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COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

SELECT SUBCOMMITTEE ON THE CORONAVIRUS PANDEMIC

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, D.C.

INTERVIEW OF: DAVID MORENS, M.D.

December 29, 2023

The Interview Commenced at 10:38 a.m.

26

Appearances

27

28

For the SELECT SUBCOMMITTEE ON THE CORONAVIRUS PANDEMIC:

29

MITCH BENZINE, Staff Director

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ERIC OSTERHUES, Majority Counsel

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██████████ Minority Senior Counsel

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For the COMMITTEE ON ENERGY AND COMMERCE:

34

JOHN STROM, Majority Counsel

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ALAN SLOBODIN, Majority Counsel

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██████████ Minority Counsel

37

38

For the U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES:

39

TARA GANAPATHY, Senior Counsel

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DARIA BERSTELL, Legislative Analyst

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JESSICA CREERY, NIH

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43

For the Witness:

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51	Exhibits	
52	Exhibit No.	Page No.
53	1 Memorandum dated December 28, 2023,	
54	to Dr. David M. Morens, M.D.	
55	from Melanie Anne Egorin	10
56	2 Title 5 - Government Organization and	
57	Employees, page 844	12
58		

59 P R O C E E D I N G S

60 Mr. Benzine. We can go on the record.

61 This is a transcribed interview of Dr. David Morens,
62 conducted by the House Select Subcommittee on the Coronavirus
63 Pandemic, pursuant to House Resolution 5 and the rules of the
64 Committee on Oversight and Accountability.

65 This interview was requested by Chairman Brad Wenstrup as
66 part of the Select Subcommittee's oversight of the federal
67 government's response to the coronavirus pandemic. Further,
68 pursuant to House Resolution 5, the Select Subcommittee has
69 wide-ranging jurisdiction, but specifically to investigate the
70 origins of the coronavirus pandemic, including, but not
71 limited to, the federal government's funding of gain of
72 function research.

73 At the discretion of Chairman Wenstrup, the staff of the
74 Committee on Energy and Commerce have been granted permission
75 to attend and participate in this interview.

76 Can the witness please state his name and spell his last
77 name for the record?

78 The Witness. It's David Michael Morens, M-O-R-E-N-S.

79 Mr. Benzine. Thank you, Dr. Morens. My name is Mitch
80 Benzine, and I am the staff director for the Majority Staff of
81 the Select Subcommittee. I want to thank you for coming in
82 today for this interview. We recognize that you are here
83 voluntarily, and we appreciate that.

84 Under the Select Subcommittee and Committee on Oversight
85 and Accountability's rules, you are allowed to have an
86 attorney present to advise you during this interview. Do you
87 have an attorney representing you in a personal capacity with
88 you today?

89 The Witness. Yes, I do.

90 Mr. Benzine. Will counsel please identify themselves?

91 Mr. Belevetz. I am Tim Belevetz with the law firm of
92 Ice Miller.

93 Mr. Benzine. Is there also an attorney present
94 representing the Department of Health and Human Services?

95 Ms. Ganapathy. Yes.

96 Mr. Benzine. Will counsel identify themselves?

97 Ms. Ganapathy. Tara Ganapathy, senior counsel, HHS.

98 Mr. Benzine. For the record, starting to my right, can
99 the additional staff please introduce themselves with their
100 name, title, and affiliation?

101 Mr. Strom. John Strom, senior counsel, House Energy and
102 Commerce Majority, Subcommittee on Oversight and
103 Investigations.

104 Mr. Osterhues. Eric Osterhues, chief counsel, Select
105 Subcommittee on the Coronavirus Pandemic, Majority Staff.

106 Mr. Slobodin. Alan Slobodin, chief investigative
107 counsel, House Energy and Commerce Committee, Majority Staff.

108 [REDACTED], counsel, Energy and Commerce

109 Minority Staff.

110 [REDACTED], senior counsel, Select
111 Subcommittee, Democratic staff.

