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Congress of the United States

House of Representatives COMMITTEE ON HOUSE ADMINISTRATION

1309 Longworth House Office Building
Washington, D.C. 20515-6157
(202) 225-2061

<https://cha.house.gov>
December 19, 2019

RODNEY DAVIS, ILLINOIS
RANKING MINORITY MEMBER

MARK WALKER, NORTH CAROLINA
BARRY LOUDERMILK, GEORGIA

ONE HUNDRED SIXTEENTH CONGRESS

JEN DAULBY, MINORITY STAFF DIRECTOR

The Honorable Zoe Lofgren
Chairperson
Committee on House Administration
1309 Longworth HOB
Washington, DC 20515

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
2138 Rayburn HOB
Washington, DC 20515

Dear Chairperson Lofgren and Chairman Nadler:

I am writing regarding Chairman Nadler's December 19, 2019 letter requesting Committee on House Administration approval of a consultant contract between the Judiciary Committee and Barry H. Berke.

Pursuant to 2 U.S.C. § 4301, committees may procure services of consultants "to make studies and advise the committee." Under the existing consultant contract, Mr. Berke has done significantly more than "making studies and advising the committee" including questioning witness and testifying on behalf of the Judiciary Committee majority. Mr. Berke has not been "advising" but "performing" the duties of staff.

This was most notable during the Judiciary Committee's hearing on December 9, 2019, when Mr. Berke testified as a witness with the Majority and Minority Counsel of the Permanent Select Committee on Intelligence and then presided at the dais to question the witnesses with Judiciary Committee's Minority Counsel.

The fact that the Judiciary Committee Rules define "consultants" as "staff" and allow staff to question witnesses has no relevance in the House Administration Committee's consideration of this contract. The terms of this contract must comply with U.S. Code and the Committees' Congressional Handbook regulations governing the use of consultants which states, "The Committee on House Administration will not approve a contract if the services to be provided by the consultant are the regular and normal duties of Committee staff." Given that Mr. Berke has clearly been performing the duties of staff, the Committee on House Administration has no choice but to deny this contract. Any other decision would abdicate our statutory role in the consultant contract approval process.

The Judiciary Committee can at any time hire Mr. Berke as staff which would allow him to continue the work he has been doing this last year, in clear violation of House Administration regulations. Furthermore, hiring Mr. Berke would then require compliance with the Code of

Official Conduct removing any potential conflicts of interest that may currently exist and requiring lobbying restrictions and financial disclosure. Skirting the rules, once again, to avoid the disclosure rules of the House, would be an affront to the American taxpayer.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Davis", is positioned above the typed name.

The Honorable Rodney Davis
Ranking Minority Member
Committee on House Administration