

VIA EMAIL

November 18, 2019

Michael M. Purpura, Esq.
Deputy Assistant to the President and Deputy Counsel to the President
The White House
1600 Pennsylvania Avenue NW
Washington, D.C.

Dear Mr. Purpura:

I write to follow-up on our exchange of letters on Sunday, October 13 and Monday, October 14, 2019 concerning the testimony of our client Dr. Fiona Hill.

As you know, following our exchange of letters, the U.S. House of Representatives' Permanent Select Committee on Intelligence, in consultation with the Committee on Foreign Affairs and Committee on Oversight and Reform (collectively, the "Committees"), issued a subpoena for Dr. Hill's testimony. Dr. Hill appeared before the Committees and provided testimony on October 14, 2019 pursuant to that subpoena. At her deposition, I made clear to the Committees that Dr. Hill's testimony was offered subject to our letter exchange and any rulings made by the Chair. Oct. 14, 2019 Hill Dep. Tr. at 18:20–19:6.

You have now had an opportunity to review Dr. Hill's testimony, as it was publicly released on Friday, November 8. We have not received any communications from you since either Dr. Hill's testimony on October 14 or its public release on November 8. We continue to disagree with regard to the parameters of executive privilege as you articulated it on October 14 and our prior telephone calls.¹ And as you know, we do not believe that it is incumbent on the

¹ Notably, the privilege context has changed in two important ways since our prior communications. First, the Committees have released 13 transcripts from current and former administration officials, totaling 3,514 pages of testimony. Chad Pergram (@ChadPergram), Twitter (Nov. 16, 2019, 4:17 PM), <https://twitter.com/ChadPergram/status/1195813182830522370>. There cannot logically be any assertion of privilege over the information contained in these publicly available transcripts. See Letter from Lee S. Wolosky to Michael M. Purpura & Patrick F. Philbin, Deputy Counsels to the President at 2 (Oct. 13, 2019) ("[M]atters which have been made public . . . are likely not protected as confidential by executive privilege because they are, by their very nature, no longer confidential."); *id.* at 1 (quoting *Nixon v. Sirica*, 487 F.2d 700, 761 n.128 (D.C. Cir. 1973) (MacKinnon, J., concurring and dissenting in part) ("Naturally, if a document or a tape is no longer confidential because it has been made public, it would be nonsense to claim that it is privileged . . .")). Second, in your October 14 letter, you wrote that "even if it were the case that executive privilege operates differently in connection with an impeachment inquiry, there is no ground for Dr. Hill to believe that she may disclose privileged information on that basis" as "the House has not authorized any committee to conduct an impeachment inquiry." Letter from Michael M. Purpura, Deputy Counsel to the President, to Lee S. Wolosky at 2–3 (Oct. 14, 2019). On October 31, 2019, the House directed the Committees "to continue their ongoing investigations as part of the existing House of Representatives inquiry into whether sufficient grounds exist for the House of Representatives to exercise its Constitutional power to impeach" President Trump. H. Res. 660, 116th Cong. (2019). We trust that the passage of this resolution obviates this specific concern. See also *In re Application of Comm. on Judiciary, U.S. House of Representatives, for an Order Authorizing Release of Certain Grand Jury Materials*, --- F. Supp. 3d ---, 2019 WL 5485221, at *27–30 (D.D.C. Oct. 25, 2019).

witness or her counsel to assert the Executive Branch's privilege; we continue to believe the issue of participation of agency counsel in the taking of witness testimony remains an issue that must be resolved between the executive and legislative branches. We nonetheless set forth the White House's position with regard to executive privilege, and we entered your October 14 letter into the record of the proceedings. Oct. 14, 2019 Hill Dep. Tr. at 18:20–19:6 (“MR. WOLOSKY: . . . I would like to enter into the record a letter of today's date, October 14, 2019, from Michael Purpura of the White House Counsel's [O]ffice governing the subjects or addressing the subjects of executive privilege and classification, along with a letter from me to Mr. Purpura dated October 13, 2019. I'd like to make it clear that Dr. Hill is testifying today subject to the contents . . . of the White House Counsel's Office's letter, also pursuant to the subpoena she received today, and pursuant to any rulings that are made by the chair during the pendency of these proceedings.”).

Moreover, regardless of any disagreement on the scope and extent of the applicable privileges, the substance of Dr. Hill's testimony clearly fell within the guidance as to specific subject matters that you provided telephonically and in your October 14 letter. Dr. Hill has not disclosed any classified information (*see* Oct. 14, 2019 Hill Dep. Tr. at 361:11–18, 362:3–8, 363:10–21), and in at least one instance she refused to answer a question because it could have called for the disclosure of classified information. *See id.* at 87:19–20, 138:13–16. Further, Dr. Hill did not (and could not) provide the Committees with any information about “diplomatic communications or to deliberative processes related to the [July 25] call” between the President and President Zelensky. *See* Letter from Michael M. Purpura to Lee S. Wolosky, *supra* note 1, at 2. As Dr. Hill testified, she was not aware that the July 25 call was taking place and did not participate in any preparation for that call before the conclusion of her duties at the White House on July 19. *See* Oct. 14, 2019 Hill Dep. Tr. at 88:22–89:8. Nor has Dr. Hill provided any testimony concerning non-public information about “communications between the President and foreign heads of state and other diplomatic communications.” *See* Letter from Michael M. Purpura to Lee S. Wolosky, *supra* note 1, at 1; Oct. 14, 2019 Hill Dep. Tr. at 12:11–14 (statement of Rep. Jordan), 138:13–16.

As you are likely aware, Dr. Hill has been invited to provide testimony in an open hearing before the House of Representatives' Permanent Select Committee on Intelligence on Thursday, October 21. To the extent that you have any additional concerns that you would like to raise concerning the issue of executive privilege before that date, please let us know. Again, we reiterate that Dr. Hill remains mindful of her legal obligations with regard to classified information, and she intends to strictly abide by those obligations.

We appreciate your engagement with us throughout this process, and again welcome your views, including any potential areas of disagreement that you may have.

Thank you,

/s/ Lee S. Wolosky

Lee S. Wolosky
