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BEFORE THE
ILLINOIS HOUSE OF REPRESENTATIVES
97TH GENERAL ASSEMBLY
HOUSE SPECIAL INVESTIGATING COMMITTEE

Hearing held, pursuant to Notice, on the
10th day of May, 2012, between the hours of
10:30 a.m. and 12:08 p.m., in Room 114, Capitol
Building, Springfield, Illinois.

TRANSCRIPT OF PROCEEDINGS

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I N D E X

WITNESSES

PAGE

(No witnesses testified.)

E X H I B I T S

EXHIBITS

DESCRIPTION

PAGE

Exhibit Number 8	e-mail	5
Exhibit Number 9	letter	5
Exhibit Number 10	letter	5

(The exhibits were retained by the committee.)

1 COMMITTEE MEMBERS PRESENT:

2 Representative Elaine Nekritz, Chairperson

3 Representative Dennis M. Reboletti,

4 Republican Spokesperson

5 Representative William Davis, Member

6 Representative JoAnn D. Osmond, Member

7 Representative Andre´ M. Thapedi, Member

8 Representative Jil Tracy, Member

9

10 ALSO PRESENT:

11 Mr. Dave Ellis, Committee Counsel

12

13 Representative Derrick Smith

14 Mr. Victor P. Henderson,

15 Counsel for Representative Smith

16

17 COURT REPORTER:

18 Ms. Dorothy J. Hart, CSR, RPR

19 Illinois CSR No. 084-001390

20 Midwest Litigation Services

21 15 South Old State Capitol Plaza

22 Springfield, Illinois 62701

23 (217) 522-2211

24 1-800-280-3376

1 (The hearing commenced at 10:40 a.m.)

2

3 CHAIRPERSON NEKRITZ: Good morning, ladies
4 and gentlemen. I'd like to call the Special
5 Investigating Committee to order. And the first order
6 of business will be taking 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: Here.

19 CHAIRPERSON NEKRITZ: Six members having
20 answered the roll, a quorum is present.

21 I'd like to welcome Representative Smith
22 and his attorney, Mr. Henderson, here today. Happy to
23 have you here.

24 At the last committee hearing, we as a

1 committee unanimously voted to send a letter to
2 Representative Smith through Mr. Henderson requesting
3 that he testify under oath before this committee on
4 the subject matter before us. Our counsel, Mr. Ellis,
5 sent him such a letter via e-mail, which is the form
6 of communication I believe Mr. Henderson had
7 requested.

8 So unless there is objection, I'm going to
9 enter the e-mail and the letter we sent to
10 Representative Smith and his representative as
11 Exhibits 8 and 9.

12 We've also received a letter from
13 Mr. Henderson addressed to our counsel, dated May 8th,
14 2012. Again, unless there's objection, I would enter
15 this letter and its attachments into the record as
16 Exhibit 10.

17 And those both -- all those exhibits will
18 be uploaded on to the General Assembly website within
19 a matter of a few minutes.

20 In the letter that we sent to
21 Representative Smith we requested that he provide
22 sworn testimony to this committee on the issues that
23 are pending before us. This can include a preliminary
24 statement under oath, any questioning from

1 Mr. Henderson under oath, and then any questions from
2 committee members or our counsel under oath.

3 So, Representative Smith, I would ask you
4 if you're willing to testify under oath before this
5 committee at this time?

6 MR. HENDERSON: Not today.

7 CHAIRPERSON NEKRITZ: I'll need you to put
8 the microphone on. And you need to identify yourself.

9 MR. HENDERSON: Victor Henderson, for the
10 record, the attorney for Representative Smith.

11 Representative Smith will not be
12 testifying under oath today. Possibly at some future
13 time but not today.

14 CHAIRPERSON NEKRITZ: So we also mentioned
15 in the letter, and I want to make sure it's very
16 clear, that because this is not a criminal proceeding,
17 the members of this committee may consider refusal to
18 testify under oath as a factor in reaching our final
19 conclusions. I just want to make sure that we all
20 understand that that's a possibility.

21 MR. HENDERSON: Yes, we do.

22 CHAIRPERSON NEKRITZ: Thank you. And so I
23 also understand based on conversation between
24 Mr. Henderson and our counsel that Representative

1 Smith would like to make a statement today, though not
2 under oath. So if that's the case, why don't we
3 proceed with that statement.

