

UNCLASSIFIED

MEMORANDUM

November 12, 2019

To: Committee Members
Fr: Chairman Adam Schiff
Re: Procedures for Impeachment Inquiry Hearings

At 10:00 a.m. tomorrow—Wednesday, November 13, 2019—in Room 1100 of the Longworth House Office Building, the Permanent Select Committee on Intelligence will hold its first of several open hearings as part of the public phase of the House of Representatives’ impeachment inquiry. Like the depositions preceding them, these hearings will address subjects of profound consequence for the Nation and the functioning of our government under the Constitution. The House’s inquiry into whether grounds exist for President Trump’s impeachment has been, and will continue to be, a sober and rigorous undertaking. The purpose of this memo is to provide Committee Members with information regarding procedures to be observed during the open hearings.

The hearings will be conducted in a manner that ensures that all participants are treated fairly and with respect, mindful of the solemn and historic task before us. The hearings will therefore adhere to the Rules of the House and of the Committee, and to H. Res. 660, which established the format the Committee will use during the hearings. These procedures are consistent with those governing prior impeachment proceedings and mirror those used under Republican and Democratic House leadership for decades.

- **Attendance and Participation.** As provided by House Rule XI and H. Res. 660, only Members of the Committee may participate in hearings conducted by the Committee.¹ Although Members who are not assigned to the Committee are not permitted to sit on the dais, make statements, or question witnesses, they may of course sit in the audience. Seating for non-Committee Members wishing to attend will be available.
- **Decorum.** The Code of Official Conduct for Members of Congress requires that every Member “shall behave at all times in a manner that shall reflect creditably on the House.”² As Chair, I will do my utmost during the hearings to safeguard the rights of the witnesses and all Members of the Committee, just as Committee Members should strive to conduct themselves with “dignity, propriety, courtesy, and decorum.”³

¹ See *Rules of the House of Representatives*, 116th Cong. Rule XI, Cl. 2(g)(2)(C) and 2(j)(2)(A) (Jan. 11, 2019) (“House Rules”); H. Res. 660, 116th Cong. § 2 (Oct. 31, 2019) (“H. Res. 660”).

² House Rule XXIII, Cl. 1.

³ House Rule XI (4)(c).

- Opening Statements. House Rules do not provide for opening statements by Members,⁴ but, consistent with Committee practice, the Committee will allow equal time for the Chairman and Ranking Member to make opening statements at the beginning of the first hearing.
- Swearing of Witnesses. Witnesses will be sworn in before they testify and will have the opportunity to deliver an opening statement.⁵
- Extended Questioning by the Chair, Ranking Member, and Committee Counsels. Pursuant to H. Res. 660, the Chair and Ranking Member may conduct at the outset of each open hearing extended rounds of questioning for periods of up to 90 minutes, as determined by the Chair and split evenly between the two sides.⁶ As specified in H. Res. 660, the Chair and Ranking Member may not yield time to other Members during these extended question periods, though either may yield time to Majority and Minority Committee Counsels, respectively.

A similar rule put in place initially by House Republican leadership in 1997 authorized committees to allow extended periods of time for the questioning of witnesses, in excess of traditional five-minute rounds. The 1997 revision also allowed staff to question witnesses at hearings.⁷ Under this approach, which was also adopted in subsequent Congresses, staff questioned witnesses during the Clinton impeachment hearings⁸ and in numerous other investigative hearings.⁹

As Chairman, I expect to yield extensive time to Majority Committee Counsel during the extended questioning periods permitted under H. Res. 660. After I announce the conclusion of extended questioning, Committee Members will be recognized for customary five-minute rounds pursuant to House Rule XI.

⁴ House Rule XI(2)(k)(1).

⁵ See House Permanent Select Committee on Intelligence, *Rules of Procedure for the Permanent Select Committee on Intelligence*, 116th Cong. Rule 8(b) (authorizing the Chair to “require testimony of witnesses to be given under oath or affirmation.”).