112 Ms. Creery. Jessica Creery, NIH legislative office.

113 Ms. Berstell. Daria Berstell, HHS, Office of the
114 Assistant Secretary for Legislation.

115 Mr. Benzine. Thank you all.

116 EXAMINATION BY COUNSEL FOR THE SUBCOMMITTEE

117 BY MR. BENZINE.

118 Q Dr. Morens, before we begin, I would like to go
119 over the ground rules for this interview.

120 The way the interview will proceed is as follows: The
121 Majority and Minority Staff will alternate asking you
122 questions, one hour per side per round, until each side is
123 finished with their questioning. The Majority Staff will
124 begin and proceed for an hour, and then the Minority Staff
125 will have an hour to ask questions. We will then alternate
126 back and forth in this manner until both sides have no more
127 questions.

128 If either side is in the middle of a specific line of
129 questions, they may choose to end a few minutes past an hour
130 to ensure completion of that specific line of questioning,
131 including any pertinent follow-ups. In this interview, while
132 one member of the staff for each side may lead the
133 questioning, additional staff may ask questions.

134 There is a court reporter taking down everything I say
135 and everything you say to make a written record of the
136 interview. For the record to be clear, please wait until the
137 staffer questioning you finishes each question before you
138 begin your answer, and the staffer will wait until you finish
139 your response before proceeding to the next question.

140 To ensure the court reporter can properly record this
141 interview, please speak clearly, concisely, and slowly. Also,
142 the court reporter cannot record non-verbal answers such as
143 nodding or shaking your head, so it is important that you
144 answer each question with an audible, verbal answer.

145 Exhibits may be entered into the record. Majority
146 exhibits will be identified numerically, Minority exhibits
147 will be identified alphabetically.

148 We will remain on the record until the staffer speaking
149 says otherwise. Do you understand?

150 A Mm-hmm. Yes, I do.

151 Q We want you to answer our questions in the most
152 complete and truthful manner possible. If you have any
153 questions or do not fully understand the question, please let
154 us know and we will attempt to clarify, add context to, or
155 rephrase our questions. Do you understand?

156 A I do.

157 Q If we ask about a specific conversation or event
158 in the past and you are unable to recall the exact words or

159 details, you should testify to the substance of those
160 conversations or events to the best of your recollection. If
161 you recall only a part of a conversation or event, you should
162 give us your best recollection of those events or parts of
163 conversations that you do recall. Do you understand?

164 A Yes, I do.

165 Q Although you are here voluntarily and we will not
166 swear you in, you are required pursuant to Title 18, Section
167 1001 of the United States Code to answer questions from
168 Congress truthfully. This also applies to questions posed by
169 congressional staff in this interview. Do you understand?

170 A I do.

171 Q If at any time you knowingly make false
172 statements, you could be subject to criminal prosecution. Do
173 you understand?

174 A I do.

175 Q Is there any reason you are unable to provide
176 truthful testimony today?

177 A No.

178 Q The Select Subcommittee follows the rules of the
179 Committee on Oversight and Accountability. Please note that
180 if you wish to assert a privilege over any statement today,
181 that assertion must comply with the rules of the Committee on
182 Oversight and Accountability.

183 Pursuant to that, Committee Rule 16(c)(1) states: "For

184 the chair to consider assertions of privilege over testimony
185 or statements, witnesses or entities must clearly state the
186 specific privilege being asserted and the reason for the
187 assertion on or before the scheduled date of testimony or
188 appearance." Do you understand?

189 A Yes.

190 Q Ordinarily, we take a five-minute break at the end
191 of each hour of questioning, but if you need a longer break or
192 a break before that, please let us know and we will be happy
193 to accommodate. However, to the extent that there is a
194 pending question, we would ask that you finish answering the
195 question before we take the break. Do you understand?

196 A Yes.

197 Q Do you have any other questions before we begin?

198 A No.

199 Q Thank you.

200 Dr. Morens, before we get into the substance last night,
201 I'm presuming you, Tim, and we received an authorization memo
202 from HHS Assistant Secretary Egorin. I would like to
203 introduce that as Exhibit 1.

204 (Morens Exhibit No. 1 was
205 identified for the record.)

