

United States Senate

WASHINGTON, DC 20510

September 27, 2019

Steven Menashi
Office of the White House Counsel
1600 Pennsylvania Avenue, NW
Washington, DC 20500

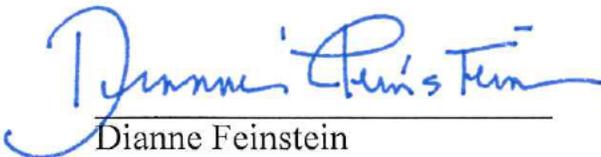
Dear Mr. Menashi:

We write to inquire about your knowledge of or involvement with any of the events related to a telephone call between President Trump and Ukrainian President Zelensky on July 25, 2019, or a whistleblower complaint about that call and efforts to pressure Ukraine to interfere in the upcoming 2020 U.S. election.

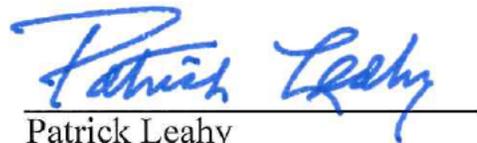
As the Senate Judiciary Committee considers your nomination to the Second Circuit Court of Appeals, it is vital to understand the work that you have done in the White House Counsel's Office, including any work related to the matters referenced above.

In particular, we would like you to answer the questions attached to this letter. We look forward to your prompt attention to this request and ask that you submit your responses by Monday, October 7.

Sincerely,



Dianne Feinstein
United States Senator



Patrick Leahy
United States Senator



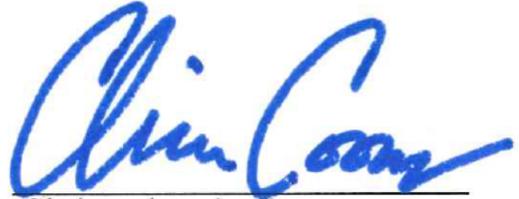
Richard J. Durbin
United States Senator



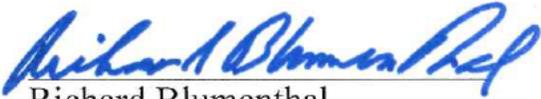
Sheldon Whitehouse
United States Senator



Amy Klobuchar
United States Senator



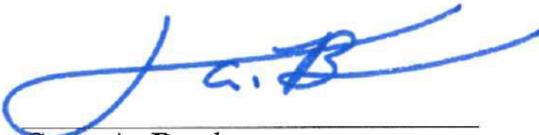
Christopher A. Coons
United States Senator



Richard Blumenthal
United States Senator



Mazie K. Hirono
United States Senator



Cory A. Booker
United States Senator



Kamala D. Harris
United States Senator

**Nomination of Steven Menashi to the U.S. Court of Appeals for the Second Circuit
Supplemental Questions for the Record
Submitted September 27, 2019**

QUESTIONS FROM JUDICIARY DEMOCRATS

1. **When and how did you first become aware of the July 25, 2019 phone call between President Trump and Ukrainian President Zelensky?**

2. On September 26, 2019, Acting Director of National Intelligence Joseph Maguire testified before the House Intelligence Committee about an August 12, 2019 whistleblower complaint (hereinafter the “whistleblower complaint”) that the Inspector General of the Intelligence Community had forwarded to him August 26, 2019. As Acting Director Maguire testified, the Inspector General stated that the whistleblower complaint raised an “urgent concern.” Acting Director Maguire testified that his office “consulted with the White House Counsel’s Office and we were advised the much of the information in the complaint was in fact subject to Executive privilege – a privilege that I did not have the authority to waive. Because of that, we were unable to immediately share the details of the complaint with the committees, but continued to consult with the White House Counsel’s Office in an effort to do so.” (Acting Director Maguire’s Opening Statement (Sept. 26, 2019))
 - a. **When and how did you first become aware of this whistleblower complaint?**

 - b. **Did you work or advise on any matter related to this whistleblower complaint?**

 - c. **Did you work or advise on whether the whistleblower complaint at issue could be turned over to Congress?**

 - d. **Were you involved in any conversations about how to handle the whistleblower complaint?**

3. According to the whistleblower complaint, at the time that White House officials raised concerns with the whistleblower about the July 25 phone call, “there was already a ‘discussion ongoing’ with White House lawyers about how to treat the call because of the likelihood, in the officials’ retelling, that they had witnessed the President abuse his office for personal gain.”
 - a. **Were you a part of any discussions about how to treat this July 25 phone call? When did those discussions begin?**

