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BEFORE THE
ILLINOIS HOUSE OF REPRESENTATIVES
97TH GENERAL ASSEMBLY

HOUSE SPECIAL INVESTIGATING COMMITTEE

Hearing held, pursuant to Notice, on the 26th
day of April, 2012, between the hours of 10:30 A.M.
and 10:50 A.M., in Room 114, Capitol Building,
Springfield, Illinois.

TRANSCRIPT OF PROCEEDINGS

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I N D E X

WITNESSES

PAGE

(No witnesses presented.)

E X H I B I T S

EXHIBIT	DESCRIPTION	PAGE
Exhibit 4	E-mail notice	7
Exhibit 5	Indictment	7
Exhibit 6	Letter	8
Exhibit 7	Letter	8

(The exhibits were retained by the committee.)

1 COMMITTEE MEMBERS PRESENT:

2 Representative Elaine Nekritz, Chairperson

3 Representative Dennis M. Reboletti,

4 Minority Spokesman

5 Representative William Davis, Member

6 Representative JoAnn D. Osmond, Member

7 Representative Andre' M. Thapedi, Member

8 Representative Jil Tracy, Member

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10 ALSO PRESENT:

11 Mr. Dave Ellis, Counsel

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Court Reporter:

20 Robin A. Enstrom, RPR, CSR

Illinois CSR #084-002046

21 Midwest Litigation Services

15 S. Old State Capitol Plaza

22 Springfield, Illinois 62701

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23 800.280.3376

24

1 (The hearing commenced at 10:36 A.M.)

2

3 CHAIRPERSON NEKRITZ: Good morning, ladies
4 and gentlemen. The House Special Investigating
5 Committee shall be called to order, and the clerk
6 shall call the roll.

7 CLERK: Nekritz.

8 CHAIRPERSON NEKRITZ: Yes.

9 CLERK: Reboletti.

10 REPRESENTATIVE REBOLETTI: Present.

11 CLERK: Davis.

12 REPRESENTATIVE DAVIS: Present.

13 CLERK: Osmond.

14 REPRESENTATIVE OSMOND: Here.

15 CLERK: Thapedi.

16 REPRESENTATIVE THAPEDI: Here.

17 CLERK: Tracy.

18 REPRESENTATIVE TRACY: Present.

19 CHAIRPERSON NEKRITZ: Six members
20 answering the roll. A quorum is present.

21 We do note that Representative Derrick
22 Smith is not here today either personally or through
23 his attorney.

24 I'd like to hear from our counsel,

1 Mr. Dave Ellis, on the notice that was provided to
2 Representative Smith of this hearing.

3 MR. ELLIS: Thank you, Madam Chair.

4 Once the date of the new hearing --
5 today's hearing was determined by the committee, by
6 the Chair and Representative Reboletti, I sent an
7 e-mail to Victor Henderson, who is the counsel --
8 Victor Henderson and Sam Adam, Jr., who are the
9 counsel for Derrick Smith. I sent that on April 20th.
10 We have a copy of that that I would suggest be
11 admitted into the record as an exhibit.

12 In addition, at that same time we gave
13 notice, as we typically do, on our website. We posted
14 notice. That's actually seven days' notice that he
15 received, which is more than the House rules even
16 require, not that the House rules govern this notice.

17 And, on top of all that, Mr. Henderson and
18 I have had several conversations over the last week,
19 and he clearly indicated he was aware of the hearing,
20 and he told me yesterday that he had made a decision
21 with his client that they would not be appearing
22 today.

23 CHAIRPERSON NEKRITZ: Thank you.

24 So unless there's an objection, we will

1 enter a copy of the notice e-mail from Counsel Ellis
2 to Representative Smith's attorneys into the record as
3 Exhibit 4, and all the e-mail addresses have been
4 redacted out of that.

5 Since our last meeting, there's been some
6 action in the criminal case. A federal grand jury
7 indicted Representative Smith on the same charge for
8 which he was arrested and the criminal complaint was
9 entered.

10 And, again, unless there's an objection, I
11 would enter into the record as Exhibit 5 a copy of the
12 indictment in the matter of United States of America
13 versus Derrick Smith, which is Case No. 12-CR-175.