206 Ms. Ganapathy. Do you have copies for Agency staff?

207 Mr. Benzine. I'll wait for it to get around.

208 BY MR. BENZINE.

209 Q Did you receive this memo last night?

210 A I did.

211 Mr. Benzine. Did counsel receive this memo last night?

212 Mr. Belevetz. Yes.

213 Mr. Benzine. I would like to state for the record that
214 the Select Subcommittee did not and does not agree to the
215 terms of this memo. Despite that, the operative paragraph
216 reads: "Given that the subject matter of the Select
217 Subcommittee's requests center on communications from your
218 personal, rather than official NIH, accounts, it is the
219 Department of Health and Human Services' understanding that
220 you will not be providing information about your work for
221 NIAID. If you have any questions regarding the scope of your
222 authorization to discuss information pertaining to your
223 official work, please consult with agency counsel prior to
224 disclosure of such information to the Select Subcommittee."

225 The premise that the Select Subcommittee's inquiry only
226 involves your use of personal email is false. The letter sent
227 to you by Chairman Wenstrup, in fact, cited emails sent from
228 your official email and other documents through which you have
229 knowledge regarding COVID origins. The Department knows this.

230 Second, the Department cannot block you from providing
231 testimony regarding your official work at NIAID or on COVID
232 origins. The decision as to what testimony you give rests
233 solely with you. The Department also knows this.

234 I would like to introduce Majority Exhibit 2.

235 (Morens Exhibit No. 2 was
236 identified for the record.)

237 BY MR. BENZINE.

238 Q While it is working its way around, I will
239 identify it. At the bottom right side of the second column,
240 this is Title 5, Section 7211 of the United States Code. It
241 reads: "The right of employees, individually or collectively,
242 to petition Congress or a Member of Congress, or to furnish
243 information to either House of Congress, or to a committee or
244 Member thereof, may not be interfered with or denied."

245 Dr. Morens, the Department's authorization memo is
246 attempting to obstruct this committee and attempting to
247 interfere with your legal right to furnish information to
248 Congress.

249 Ms. Ganapathy. Mitch, I'm going to object to your
250 characterization of the authorization memo.

251 Mr. Benzine. That's fine.

252 Ms. Ganapathy. We do not intend to obstruct anything.
253 As you know, in our email to you, we are happy to discuss any
254 questions you have regarding Dr. Morens' official activities,
255 official communications, at the appropriate venue and time.
256 However, the Committee did not engage with the agency at all
257 in connection with this interview, so we understood him to be
258 called in his personal capacity today.

259 Mr. Benzine. That's fine.

260 Mr. Strom. So I'm trying to understand this because I'm
261 not familiar with authorization memos in the eight or so years
262 that I've been doing this. It says, "you are authorized to
263 provide information to the Select Subcommittee." Is it HHS's
264 position that this is legally binding on Dr. Morens, such that
265 if he doesn't comply with it, he would be subject to, like, an
266 adverse employment consequences?

267 Ms. Ganapathy. That's not our position. Our position
268 is that this is what we authorized him to provide information
269 on, as it says in the memorandum. And as you know, our
270 instructions to him will be to limit his responses to
271 non-official personal activities and communications.

272 Mr. Strom. So I guess what I'm struggling with is that
273 there are multiple laws that say you can't do this, you can't
274 restrict somebody's authority, like an employee's ability to
275 talk to Congress.

276 In the face of this memo, it says you could only provide
277 this information. So whether it's the statute Mitch cited or
278 the one I'm going to bring up, which is 1523.02, either this
279 is legally enforceable, like you're going to take action
280 against Dr. Morens if he strays from this, or it's just an
281 advisory opinion and it's effectively meaningless. So which
282 is it?

283 Ms. Ganapathy. So, John, it sounds like you have a lot

284 of questions that are not for the witness that are instead for
285 the agency, and I suggest that you engage with the agency on
286 those questions.

287 Mr. Strom. If we go forward today, you're going to
288 object to things that are outside the scope of this memo. If
289 you're going to tell him, despite his constitutional legal
290 right to tell us any information he wants to, you're going to
291 tell him, don't tell us.

292 We didn't agree to the scope of this. You dropped this
293 on us at 8:00 last night, 7:00 last night. This was not part
294 of any sort of bargained for negotiation with the Committees.

295 Ms. Ganapathy. John, if you have questions about this,
296 you should really talk to the leg. affairs office. I
297 can't -- this is an authorization memo. You see what's on the
298 page.

