

THE WHITE HOUSE

WASHINGTON

April 22, 2019

Robert N. Driscoll, Esq.
McGlinchey Stafford
1275 Pennsylvania Avenue N.W., Suite 420
Washington, D.C. 20004

Dear Mr. Driscoll:

As you are aware, on April 2, 2019, the House Committee on Oversight and Reform (the “Committee”) issued a subpoena to your client, former White House Personnel Security Director Carl Kline, seeking his appearance at a deposition on April 23, 2019. The Committee intends to seek, among other things, “information concerning the processing of security clearances within the Executive Office of the President.” Letter from Elijah E. Cummings, Chairman, to Mr. Robert N. Driscoll (Apr. 18, 2019).

The Committee intends to apply Committee Rule 15(e) to bar any representative from the Office of Counsel to the President from attending Mr. Kline’s deposition. Letter from Elijah E. Cummings, Chairman, to Pat Cipollone, Counsel to the President (Apr. 22, 2019) at 2. Consistent with the position of past Administrations, if the Committee goes forward with the deposition, a representative from the Office of Counsel to the President should attend and represent the interests of the Executive Office of the President. *See Representation of White House Employees*, 4B Op. O.L.C. 749, 754 (1980).

We agree with and adopt the Department of Justice’s views on this issue, as articulated in its April 9, 2019 letter to the Committee. *See* Letter from Stephen E. Boyd, Assistant Attorney General, to Elijah E. Cummings, Chairman (Apr. 9, 2019). Consistent with that view, whenever the Committee takes the deposition of a current or former White House employee, the White House “has a strong interest in ensuring that the questioning is limited to the proper scope, the information provided on its behalf is accurate and complete, and any ambiguity or confusion is promptly resolved.” *Id.* at 2. More importantly, without a representative attending the deposition, the White House cannot “protect the constitutional equities of the Executive Branch,” *id.*, or ensure that the disclosure of any information subject to executive privilege is properly authorized. Further, the Executive Branch “has a fundamental interest in ensuring that its officials are not pressed into revealing privileged information . . . or pressed into responding to inquiries that are beyond Congress’s oversight authority[.]” *Id.*; *see also Authority of Agency Officials to Prohibit Employees from Providing Information to Congress*, 28 Op. O.L.C. 79, 80–82 (2004) (discussing Executive Branch authority to supervise employee disclosures of privileged and other information to Congress).

Because this proposed action by the Committee unconstitutionally encroaches on fundamental Executive Branch interests, on April 18, 2019, the White House informed the

Robert N. Driscoll, Esq.

Page 2

Committee that Mr. Kline would be instructed not to appear on April 23, 2019 unless the Committee will allow a representative of the Office of Counsel to the President to attend. Letter from Michael M. Purpura, Deputy Counsel to the President, to Elijah E. Cummings, Chairman (Apr. 18, 2019). On April 22, 2019, the Committee responded that “[t]he Committee will not permit a representative from [this] office to attend the deposition.” Letter from Elijah E. Cummings, Chairman, to Pat Cipollone, Counsel to the President (Apr. 22, 2019) at 2. Accordingly, this letter serves to inform you that Mick Mulvaney, Acting Chief of Staff to the President, has directed Mr. Kline not to appear on April 23, 2019. I respectfully request that you communicate this instruction to Mr. Kline. The Department of Justice is aware of and concurs with the legal position taken by the White House that Mr. Kline does not need to appear for his deposition if no representative of this office is permitted to attend.

Please contact me if you have any questions or would like to discuss these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael M. Purpura". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael M. Purpura
Deputy Counsel to the President