14 Representative Reboletti.

15 REPRESENTATIVE REBOLETTI: I would just
16 note that on the indictment that there's a forfeiture
17 provision that the federal government would be seeking
18 \$4,500 from Representative Smith during the
19 prosecution, and if he was found guilty, they would
20 seek to -- this \$4,500 was the amount that they did
21 not recover during the investigation.

22 CHAIRPERSON NEKRITZ: Thank you.

23 So our first order of business is the
24 correspondence with the U.S. Attorney. Again, unless

1 there's an objection, I would want to talk about this
2 a little bit and -- about the correspondence that was
3 exchanged between the U.S. Attorney and -- and this
4 committee.

5 At our first meeting, we determined as a
6 committee that our first step would be to consult with
7 the U.S. Attorney's office about the information
8 gathering process that this committee would undertake.

9 Two things we wanted to request:

10 One was whether the U.S. Attorney had
11 any -- would be willing to give this committee any
12 information in his office's possession that was
13 relevant to our investigation.

14 Second, we wanted to determine whether
15 there was any independent fact finding that the
16 committee might undertake which would or would not
17 interfere with the U.S. Attorney's investigation.

18 So as we discussed at that -- and agreed
19 at that meeting, we sent a letter to the U.S.
20 Attorney, and we have received a written reply to our
21 inquiry. And unless -- again, unless there's
22 objection, I would enter each of these letters into
23 the record as Exhibit 6 and 7. Members of the
24 committee have been provided with a copy of the

1 U.S. Attorney's letter at the time it was received.

2 In his letter, U.S. Attorney Patrick
3 Fitzgerald indicated first that his office is not
4 willing at this time to provide any documents or other
5 information pertaining to the prosecution of
6 Representative Smith. He noted that his investigation
7 of Representative Smith was ongoing and that producing
8 any documents at this time could compromise his
9 investigation.

10 Second, Mr. Fitzgerald indicated that any
11 independent attempts by this committee to obtain
12 information either by subpoena, FOIA requests, or
13 otherwise would constitute an interference with his
14 ongoing investigation. The only caveat to the
15 statement was that Mr. Fitzgerald would not object to
16 the committee seeking information directly from
17 Representative Smith.

18 So in a couple minutes -- (loud noise) --
19 whoa -- we'll discuss generally what our next steps
20 will be in terms of the investigation into this
21 matter, but since the U.S. Attorney specifically noted
22 that hearing directly from Representative Smith would
23 not interfere with his investigation, I'd like to turn
24 to that topic.

1 So this committee has always taken the
2 position that we want to obtain as much information as
3 possible before reaching a recommendation, and that
4 obviously includes any information from Representative
5 Smith, including testimony before this committee. So
6 I think we should discuss whether it would be
7 appropriate to specifically request Representative
8 Smith to testify under oath before this committee,
9 including any statement he would like to give and
10 answering questions from the members.

11 It seems -- and we've had some
12 discussions, and it seems to me that this request
13 could come from a written invitation or from a
14 subpoena, and so we discussed the two possibilities of
15 a letter or a subpoena.

16 And members have any thoughts on that?
17 Representative Reboletti.

18 REPRESENTATIVE REBOLETTI: Thank you,
19 Madam Chair.

20 Based on our previous communication, I
21 would think it would be appropriate to send a letter
22 to Representative Smith as well as his counsel,
23 requesting them to appear in front of the committee,
24 and then see if he and his counsel appear, and then at

1 that point we can discuss if we feel that we should
2 issue a subpoena for him to appear to testify in front
3 of this committee.

4 So I would -- I would suggest that we send
5 a letter. We could begin working on that letter
6 today, and that letter would then come from myself and
7 the chairman.

8 CHAIRPERSON NEKRITZ: I certainly am in
9 agreement with that, Representative.

10 Any other thoughts from members?

11 All right. Representative Davis.

12 REPRESENTATIVE DAVIS: So just so I
13 understand, Representative -- and I do agree with the
14 letter aspect of it, and then you said subsequent to
15 the letter, if he does not appear, then you would move
16 to issue a subpoena at that point or --

17 REPRESENTATIVE REBOLETTI: I think that,
18 if he does not appear pursuant to our letter, that
19 this committee needs to have a discussion if we think
20 it is appropriate to issue a subpoena for
21 Representative Smith to come and testify in front of
22 this committee.