299 Mr. Strom. If this is legally binding on Dr. Morens,
300 this is a crime. So it's either advisory and he can answer
301 whatever questions we ask him, or HHS is taking the position
302 that you can interfere with an employee's ability to talk to
303 Congress.

304 Ms. Ganapathy. HHS does not take the position that we
305 can interfere with an employee's ability to talk to Congress.

306 Mr. Strom. So then the scope of this authorization is,
307 I guess, advisory to Dr. Morens?

308 Ms. Ganapathy. John, in the memo itself, it says, "The

309 purpose of this memorandum is to provide you with guidance on
310 the extent to which you are authorized to provide information
311 to the Select Subcommittee in your capacity as an NIH
312 employee." That's the purpose of the memorandum.

313 Mr. Strom. "If you have any questions regarding the
314 scope of your authorization to discuss information pertaining
315 to your official work, please consult with agency counsel
316 prior to disclosure of such information to the Select
317 Subcommittee."

318 That sounds mandatory. And I guess the concern is
319 particularly acute with Dr. Morens, because the previous ones
320 have more or less been within the scope of, like, the February
321 letters. But with Dr. Morens, we unfortunately have the
322 situation where he isn't able to be represented by agency
323 counsel, but he's retained counsel on his own dime, so there's
324 a divergence of legal interests between Dr. Morens and the
325 Department.

326 I might also add that the Department is going to be the
327 one that's adjudicating the NARA, the records retention
328 issues. And so the impression that this memo gives is that
329 you guys are essentially precluding him from speaking to stuff
330 that's relevant to the origins investigation uniquely to him.

331 But you also have a unique degree of leverage over him
332 because he is under investigation, like any -- I don't know
333 the probability of this, but, like, technically, he's at risk

334 of being separated from federal service, he's at risk of
335 having portions of his pension forfeited for these violations.

336 Those are adjudications of, like, OGC HHS are going to be
337 involved in making. And you're now telling him, you can't
338 talk about your official work at NIAID when every other NIAID
339 employee that we've done a voluntary interview with has been
340 allowed to talk about that.

341 Ms. Ganapathy. John, this memorandum is separate and
342 apart from any internal personnel process that might be
343 happening. To be clear, it is not any kind of compulsion or
344 threat that there will be adverse employment consequences if
345 he does not abide by the terms of it. That is not the case.

346 Mr. Strom. So this is purely advisory? We can ask him
347 questions like we have every other NIAID official?

348 Ms. Ganapathy. You can ask him questions as you would
349 any other NIAID official. We will instruct him to limit his
350 responses to his personal, non-official activities. He, as a
351 witness, is free to respond as he sees fit.

352 Mr. Strom. All while the Department is adjudicating his
353 Federal Records Act issues.

354 Ms. Ganapathy. I think it's not correct that the
355 Department is adjudicating those issues.

356 Mr. Strom. Didn't the National Archives tell you to?

357 Ms. Ganapathy. That is a separate component within NIH.
358 It's a separate process insulated from any Congressional

359 investigations going on.

360 Mr. Benzine. But it's within the Department. The
361 Department is adjudicating the issues.

362 Mr. Osterhues. NARA directed the Department to
363 investigate, and NARA has an interest in the records. The
364 agency would seem to have an interest in any personnel action.
365 So it is a personnel action that's before the Department
366 currently, and I don't know how you can say it isn't.

367 Mr. Benzine. So I guess your position is that this is
368 advisory. If Dr. Morens wants to disregard your instruction,
369 he can?

370 Ms. Ganapathy. Yes.

371 Mr. Benzine. Okay.

372 Mr. Belevetz. We interpret this as binding upon
373 Dr. Morens. Because of the ambiguity, we're going to play it
374 safe and I'm going to instruct him, as I believe agency
375 counsel will, to not answer questions that relate to agency
376 business.

377 There is ambiguity, there are two different positions
378 with respect to the interpretation of this. And until we get
379 some clarity on which is the correct position, we're going to
380 take the cautious approach.

381 Mr. Strom. Look, as a public defender before coming to
382 the Hill, that is my concern, there is this divergence of
383 interest that is unique amongst NIAID officials that we've

384 interviewed. And then to have this at the 11th hour dropped
385 in, that is also a uniquely restrictive scope because it does
386 clash with, like, Black Letter statute.

