

# U.S. House of Representatives

## Committee on the Judiciary

Washington, DC 20515-6216

One Hundred Sixteenth Congress

August 26, 2019

The Honorable Jerrold Nadler  
Chairman  
Committee on the Judiciary  
2138 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Nadler,

In recent weeks, you have repeatedly claimed the House Judiciary Committee (“the Committee”) is conducting “formal impeachment proceedings.”<sup>1</sup> As part of the “formal impeachment proceedings,” you distributed to Committee Members the “House Judiciary Committee Procedures for Handling Grand Jury Information” (“the Procedures”) and cited to the Procedures in the Committee’s Application for Release of Grand Jury Material (“the Application”), filed on July 26, 2019.<sup>2</sup>

I write today to inform you that, contrary to your assertions in the media, the Procedures, and the Application, you lack the procedural authority to prohibit non-committee Member access to Committee records, because the full House has not voted to initiate an impeachment inquiry or to allow you to limit such access. As such, the Procedures and the Application fundamentally misapply the Rules of the House.

### Clause 2(e) of Rule XI

Clause 2(e)(2)(A) of Rule XI makes clear that “...all committee records (including hearings, data, charts, and files)...shall be the property of the House, and each Member, Delegate, and

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<sup>1</sup> Nadler: *These are ‘formal impeachment proceedings’*, CNN (Aug. 8, 2019),

<https://www.cnn.com/videos/politics/2019/08/08/jerry-nadler-trump-impeachment-inquiry-ebf-vpx.cnn>

<sup>2</sup> Jerrold Nadler, Chairman, H. Comm. on the Judiciary, *House Judiciary Committee Procedures for Handling Grand Jury Information* at 1 (July 26, 2019) [hereinafter *Procedures for Handling Grand Jury Information*]; *In re Application of the Committee on the Judiciary, U.S. House of Representatives, for an Order Authorizing the Release of Certain Grand Jury Materials*, No. 19-gj-48 (BAH) (D.D.C. July 26, 2019) [hereinafter *Committee’s Application*].

Resident Commissioner shall have access thereto.”<sup>3</sup> While committees may impose reasonable conditions upon inspection of committee records, they are explicitly barred under Rule XI from prohibiting non-committee Members from access to committee records.<sup>4</sup>

The sole authority to modify Clause (2)(e), or to except the Committee from its application, rests with the House, acting through adoption of a Resolution. In fact, the full House has, on occasion, voted to specifically grant the Committee with authority to prohibit non-committee Members from reviewing certain materials.<sup>5</sup> However, no such authority has been granted by the House in this case.

### **The Procedures and their Characterization in the Committee’s Application**

The Procedures provide that the Chairman and Ranking Member of the Committee shall “at all times, have access to and be responsible for all information received by the Committee subject to Federal Rule of Criminal Procedure 6(e).”<sup>6</sup> It further provides varying levels of access to “[o]ther Committee Members” and Members of the House Permanent Select Committee on Intelligence, granting no right of access for Members not serving on either of those committees.<sup>7</sup>

This suggests that, should the Committee receive grand jury materials, Members of Congress not serving on either the Committee or the Intelligence Committee would be prohibited from inspecting them, absent further decision from the Chairman to expand access.<sup>8</sup> The notion that a standing committee can exclude non-committee Members from access to committee documents – while unequivocally wrong – is made explicit in the Committee’s Application, which describes the Procedures as requiring “any grand jury materials obtained by the committee be stored in a

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<sup>3</sup> *Rules of the House of Representatives*, 116th Cong. Clause 2(e)(2)(A), Rule XI (2019).

<sup>4</sup> Clause 2(e)(2) of Rule XI offers a sole exception which states that “[a] Member..., other than members of the Committee on Ethics may not have access to the records of that committee...without the specific prior permission of that committee.” This exception further validates that the Rule requires all committees, except for the Committee on Ethics, to ensure committee records are available to all Members of the House.

<sup>5</sup> See H. Res. 525, 105th Cong. (1998). (“Notwithstanding clause 2(e) of rule XI, access to executive-session material of the committee relating to the review shall be restricted to members of the committee, and to such employees of the committee as may be designated by the chairman after consultation with the ranking minority member.”).

<sup>6</sup> *Procedures for Handling Grand Jury Information* at 1.

<sup>7</sup> *Id.* at 1; see *id.* at 2 (stating that the Chairman, Ranking Member, and designated staff of the House Permanent Select Committee on Intelligence shall have access to the grand jury information in accordance with the Procedures for Members and staff of the Judiciary Committee); see *id.* at 2 (granting access to Members of two Committees while making no mention of access for Members not serving on either Committee except that the Chairman “may issue additional procedures governing access by other Non-Committee Members, consistent with House Rule XI, clause 2(e).”).

<sup>8</sup> See *id.* at 2 (stating that the “Chairman...may issue additional procedures governing access by other Non-Committee members, Consistent with House Rule XI, Clause 2(e)(2).”).



secure area *with access limited to* Members of the Committee, certain designated staff, and Members of HPSCI and their designated staff” (emphasis added).<sup>9</sup>

**The Procedures and Claims About Them to the Court Are Irreconcilable with the Rules of the House, Requiring Corrective Action by the Chairman**

As you know, access to grand jury materials is strictly limited under Rule 6(e) of the Federal Rules of Criminal Procedure. While I understand your desire to bolster the Committee’s Application, it is beyond the scope of your authority, absent a vote of the full House, to prohibit other Members of the House from reviewing *any* materials in possession of the Committee. This particular attempt by you to side-step the Rules illustrates the importance of “formalities,” like receiving authorization from the House, in conducting a “formal impeachment inquiry.” Without these formal steps, the Committee cannot possibly be conducting a “formal impeachment inquiry,” as you claim it is.

To avoid any misunderstanding of the Rules arising from the Procedure and relevant statements in the Committee’s Application, I urge you to revise the proposed protocols and clarify your assertions to the Court.

Sincerely,



Doug Collins  
Ranking Member

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<sup>9</sup> Committee’s Application at 24, 25.