in or about November of 2018.

In March of 2019, the current majority learned for the first time that ODNI intended to share the HPSCI transcripts with the White House because they claimed it

implicated White House equities. In response, the committee directed that the ODNI refrain from sharing the transcripts with the White House and the apparent recognition that the transcripts are the property of the committee. The ODNI has complied with that directive.

According to ODNI, these White House equities found the two categories. Number one, White House originated classified information. And, two, information subject to executive privilege. I, the majority staff, ODNI, and the White House have engaged in extensive negotiations over the past 6 months to try to resolve these two issues.

During the negotiations, the Committee informed ODNI and the White House that we were willing to permit a narrowly tailored review for White House originated classified information, since such a review is tethered to the classification review the Committee requested. However, we were and remain unwilling to allow any review for executive privilege, and this is for multiple reasons.

First, the Committee asked ODNI to review committee materials solely for classification review and nothing more. Executive privilege review is not part of a classification review, was not part of the Committee's request to ODNI. These transcripts are congressional materials, not executive branch materials. And the White House cannot use its overly expansive view of executive privilege to claw back information already provided to Congress.

Second, the committee does not recognize any after the fact assertion of executive privilege where, number one, the White House had ample opportunity to assert privilege before and during the interviews. And, number two, nevertheless, allowed witnesses to voluntarily testify before a coequal branch of government. And, number three, had no agreement with the Committee authorizing post-hoc assertions of

executive privilege, thus, there is no basis for an executive privilege review.

Because of this issue of executive privilege and at the direction of the White House, ODNI has refused to complete its review of the remaining HPSCI transcripts, which it is holding hostage because the White House has tied its desired executive privilege review to ODNI's classification review. According to the White House, ODNI has, quote, fully completed the review of 43 of 53 transcripts, closed quote, and provided proposed redactions for these transcripts that were not already unclassified. The motion, therefore, authorizes the release of those transcripts.

As noted above, the ODNI as refused to return the remaining 10 transcripts to the Committee because they claim that the transcripts implicate White House equities, although, ODNI has informed the Committee that 2 of those 10 transcripts are unclassified, and one contains For Official Use Only.

The White House has, in a sense, hijacked what should have been an uncontroversial straightforward review of congressional transcripts to identify and redact any classified information, and attempted to expand it into an unsolicited after the fact review for information purportedly protected by executive privilege. Negotiations now, after 10 months, are at an impasse and our patience has been exhausted.

Because the Committee's vote in September 2018 did not contemplate the White House's interference, and such a protracted review by ODNI, out of an abundance of caution we are taking another vote on the release of the transcripts today in order to release those that the ODNI has returned with proposed redactions, if any, as well as any that ODNI has informed us are unclassified.

The transcripts will be released with redactions for personally identifiable information, for staff names, and for information that ODNI has identified as Classified, For Official Use Only, or Law Enforcement Sensitive. The proposed motion authorizes

the public release of all 53 transcripts, but with certain caveats in order to protect national security.

In an abundance of caution and in order to protect classified information, including sources and methods, the Committee will not release any executive session interview transcripts that ODNI has informed the Committee include classified information, but has yet to return to the Committee with proposed redactions because of inappropriate interference by the White House. Those transcripts will only be released once any classified information has been identified and redacted in consultation with ODNI.

So, in sum, because of the White House's unsolicited and improper interference in the ODNI's classification review of the committee's transcripts. The ODNI's ensuing refusal to complete the review at the direction of the White House, the Committee has no choice but to take up today's proposed motion to publicly release the transcripts with all redactions provided by ODNI, prior to ODNI completing its classification review, and in the sequence determined at the direction of the chairman.

I now yield to the ranking member for any statements he would like to make.

MR. NUNES: Thank you, Mr. Chairman. Nearly a year ago this Committee met and authorized the public release of 53 transcripts related to the investigation into Russian active measures during the 2016 U.S. Presidential election. Subject to classification review by ODNI, to date, these 53 transcripts still have not been released due to ODNI dragging its feet and conducting the classification reviews. This is simply unacceptable.

The American people deserve to see the full picture and read these transcripts, many of which were used to support the Committee's investigative report on Russian interference in the 2016 U.S. Presidential elections, which was released to the public in

March 2018. These transcripts help correct the record related to many false reports that mischaracterized witness testimony and perpetuated Russian collusion narrative.

I urge the chairman to work with ODNI in order to expeditiously finalize the classification review on the remaining transcripts. I urge my colleagues to vote in favor of today's motion in order to release the transcripts ODNI has already reviewed for classification and look forward to public release of these transcripts.

I yield back.

THE CHAIRMAN: I thank the gentlemen. Consistent with the rules of procedure of the House and Committee and find that the public interest would be served, the Committee authorizes the chairman -- I so move the Committee to authorize the chairman to publicly release the executive session interview transcripts that the Committee sent to ODNI for classification review in the 115th Congress, and for which ODNI has either already proposed redactions to protect classified information or has determined to be unclassified.

This motion authorizes the chairman to release the transcripts with redactions as appropriate for, one, personally identifiable information; two, staff names; and three, information that ODNI on June 4 and 26, 2019, identified in their proposed redactions as Classified, For Official Use Only, or Law Enforcement Sensitive in order to protect national security interests.

In doing so, the motions grants the chairman discretion as to the timing of any release of one or more of the affected transcripts.

In an abundance of caution, and in order to protect classified information, including sources and methods, the chairman will not release executive session interview transcripts that ODNI has informed the Committee include classified information, but which ODNI has yet to return to the Committee with proposed redactions because of the

interference by the White House.

The chairman will be authorized to release the remaining transcripts once clarified information has been identified and redacted in consultation with ODNI.

All those in favor will say aye.

MR. CONAWAY: Mr. Chairman.

MR. CHAIRMAN: Mr. Conaway.

MR. CONAWAY: Could you give us the breakdown of what will actually be released? All 53, 43, 12, what is the actual numbers?

THE CHAIRMAN: The actual numbers, I believe there are 43 that have been returned to us with redactions.

MR. CONAWAY: And those will be released?

THE CHAIRMAN: They have been released, yes. They have been returned to us with either redactions or with the attestation that there is nothing classified in them. There are, I think, a couple others that they have not returned to us, but they have said are unclassified, and since we possess them, it is our intention to release those as well.

MR. CONAWAY: So 45?

THE CHAIRMAN: So that would be 45. I think that is it. And then the remaining --

MR. CONAWAY: The remaining ones we are still under a fist fight?

THE CHAIRMAN: We're going to have to still negotiate to try to get back --

MR. CONAWAY: Thank you, sir.

THE CHAIRMAN: Anything further?

MR. NUNES: I just want to make sure, just to clarify on the remaining eight, Mr. Chairman, that there will be some reasonable amount of time that you would release those. That they wouldn't be held back, you know, a week, days, something like that,

not -- I assume you would get those out as soon as possible, assuming that we reach a --

THE CHAIRMAN: Oh, yes, as soon as we reach an agreement. And if you can weigh in as well. That we sent these to ODNI for a declassification review and they need to send them back. And they can say, you know, the White House has its position, and the White House can discuss that with us. But all we are asking the ODNI is to tell us what is classified. So we will be releasing them as expeditiously as we can when we get the redactions back.

MR. NUNES: Thank you for the clarification.

THE CHAIRMAN: All those in favor say aye.

Those opposed, no.

In the opinion of the chair the ayes have it. The motion is agreed to. The motion is agreed to.

Let me just make a few comments about the whistleblower situation. We learned -- yes -- the Committee is adjourned.

[Whereupon, at 6:49 p.m., the committee was adjourned.]