⁶ H. Res. 660 § 2(2).

⁷ H. Res. 5, 105th Cong. § 12 (Jan. 7, 1997) (authorizing Committees to adopt a rule allowing Committee staff to question hearing witnesses).

⁸ See, e.g., House Committee on the Judiciary, *Impeachment: William Jefferson Clinton, President of the United States*, 105th Cong. (Nov. 19, 1998) (online at www.govinfo.gov/content/pkg/CHRG-105hhrg53367/pdf/CHRG-105hhrg53367.pdf).

⁹ See, e.g., House Committee on Government Reform, *The FBI’s Handling of Confidential Informants in Boston: Will the Department of Justice Comply with Congressional Subpoenas?*, 107th Cong. (Dec. 13, 2001) (online at www.govinfo.gov/content/pkg/CHRG-107hhrg78051/pdf/CHRG-107hhrg78051.pdf); House Committee on Government Reform, *The History of Congressional Access to Deliberative Department of Justice Documents*, 107th Cong. (Feb. 6, 2002) (online at www.govinfo.gov/content/pkg/CHRG-107hhrg78051/pdf/CHRG-107hhrg78051.pdf#page=465).

- Minority Witnesses. As set forth in H. Res. 660, the Committee’s Minority may request witnesses to testify during open hearings conducted by the Committee in connection with the impeachment inquiry.¹⁰ To allow for their full evaluation, H. Res. 660 provides that such requests should be submitted to the Chairman within 72 hours of the notice for the first hearing and include a “detailed written justification of the relevance of the testimony” of each requested witness.¹¹

On November 6, the Committee noticed its first public hearing, and on that same day, by letter, I asked that the Ranking Member submit any Minority requests in accordance with the resolution.¹² On November 9, the Ranking Member submitted minority witness requests.¹³ The Committee is evaluating the Minority’s requested witnesses and will give due consideration to witnesses within the scope of the impeachment inquiry.

The report submitted by the Committee on Rules to accompany H. Res. 660 sets forth the parameters of the investigation conducted by the Committee, in coordination with the Committees on Foreign Affairs and Oversight and Reform:

1. *Did the President request that a foreign leader and government initiate investigations to benefit the President’s personal political interests in the United States, including an investigation related to the President’s political rival and potential opponent in the 2020 U.S. presidential election?*
2. *Did the President—directly or through agents—seek to use the power of the Office of the President and other instruments of the federal government in other ways to apply pressure on the head of state and government of Ukraine to advance the President’s personal political interests, including by leveraging an Oval Office meeting desired by the President of Ukraine or by withholding U.S. military assistance to Ukraine?*
3. *Did the President and his Administration seek to obstruct, suppress or cover up information to conceal from the Congress and the American people evidence about the President’s actions and conduct?¹⁴*

¹⁰ H. Res. 660 § (3).

¹¹ *Id.*

¹² Letter from Chairman Adam Schiff to Ranking Member Devin Nunes, House Permanent Select Committee on Intelligence (Nov. 6, 2019) (online at https://intelligence.house.gov/uploadedfiles/20191106_-_hpsci_ch_letter_to_rm_re_witness_requests_-_9183653.pdf).

¹³ Letter from Ranking Member Devin Nunes to Chairman Adam Schiff, House Permanent Select Committee on Intelligence (Nov. 9, 2019) (online at https://republicans-intelligence.house.gov/uploadedfiles/rm_letter_to_chm_re_witness_request.pdf).

¹⁴ House Committee on Rules, *Directing Certain 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 Donald John Trump, President of the United States of America, and for Other Purposes*, 116th Cong. (2019) (H. Rept. 116-266), at 2.