23 REPRESENTATIVE DAVIS: Okay. There would
24 be a discussion at that point.

1 REPRESENTATIVE REBOLETTI: That's correct.

2 And I would anticipate at that point, if we -- if
3 somebody made a motion for a subpoena, that there
4 would be a vote of the committee and a simple majority
5 of the committee would prevail either way.

6 REPRESENTATIVE DAVIS: I see. I see.

7 So, Madam Chair, relative to the letter,
8 is there a motion necessary for that?

9 CHAIRPERSON NEKRITZ: Yes. Yes, there is,
10 Representative.

11 REPRESENTATIVE DAVIS: Okay.

12 CHAIRPERSON NEKRITZ: Would you like to
13 make that motion?

14 REPRESENTATIVE DAVIS: I'd be more than
15 happy to make that motion.

16 CHAIRPERSON NEKRITZ: So Representative
17 Davis moves that we prepare a letter to Representative
18 Smith and his counsel, asking him to appear and
19 testify under oath.

20 Any additional discussion?

21 The clerk shall take the roll.

22 CLERK: Nekritz.

23 CHAIRPERSON NEKRITZ: Aye.

24 CLERK: Reboletti.

1 REPRESENTATIVE REBOLETTI: Aye.

2 CLERK: Davis.

3 REPRESENTATIVE DAVIS: Aye.

4 CLERK: Osmond.

5 REPRESENTATIVE OSMOND: Yes.

6 CLERK: Thapedi.

7 REPRESENTATIVE THAPEDI: Aye.

8 CLERK: Tracy.

9 REPRESENTATIVE TRACY: Yes.

10 CHAIRPERSON NEKRITZ: Six members voting
11 aye; none voting no.

12 We will get to work on that letter and
13 hopefully get that out in the very near future.

14 I would note it's my understanding that,
15 if Representative Smith decides not to appear, as is
16 his Fifth Amendment right, it wouldn't really make
17 that much difference whether we send a letter or issue
18 a subpoena. He -- you know, he's -- he's within his
19 rights not to appear.

20 So our next steps then would be -- I mean,
21 if anybody has any comments on our next steps, I'm
22 happy to hear -- happy to entertain those.

23 We are dedicated to obtaining as much
24 information as we possibly can before we come to a

1 conclusion, and we owe that to the -- I think to the
2 charge that's been given us by the -- by the -- under
3 the House rules, we owe this to the public, and we
4 certainly owe that to Representative Smith.

5 I -- it's my feeling that we can't predict
6 with any certainty when that day may come that the
7 U.S. Attorney would agree to part with some of the
8 information in his possession. I mean, it might be
9 weeks from now, and it could be months from now. And
10 it's also very challenging to predict how long the
11 criminal proceedings and when the criminal proceedings
12 against Representative Smith will conclude.

13 We do know that Representative Smith has
14 not yet entered a plea in court. He does so,
15 according to the -- what -- the information we've be
16 given, next Monday, April 30th. We know that neither
17 the prosecution nor the defense has engaged in any
18 exchange of documents or discovery yet. And we
19 understand from Representative Smith's attorney Victor
20 Henderson that there may be some pretrial submissions
21 by the defense that will speak to the substance of the
22 charge and that would be available to the public.

23 So it's my feeling the committee can't
24 wait forever for these things to happen, but given

1 that he will be entering a plea next week and that
2 the -- that that will trigger some dates and things
3 for the process to start to unfold, I think there's
4 some reason, in my view, to believe that the amount of
5 additional information may -- that some additional
6 information may become available to this committee in
7 the near future.

8 Any thoughts from any other committee
9 members?

10 Representative Davis.

11 REPRESENTATIVE DAVIS: Just for my own
12 curiosity's sake, with regard to the discovery process
13 that may ensue, does that discovery -- is that
14 something that can be made available to us? Can we
15 ask/request for --

16 CHAIRPERSON NEKRITZ: It's possible, but
17 there are also procedures by which that -- by which
18 either the U.S. Attorney or Representative Smith can
19 make that private or make it confidential, and we
20 don't -- we've not been yet told how that would all
21 unfold.

