

AT TIME OF TRUMP-ZELENSKY CALL, MULVANEY WAS ALREADY UNDER NOTICE FROM CUMMINGS, ENGEL AND SCHIFF NOT TO HIDE RECORDS

Note the byline.

In perusing the House Oversight Committee website while looking for something else, I ran across this remarkable letter dated February 21, 2019. It is addressed to Mick Mulvaney as Acting White House Chief of Staff and is from Elijah Cummings, Chair of the House Committee on Oversight and Reform, Eliot Engel, Chair of the House Committee on Foreign Affairs and Adam Schiff, Chair of the House Permanent Select Committee on Intelligence. The letter is part of an ongoing effort by Congress to obtain records from meetings between Donald Trump and Vladimir Putin that occurred in Hamburg on July 7, 2017 and in Helsinki on July 16, 2018.

The letter reprises press reports of Trump confiscating notes from interpreters and having a general reputation for tearing up documents. Although prompted by their frustration in getting records from these two meetings, the three committee chairmen expand the scope of their direction to Mulvaney to preserve records:

Another report has raised concerns that President Trump may be failing to document hundreds of calls and meetings that do not appear on his schedule. A press report documenting three months of President Trump's schedules indicated that he spends approximately 60% of his time in unspecified "Executive Time."⁶ In response, Madeleine Westerhout, the Director of Oval Office Operations, seemingly confirmed in a tweet that the President was having numerous calls and meetings that do not appear on his schedule. She wrote: "What these don't show are the hundreds of calls and meetings @realDonaldTrump takes everyday."⁷

For these reasons, we now request that you preserve all documents, communications, and other data ("records") that may be required for the Committees' oversight and investigative duties relating to this subject. The term "records" is broad and includes log files and metadata. For purposes of this request, "preserve" means taking reasonable steps to prevent the partial or full destruction, alteration, testing, deletion, shredding, incineration, wiping, relocation, migration, theft, or mutation of electronic records, including emails, as well as negligent or intentional handling which would foreseeably make such records incomplete or inaccessible.

Recall that the Trump-Zelensky phone call took place on July 25, 2019, just over five months after the letter was sent. It seems particularly on point that the letter warned Mulvaney against "relocation" as well as "intentional handling which would foreseeably make such records incomplete or inaccessible". Certainly, by relocating the Situation Room's transcript to the code-word level computer system, Mulvaney (or other actor(s) in the White House) did indeed make the record incomplete and essentially inaccessible until the whistleblower complaint forced the publication of a partial transcript.

And how did the White House respond to the letter? The return letter came from White House Counsel Pat Cipollone exactly one month later, blowing off the request for records from the two Trump-Putin meetings in its entirety, citing a claim that the President alone conducts foreign policy. And yet, the letter claimed that the White House fully complies with the Presidential Records Act, under which the three committee chairmen had submitted their request.

I'm wondering if this letter, with its highly specific warning, will increase the legal difficulties for Mulvaney once the impeachment investigation spotlight begins to point his direction.