387 Ms. Ganapathy. John, before you move on, you told us
388 yesterday about your intended scope for him and so we
389 responded the same day.

390 Mr. Strom. We told you in February when we wrote the
391 initial letters, and you're punishing us for accommodating.

392 Ms. Ganapathy. We're not punishing anyone.

393 Mr. Strom. You're penalizing us for accommodating you,
394 because every time we wrote you a new letter narrowing our
395 request, trying to target to meet what you guys wanted to do,
396 you're now holding that against us by saying you can only talk
397 about that stuff, which is ridiculous.

398 Ms. Ganapathy. If the Committees feel that they can't
399 have a useful, fulsome interview and get answers to their
400 questions regarding his personal, unofficial activities today
401 without adding in the agency component, we can talk about
402 rescheduling this. That is something that we have always left
403 the door open to. And we don't want to deprive you of
404 anything and we certainly do not want to block any testimony
405 whatsoever, but this is the authorization. I know you have
406 the Department's position. I can't add any more to that.

407 Mr. Strom. So the Assistant Secretary is willing to
408 explain to Chair Comer, Dr. Wenstrup, Mr. Griffith, CMR,

409 Mr. Guthrie that: We're totally cooperative, but you can only
410 ask him about this stuff. Even though we will tell all of our
411 chairs that we never agreed to this, that this was -- I'll
412 show them the email. This was sent to us the night before,
413 and I'll show them the other authorization memos that are
414 materially different from this one.

415 Mr. Benzine. Dr. Morens was also listed as the
416 custodian of the September 14th letter on all kinds of topics,
417 EcoHealth, the Wuhan Institute of Virology, all the topics
418 that we have been discussing with every other executive
419 agent/branch employee.

420 Mr. Strom. Dr. Morens, I'm sorry we are having to sort
421 this out in front of you.

422 Ms. Ganapathy. We're burning up a lot of time that you
423 have put aside to ask Dr. Morens about questions that I'm sure
424 you have. I think this would be a more productive
425 conversation if you actually talk to leg. affairs about it. I
426 can't tell you anything more than what you already know.

427 Mr. Benzine. I'm going to ask Dr. Morens a couple
428 questions and then we'll make a decision on a path forward.

429 BY MR. BENZINE.

430 Q I think you just heard it, but I want to get it on
431 the record. Dr. Morens, are you aware that government counsel
432 represents the interests of the Department and not you?

433 A Yes.

434 Q Are you aware that if the Department instructs you
435 to not answer a question, even pursuant to Majority Exhibit 1,
436 the Subcommittee may request you return and testify again?

437 A Yes.

438 Q Are you aware that if you refuse any questions,
439 pursuant to Exhibit 1, the Select Subcommittee has the
440 authority to subpoena you and compel your testimony?

441 A Yes.

442 Q In this case, if you refuse to answer questions,
443 the Chairman has instructed me to execute a subpoena before
444 next week. We don't want to do that. We want to finish this
445 today. We want to be as efficient as possible and not have
446 you return.

447 Now that you're aware of these facts, I am going to ask
448 you two questions and then we will go off the record and you
449 can discuss with your personal counsel how you want to
450 proceed. These two questions are what I want you to discuss.

451 Are you willing to answer the Subcommittee's questions
452 notwithstanding the authorization in Exhibit 1? And then
453 considering this discussion, would you prefer to testify
454 without Department representatives present?

455 We can go off the record.

456 (Recess.)

457 Mr. Benzine. We can go back on the record.

458 BY MR. BENZINE.

459 Q So I asked you two questions before we went off
460 the record. I'm going to ask you again, and you can provide
461 the answers that you discussed with counsel to those
462 questions.

463 Are you willing to answer the Subcommittee's questions
464 notwithstanding the authorization in Exhibit 1?

465 A Notwithstanding. Just I'm a little confused by
466 the word "notwithstanding." I think the answer is no.

467 Q Okay. Would you prefer to testify without
468 Department representatives present?

469 A No.

470 Mr. Benzine. Considering the witness's unwillingness to
471 answer questions and the Department's current position, the
472 Chairman will be issuing a subpoena to compel his testimony.
473 We can go off the record. We're done for the day.

474 [Whereupon, at 11:03 a.m., the taking of the instant
475 interview ceased.]