

From: [Michael W. Kirk](#)
To: [Mitchell, Nicolas](#); [Chuck Cooper](#)
Cc: [Bitar, Maher](#); [Goldman, Daniel](#); [Noble, Daniel](#); [Grooms, Susanne Sachsman](#); [Kenny, Peter](#); [Bair, James](#); [Carey, Laura](#); [Wirkkala, Rheanne](#)
Subject: RE: Dr. Kupperman Deposition Subpoena - House Impeachment Inquiry
Date: Friday, October 25, 2019 9:40:29 PM
Attachments: [Doc. 1-2 Ex. B.pdf](#)
[Doc. 1 Complaint.pdf](#)
[Doc. 1-2 Ex. A.pdf](#)

Nick -

We did receive the subpoena. However, we subsequently received a letter from the White House Counsel informing us that the President has asserted absolute immunity from compelled congressional testimony and instructed Dr. Kupperman not to appear and testify in response to the subpoena.

Dr. Kupperman cannot satisfy the competing and irreconcilable demands of both the Legislative and Executive Branches, and we are aware of no controlling judicial authority definitively establishing which Branch's command should prevail. Constitutional disputes between the Legislative and Executive Branches should be adjudicated by the Judicial Branch, not by private citizens like Dr. Kupperman. For this reason, Dr. Kupperman has filed an action in the United States District Court for the District of Columbia requesting that the Court issue a Declaratory Judgment determining whether he should comply with the House's subpoena or with the President's assertion of immunity and instruction that he not appear and testify. Dr. Kupperman takes no position on whether the command of the Legislative Branch or the command of the Executive Branch should prevail; he seeks only to carry out whichever constitutional obligation the Judicial Branch determines to be lawful and binding on him. I have attached a copy of the complaint.

Pending the courts' determination as to which Branch should prevail, Dr. Kupperman will not effectively adjudicate the conflict by appearing and testifying before the Committees.

Best,

Michael

From: Mitchell, Nicolas [REDACTED]
Sent: Friday, October 25, 2019 4:14 PM
To: Michael W. Kirk [REDACTED]; Chuck Cooper [REDACTED]
Cc: Bitar, Maher [REDACTED]; Goldman, Daniel [REDACTED]; Noble, Daniel [REDACTED]; Grooms, Susanne Sachsman [REDACTED]; Kenny, Peter [REDACTED]; Bair, James [REDACTED]; Carey, Laura [REDACTED]

[REDACTED]; Wirkkala, Rheanne [REDACTED]
Subject: Dr. Kupperman Deposition Subpoena - House Impeachment Inquiry

Mr. Kirk and Mr. Cooper:

Pursuant to the House of Representatives' impeachment inquiry, we are hereby transmitting a subpoena that compels your client, Dr. Charles Kupperman, to appear at a previously scheduled deposition on **October 28, 2019, at 9:30 a.m., at The Capitol, HVC-304.**

The subpoena is being issued by the Permanent Select Committee on Intelligence under the Rules of the House of Representatives in exercise of its oversight and legislative jurisdiction and after consultation with the Committee on Foreign Affairs and the Committee on Oversight and Reform. The testimony shall be part of the House's impeachment inquiry and shared among the Committees, as well as with the Committee on the Judiciary as appropriate. Your client's failure or refusal to comply with the subpoena, including at the direction or behest of the President, the White House, or the State Department shall constitute evidence of obstruction of the House's impeachment inquiry and may be used as an adverse inference against the President.

In light of recent attempts by the Administration to direct witnesses not to appear voluntarily for depositions, the enclosed subpoena compels your client's mandatory appearance.

Enclosed are copies of the House Deposition Rules, Section 103(a) of H. Res. 6, and HPSCI's Rules of Procedure for your information.

Kindly confirm receipt. Thank you.

Nicolas A. Mitchell
Senior Investigative Counsel
House Permanent Select Committee on Intelligence
Office: (202) 225-[REDACTED]

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