4 REPRESENTATIVE SMITH: Good morning, dear
5 colleagues. Since I've been arrested by the federal
6 government almost two months ago, on March 13th, 2012,
7 I have been painfully aware of how this -- how my
8 arrest has affected the perception of me in this
9 House, in my district, by my colleagues, and by my
10 family and friends.

11 As most of you know, I have already
12 appeared in court and entered a plea of not guilty in
13 response to the single charge against me. I intend to
14 fight this charge and clear my name. With the support
15 of my many people in the district and with the support
16 of many family and friends, I will continue to
17 represent the interests of the people in the district.
18 They elected me despite the fact the government had
19 levied a charge against me just a week before the
20 primary.

21 In the same way that the people in the
22 district did not abandon me, I will not abandon them.
23 Not as long as there are mothers, fathers who need
24 jobs, families that need healthcare, and people who

1 need the police to protect them in their
2 neighborhoods. The people in my district did not quit
3 on me and I will not quit on them.

4 Which may leave some of you to wonder why
5 I chose to come and volunteer to come today -- here
6 today. As my lawyer, Victor Henderson, of the law
7 firm of Henderson and Adam, will explain, the law of
8 the land is that people bear the perception of
9 innocent until proven guilty. I stand here now as an
10 innocent man, a man who has been accused, but not
11 convicted, of a crime by the federal government.

12 Finally, despite my desires to clear my
13 name and despite my desires to answer all questions
14 that have been asked of me about this matter, for now
15 at least, I intend to follow the advice of my
16 attorneys, Victor Henderson and Sam Adam, and remain
17 quiet. Between now and then I intend to represent the
18 interests of the citizens in my district and I intend
19 to vigorously fight the charge levied against me until
20 my name is cleared, with my family, friends, and
21 people in the district.

22 Thank you for the opportunity to appear
23 before you today. Thank you.

24 CHAIRPERSON NEKRITZ: Thank you,

1 Representative Smith. I also just want to clarify
2 that you're not -- are you willing to answer questions
3 without being under oath?

4 MR. HENDERSON: The Representative will
5 not be answering questions today.

6 CHAIRPERSON NEKRITZ: Very good.

7 MR. HENDERSON: Again, I do want to state
8 for the record, though, at some future point he may,
9 but not today.

10 CHAIRPERSON NEKRITZ: Very good. Thank
11 you. Appreciate it. Any idea when that might be?

12 MR. HENDERSON: We had a court appearance
13 yesterday. We stand joined by -- I know that the
14 committee had earlier asked U.S. Attorney Patrick
15 Fitzgerald to release information. From our
16 understanding, the U.S. Attorney refused to do that,
17 but we will also be making a formal request in court
18 in short order that everything be released. Because,
19 like you, we want all of the facts out. And so we
20 will be in court -- the date was set yesterday. I
21 can't tell you off the top of my head when it is. But
22 the same way that the committee asked the U.S.
23 Attorney to release all the information, we will be in
24 court vigorously fighting any attempts by the U.S.

1 Attorney to keep this matter under wraps. And so as
2 soon as we get access to that information, that will
3 then have a bearing on when we are able to come back
4 in front of the committee and answer questions.

5 CHAIRPERSON NEKRITZ: Just let me make
6 sure I understand, Mr. Henderson. So you did make a
7 request yesterday or you filed -- there was some
8 action taken yesterday?

9 MR. HENDERSON: The court set a briefing
10 schedule yesterday. I believe that we're due back in
11 front of the judge in -- I believe it's early June,
12 late May or early June. That's all a matter of public
13 record. It should be on the court's docket sheet.
14 But at that time it's our intention to oppose the
15 government's attempts to keep information regarding
16 this matter in secret and under wraps. And so we
17 will, as I said again, be in front of the judge, we
18 will make our objection known, and then the court will
19 rule.

20 CHAIRPERSON NEKRITZ: And the briefing
21 schedule has to do then with that issue of whether or
22 not there would be a protective order over the --

23 MR. HENDERSON: Yes.

24 CHAIRPERSON NEKRITZ: -- evidence. Okay.

1 MR. HENDERSON: The government wants to
2 keep the information secret. We want it out and open
3 for everyone, including this body, to see.