As explained in my November 9, 2019, response to the Ranking Member, it is important to underscore that the House’s impeachment inquiry, and the Committee, will not serve as venues for any Member to further the same sham investigations into the Bidens or into debunked conspiracies about 2016 U.S. election interference that President Trump pressed Ukraine to undertake for his personal political benefit. Nor will the Committee facilitate any efforts by President Trump or his allies to threaten, intimidate, or retaliate against the whistleblower who courageously and lawfully raised concerns about the President’s conduct.¹⁵

- Whistleblower Protection and Confidentiality. The Committee has a long, proud, and bipartisan history of protecting whistleblowers—including from efforts to threaten, intimidate, retaliate against, or undermine the confidentiality of whistleblowers.

Among other authorities, the Intelligence Authorization Act of 2010 and the Intelligence Community Whistleblower Protection Act include procedures for Intelligence Community personnel to make protected disclosures to inspectors general across the Intelligence Community and to the congressional intelligence committees.¹⁶ Among other things, Intelligence Community personnel are shielded from any action constituting reprisal or the threat of reprisal for making disclosures in accordance with these procedures.

The statutory framework also prevents obstruction of lawful communications by federal employees with Congress, and of congressional proceedings.¹⁷ And, as mentioned above, the Code of Official Conduct for Members of Congress requires that every Member “shall behave at all times in a manner that shall reflect creditably on the House.”¹⁸ The Committee on Ethics has historically viewed this provision as “encompassing violations of law and abuses of one’s official position.”¹⁹

- Additional Background on Depositions. During the initial phase of this inquiry, there was discussion of the Committees’ deposition practices. The Committees’ depositions have been conducted under longstanding procedures enshrined in House Rules, expanded

¹⁵ Letter from Chairman Adam B. Schiff to Ranking Member Devin Nunes, House Permanent Select Committee on Intelligence (Nov. 9, 2019) (online at https://intelligence.house.gov/uploadedfiles/20191106_-_hpsci_ch_letter_to_rm_re_witness_requests_-_9183653.pdf).

¹⁶ See generally 50 U.S.C. § 3033, 5 U.S.C. § 8H; see also, e.g., 50 U.S.C. § 3234 (prohibiting certain reprisals for protected disclosures by IC personnel).

¹⁷ See, e.g., P.L. 116-6 § 713(a) (Feb. 15, 2019) (prohibiting funds appropriated by any law from being made available to pay the salary of an officer or employee of the “Federal Government” who “prohibits or prevents or attempts or threatens to prohibit or prevent” any federal employee from contacting or communicating with Members of Congress, on matters pertaining in any way to their employment or their department or agency); 18 U.S.C. § 1505 (criminalizing corrupt efforts to influence, obstruct, or impede or endeavor to influence, obstruct, or impede, “the due and proper administration of the law of any inquiry or investigation” by “either House, or any committee of either House or any joint committee of the Congress”).

¹⁸ House Rule XXIII, Cl. 1.

¹⁹ Committee on Standards of Official Conduct, *House Ethics Manual* (2008) (online at https://ethics.house.gov/sites/ethics.house.gov/files/documents/2008_House_Ethics_Manual.pdf).

repeatedly when Republicans were in the majority, and used by both Republicans and Democrats to gather evidence from career officials and political appointees.

For decades, House rules have authorized Committees to conduct closed depositions without agency counsel present. Over time, Republican majority Congresses repeatedly expanded this authority to additional committees.²⁰ In 2016, while seeking to expand this authority to all Committees, Rep. Jim Jordan, then-Rep. Mike Pompeo, and others explained the value of confidential depositions as an investigative tool:

The ability to interview witnesses in private allows committees to gather information confidentially and in more depth than is possible under the five-minute rule governing committee hearings. This ability is often critical to conducting an effective and thorough investigation.²¹

Under Republican leadership, deposition authority has also been granted to Committees for specific inquiries, such as the investigation into the 2012 terrorist attacks in Benghazi.²²

To preserve the integrity of investigations, it has been standard practice for depositions to remain confidential until their release by the committees. Indeed, during the Nixon and Clinton impeachments, the governing rules provided for information to remain confidential until release by the respective Committees.²³ Although some Republican-led Committees kept depositions confidential for an extended period, our Committee began releasing hearing transcripts within weeks of the depositions.²⁴

When investigating Democratic Administrations, Republican-led Committees have made liberal use of deposition authority. For example, a single Committee, the Committee on Government Reform and Oversight, deposed 141 officials in the Clinton Administration.