 - b. **Please describe the nature of any such discussions, the other parties involved in those discussions, and whether any legal advice was conveyed during those discussions.**

4. News reports have indicated that White House Counsel Pat Cipollone helped to coordinate talking points related to the White House’s release of a memorandum describing President

Trump’s phone call with Ukrainian President Zelensky on July 25, 2019. (Melanie Zanona, Burgess Everett, and Marianne Levine, *‘No Quid Pro Quo’: Trump’s Republican Defenders Dig In*, POLITICO (Sept. 25, 2019))

- a. **Is this true?**
 - b. **Did you work or advise on talking points or messaging guidance related to the release of the White House’s memorandum describing President Trump’s July 25 phone call with Ukrainian President Zelensky?**
 - c. **Did you work or advise on any talking points or messaging guidance related in any way to the whistleblower complaint?**
5. The whistleblower complaint alleges that White House lawyers “directed” other White House officials “to remove the electronic transcript [of President Trump’s July 25 phone call with Ukrainian President Zelensky] from the computer system in which such transcripts are typically stored for coordination, finalization, and distribution to Cabinet-level officials.”
- a. **Were White House lawyers involved in the decision to remove the electronic transcript of the July 25 phone call between President Trump and Ukrainian President Zelensky?**
 - b. **Did you work or advise on the handling of any records related to President Trump’s July 25 phone call with Ukrainian President Zelensky—whether electronic or otherwise?**
6. The whistleblower complaint also states that the “transcript [of the July 25 phone call] was loaded into a separate electronic system that is otherwise used to store and handle classified information of an especially sensitive nature,” even though “the call did not contain anything remotely sensitive from a national security perspective.” Further, the classified appendix to the whistleblower complaint — declassified as part of the complaint’s disclosure — states that “the transcript of the President’s call with President Zelenskyy was placed into a computer system managed directly by the National Security Council (NSC) Directorate for Intelligence Programs. This is a standalone computer system reserved for codeword-level intelligence information, such as covert action.” The whistleblower adds this in the classified appendix: “According to information I received from White House officials, some officials voiced concerns internally that this would be an abuse of the system and was not consistent with the responsibilities of the Directorate for Intelligence Programs. According to White House officials I spoke with, this was ‘not the first time’ under this Administration that a Presidential transcript was placed into this codeword-level system solely for the purpose of protecting politically sensitive—rather than national security sensitive—information.”
- a. **Did you work or advise on the decision to use this classified system for records related to President Trump’s July 25 phone call with Ukrainian President Zelensky?**

- b. Did you work or advise on the use of classification to shield or protect politically sensitive information, whether or not that information was related to President Trump’s July 25 phone call with Ukrainian President Zelensky?**
 - c. Did you work or advise on the use of classification to shield wrongdoing — by President Trump or any other employee or official in the Trump Administration — whether or not that wrongdoing was related to President Trump’s July 25 phone call with Ukrainian President Zelensky?**
 - d. Did you work or advise on the use of classification for political purposes, whether or not those political purposes were related to President Trump’s July 25 phone call with Ukrainian President Zelensky?**
- 7. On September 24, 2019, the Office of Legal Counsel (OLC) issued a slip opinion concluding the following: “A complaint from an intelligence-community employee about statements made by the President during a telephone call with a foreign leader does not involve an ‘urgent concern,’ as defined in 50 U.S.C. § 3033(k)(5)(G), because the alleged conduct does not relate to ‘the funding, administration, or operation of an intelligence activity’ under the authority of the Director of National Intelligence. As a result, the statute does not require the Director to transmit the complaint to the congressional intelligence committees.” (Assistant Attorney General Steven A. Engel, OLC Slip Opinion Re: “Urgent Concern” Determination by the Inspector General of the Intelligence Community” (Sept. 24, 2019))
 - a. Did you work or advise on any matter related to the OLC’s September 24, 2019 slip opinion?**
 - b. Were you involved in any discussions about the President’s July 25 phone call with Ukrainian President Zelensky or the August 12 whistleblower report with anyone at the Department of Justice? If so, please identify when these conversations took place and who was involved.**
 - c. Did you work or advise on whether the whistleblower complaint constitutes an “urgent concern” under federal law?**
 - d. Did you work or advise generally on the meaning of “urgent concern” under 50 U.S.C. § 3033(k)(5)(G)?**
 - e. Do you agree with the position adopted by the OLC that the whistleblower complaint did not constitute an “urgent concern” under 50 U.S.C. § 3033(k)(5)(G)?**