22 REPRESENTATIVE DAVIS: Okay. Thank you.

23 CHAIRPERSON NEKRITZ: And we have no
24 control over it either.

1 REPRESENTATIVE DAVIS: Thank you.

2 CHAIRPERSON NEKRITZ: Thank you.

3 Representative Reboletti, did you wish to
4 be recognized?

5 REPRESENTATIVE REBOLETTI: Yes.

6 I know that Mr. Ellis had had some
7 conversation with Mr. Henderson and that -- for the
8 record, that Mr. Henderson's indicated that any
9 motions he may file for the April 30th date -- that he
10 would give us courtesy copies of those motions.

11 Is that correct, Counsel?

12 CHAIRPERSON NEKRITZ: That's my
13 understanding from -- and I'm -- and Counsel Ellis is
14 whispering in my ear "yes."

15 REPRESENTATIVE REBOLETTI: All right.
16 Also, we would then, I would assume, at our next
17 meeting move to put those into evidence as well, and
18 if Mr. Smith comes, we could talk to him about those
19 motions as well as -- is the plea he would enter. We
20 don't even know what plea he might enter. He could
21 enter a plea of guilty on April 30th if he so chose.

22 And to Representative Will Davis' point,
23 the difference between federal prosecution and state
24 prosecution -- if this was a state prosecution, we

1 could FOIA those police reports from the agency. We
2 can't FOIA the FBI report. So it's not as simple as
3 that. And that will be up to the prosecution if they
4 choose to keep that information confidential. So
5 that's something else we may learn at the April 30th
6 date. So I think we need to see how that process
7 works.

8 I think the other important part is that
9 we see what the motion calendar will be, what the
10 briefing schedule is, and what the -- how quickly the
11 judge wants to pace the trial. It could be something
12 that could be three, four months out for a motion. It
13 could be a motion next month. And I think that will
14 help guide us in making our determination as to when
15 our next committee hearing should be.

16 Thank you.

17 CHAIRPERSON NEKRITZ: Thank you,
18 Representative Reboletti. I concur and appreciate
19 those remarks.

20 So, again, without objection, I think it
21 would be our intention to continue to consult with --
22 between myself and Representative Reboletti and also
23 with Representative Smith's attorneys for the date for
24 our next hearing, which I would expect would hopefully

1 be next week or the week after at the latest.

2 At that time we will have -- give
3 Representative Smith the opportunity to testify under
4 oath before this committee, and it sounds like we will
5 have some more information in the criminal proceeding
6 before that time.

7 We will always give public notice of the
8 next hearing, including a posting on the General
9 Assembly website. I will say that the documents that
10 have been entered into evidence will be available on
11 the website. I think, you know, they are right now.

12 Representative Thapedi.

13 REPRESENTATIVE THAPEDI: Thank you, Madam
14 Chair.

15 Madam Chair, with respect to the procedure
16 at this point, I think it's also very incumbent upon
17 the committee to keep the U.S. Attorney's office
18 advised of what we do, especially with respect to
19 reviewing the correspondence from Patrick Fitzgerald's
20 office, paragraph 4, which continues to page 1 and
21 page 2, and if I could read that into the record for
22 some clarification.

23 And he says -- and I quote -- "As you
24 know, today a federal grand jury returned a one count

1 indictment charging Smith with bribery. Although the
2 allegation which underlay the federal complaint forms
3 the basis of the indictment, I can tell you that our
4 investigation of Representative Smith is continuing,
5 and it is our strongly held belief that any disclosure
6 of government's evidence or active inquiry conducted
7 by the committee into the allegations of the federal
8 indictment will likely interfere with our pending case
9 and ongoing investigation," close quote.

10 So, in light of that, Madam Chair, I think
11 it's very important that we do keep the U.S. Attorney
12 advised because I would not want to do anything that
13 would interfere with their pending investigation.

14 CHAIRPERSON NEKRITZ: Thank you,
15 Representative Thapedi, for that note of caution. We
16 will certainly do that as we move forward.

17 Any other comments from members?

18 So with that, there being no further
19 business before the Special Investigating Committee,
20 we shall stand in recess to the call of the Chair.

21 Thank you, everybody.

22 (The committee recessed at 10:50 A.M)

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CERTIFICATE OF REPORTER

STATE OF ILLINOIS)

) ss.

COUNTY OF SANGAMON)

I, ROBIN A. ENSTROM, a Registered Professional Reporter, Certified Shorthand Reporter, and Notary Public within and for the State of Illinois, do hereby certify that the foregoing proceedings were taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Notary Public in and for
the State of Illinois

My commission expires May 21, 2012.

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