²⁰ See, e.g., H. Res. 5, 114th Cong. (Jan. 6, 2015) (expanding deposition authority to the Committees on Energy and Commerce, Financial Services, Science, Space and Technology, and Ways and Means); H. Res. 5, 115th Cong. (Jan. 3, 2017) (expanding deposition to additional committees).

²¹ House Select Committee on the Events Surrounding the 2012 Terrorist Attacks in Benghazi, *Final Report of the House Select Committee on the Events Surrounding the 2012 Terrorist Attacks in Benghazi*, 114th Cong. (2016) (H. Rept. 114-848), at 404-05.

²² H. Res. 567, 113th Cong. (May 8, 2014).

²³ See, House Committee on the Judiciary, *Impeachment of William Jefferson Clinton, President of the United States*, 105th Cong. (1998) (H. Rept. 105-830), at 307; Deschler's Precedents of the U.S. House of Representatives, 94th Cong., 2nd Sess., 1977, Vol. 3 Ch. 14, Sec. 6, at 2050 (discussing confidentiality procedures adopted during Nixon impeachment proceedings).

²⁴ For example, in 2015, more than a year after the commencement of the Benghazi investigation, Chairman Trey Gowdy stated: “[T]he Committee does not plan to release the transcript of any witnesses. . . . Releasing transcripts can impact the recollections of other witnesses, jeopardize the efficacy of the investigation, alert witnesses to lines of inquiry best not made public, and publicize personal information.” Letter from Chairman Trey Gowdy to Ranking Member Elijah Cummings, House Select Committee on Benghazi (June 22, 2015) (online at <https://archives-benghazi-republicans-oversight.house.gov/sites/republicans.benghazi.house.gov/files/TG%20letter%20to%20EEC%206.22.15.pdf>).

These included depositions of senior Executive Branch officials, including multiple White House Chiefs of Staff and White House Counsels.²⁵

No Member of our Committee or the other two Committees participating in these joint depositions has been excluded. To the contrary, all Members of these Committees have had equal opportunity to attend, many have chosen to participate, and questioning has been equally divided between the majority and minority. Together, more than 100 Members of these three Committees, including 48 Republican Members, were able to attend.

Consistent with House Rules and longstanding practice, Members who do not sit on any of the three relevant Committees have not been permitted to attend depositions.²⁶ The deposition rules regarding confidentiality and Member attendance adopt the same approach put in place during Republican majorities.²⁷ Similarly, the rules governing the Clinton impeachment proceedings limited deposition attendance to Members of the relevant Committee.²⁸

²⁵ Committee on Government Reform, Democratic Staff, *Congressional Oversight of the Clinton Administration* (Jan. 17, 2006) (online at <https://wayback.archive-it.org/4949/20141031200116/http://oversight-archive.waxman.house.gov/documents/20060117103516-91336.pdf>).

²⁶ House Committee on Rules, *116th Congress Regulations for Use of Deposition Authority* (Jan. 25, 2019).

²⁷ *See, e.g.*, House Committee on Rules, 115th Congress Staff Deposition Authority Procedures (Jan. 13, 2017). In one noteworthy incident involving enforcement of these rules, Oversight Committee Chairman Darrell Issa was escorted out of a deposition of the Benghazi Committee by that Committee's Chairman, Trey Gowdy. *See Rep. Darrell Issa Escorted Out of Benghazi Panel*, NBC4 (June 16, 2015) (online at www.nbcwashington.com/news/national-international/Rep-Darrell-Issa-Escorted-Out-of-Benghazi-Panel-307739641.html).

²⁸ House Committee on the Judiciary, *Impeachment of William Jefferson Clinton, President of the United States*, 105th Cong. (1998) (H. Rept. 105-830), at 307.