4 CHAIRPERSON NEKRITZ: Very good. Very
5 good. Okay. So, Mr. Henderson, that will go to our
6 next order of business, which I think would be a
7 statement from you, and then we may have some
8 questions for you from some members of the committee
9 as well as our counsel.

10 MR. HENDERSON: Thank you. I want to
11 start by thanking you for the opportunity to appear
12 before the committee this morning as I sit and stand
13 by the side of Derrick Smith.

14 The recent charge filed by the federal
15 government against Representative Smith is what brings
16 us here together this morning. But the principles of
17 democracy and our values as Americans are truly at the
18 core of today's discussion. Like many of you, I'm
19 aware that there are calls for Representative Smith to
20 respond to the one count charged against him, while
21 there are also people who have asked him to stop
22 representing the people of his district, even before
23 the legal proceeding against him has concluded. To
24 everyone, both supporters and detractors, I say the

1 same.

2 First, as the Representative has pointed
3 out, every one of us as Americans enjoys the
4 presumption that we are innocent until proven guilty
5 of any charge filed against us and that presumption is
6 also enjoyed by Representative Smith. Simply because
7 a handful of government employees have filed a charge
8 against the Representative does not make that charge
9 true. Lots of people are charged every day with
10 violating laws and those charges turn out oftentimes
11 to be unfounded. As his lawyers, we expect that the
12 Representative will be able to clear his name in the
13 not too distant future.

14 Second, as a former staff counsel for the
15 United States House Committee on Official Standards,
16 more commonly known as the House Ethics Committee, I,
17 more than most, appreciate that there is a difference
18 between court proceedings and protecting the integrity
19 of this House in the State of Illinois. Yet, no
20 matter whether a person is in a courtroom or in this
21 room in the House, notions of due process and fair
22 play must prevail. In this case, I urge each and
23 every one of you not to draw any conclusions, much
24 less premature conclusions, until after you've had a

1 chance to review all of the material facts regarding
2 the charge against the Representative, which would
3 include the ultimate resolution of his case in federal
4 court in Chicago. As it stands right now, and for
5 details I cannot share without compromising the
6 Representative's legal case, the Representative is
7 eager to have his day in court and to shed daylight on
8 the charge against him.

9 Third, and speaking of daylight, and as I
10 alluded to earlier before, I would urge this committee
11 to hold all of its hearings and to share all of its
12 information such that the integrity of these
13 proceedings cannot be questioned.

14 Conversely, and by their own admission,
15 the case put together by the federal government was
16 conducted in secret, has involved material
17 misrepresentations of fact to a sitting federal judge
18 as recently as last month, as reflected in the
19 documents that will be entered into the record and
20 that you have. That's their admission. That's not
21 coming from Representative Smith. That's the federal
22 government acknowledging that there were material
23 misrepresentations of fact to a sitting federal judge
24 in Chicago.

1 Moreover, the documents that Mr. Ellis and
2 the committee have placed into the record -- and again
3 this is the government's information -- acknowledge
4 that the government manufactured documents and uttered
5 fake information in their zeal to create an alleged
6 crime where none had existed. Again, that's in their
7 documents. That's not coming from Representative
8 Smith. That's in their documents.

9 If we are to learn anything from the
10 recent history of this same government department
11 prosecuting United States Senator Ted Stevens from
12 Alaska, whom, as you know, was a Republican, and the
13 laws that they broke, meaning the government
14 officials, the laws that they broke to prosecute him,
15 it is that some government officials, not all, but I
16 want to emphasize some government officials will break
17 the law themselves allegedly in the name of justice.
18 And the Ted Stevens matter was made known all over the
19 country in just the last 90 days and resulted in a
20 travesty on the Senator and his family and the people
21 of his district, and we urge you to keep that lesson
22 near at hand as we go through these proceedings.

23 Accordingly, on behalf of Representative
24 Derrick Smith, I respectfully request that each and

1 every one of you on this panel and others who may hear
2 or read my words to reserve judgment until all of the
3 important facts about this very serious matter are in.

4 Thank you for your time. If there are any
5 questions, I'm happy to answer them.

6 CHAIRPERSON NEKRITZ: Thank you,
7 Mr. Henderson. We appreciate that.

8 At this point, I'm going to turn it over
9 to our counsel, Dave Ellis, for some questions and
10 then we'll take questions from members.

11 MR. ELLIS: Thank you, Madam Chair.

12 Mr. Henderson, good morning.

13 MR. HENDERSON: Good morning.

14 MR. ELLIS: Nice to see you again.

15 I understand that Representative Smith
16 will not be testifying today and that if he did that
17 any testimony he gave could possibly be used against
18 him in court, which is probably one of the reasons
19 he's not testifying today. I assume you would agree
20 with me that any statements that you make to us could
21 not be used against Representative Smith in court.

22 MR. HENDERSON: That's correct.

23 MR. ELLIS: Okay. In the criminal --
24 federal criminal case pending in the United States

1 District Court in Chicago is it your intention to
2 plead not guilty by reason of entrapment?

3 MR. HENDERSON: I'm not going to disclose
4 what the legal theories are. However, what I would
5 say to you is that that question has been presented to
6 us time and again, and by virtue of the fact that that
7 question has been presented to us on multiple
8 occasions based on people reading the documents that
9 were in front of them, I think that the question has
10 been raised by enough people that it's not an unfair
11 question for you to ask that, but in order not to
12 compromise the Representative's legal strategy, we're
13 not in a position to answer that now.

14 MR. ELLIS: I'm not asking you to tell me
15 which way you're going to go. I'm just asking you if
16 it's on the table possibly that you're considering
17 entrapment.

18 MR. HENDERSON: Every available defense to
19 the Representative is on the table. Nothing has been
20 excluded.

21 MR. ELLIS: Have you considered pleading
22 guilty?

23 MR. HENDERSON: Absolutely not.

24 MR. ELLIS: Okay. So you've taken that

1 off the table.

2 MR. HENDERSON: That's not on the table.

3 MR. ELLIS: But entrapment is not off the
4 table?

5 MR. HENDERSON: Every available defense of
6 the Representative is on the table.

7 MR. ELLIS: Now, as I understand
8 entrapment -- you know, you correct me if I have this
9 wrong. The theory behind entrapment is that a
10 defendant lacks predisposition to commit a crime but
11 his will is overborne, so to speak, by the conduct of
12 governmental agents who induce him into committing the
13 acts. Is that your basic understanding of entrapment?

14 MR. HENDERSON: I think that's a fair
15 interpretation of the law as I understand it, yes.

16 MR. ELLIS: And entrapment is an
17 affirmative defense in federal criminal court; is it
18 not --

19 MR. HENDERSON: More often than not, I
20 believe that's true, yes.

21 MR. ELLIS: And an affirmative defense
22 presupposes that the elements of the crime have been
23 proven beyond a reasonable doubt and -- however, a
24 legal justification comes forward subject to

1 entrapment to nonetheless result in acquittal. Right?

2 MR. HENDERSON: I would not necessarily
3 agree with that. I'm not a constitutional law expert,
4 and so I would not take presumption of trying to state
5 the current state of the law. The state of the law is
6 very much open to different interpretations. As you
7 know, you go in front of the Supreme Court and
8 frequently get five-four decisions, which I think is
9 an indication of the fact that not all jurists
10 interpret the law the same way. So I would not
11 embrace the interpretation of the law as you have just
12 advanced it. I'm not going to reject it, but I will
13 not embrace it, either.

14 MR. ELLIS: Well, I'm just talking
15 generally about affirmative defenses. We don't even
16 have to talk about entrapment. My understanding of
17 any affirmative defense, whether it's insanity,
18 self-defense, entrapment, is that you admit that the
19 elements of the crime have been proven beyond a
20 reasonable doubt, but you say that there is a legally
21 recognized reason why, nevertheless, the result should
22 be acquittal, not conviction.

23 MR. HENDERSON: Again, what the general
24 understanding of the law is is one thing and how we

1 plan or anticipate to use the law as it relates to
2 defending the Representative are obviously two
3 distinct matters. So I will not speak to those issues
4 that relate to the Representative's defense.

5 And in response to your questions about
6 understanding the law in general, there are quite a
7 few cases, seminal cases that have been handed down by
8 the United States Supreme Court on this issue and many
9 other issues. And so I would suggest that to the
10 extent the committee wants a deeper understanding of
11 the law that to avail themselves of those cases. But
12 I am not in position here to speak to the nuances of
13 the law in those areas.

14 MR. ELLIS: Okay. Well, my understanding
15 -- not specific to Representative Smith. I won't --
16 I'll leave him out of it and just speak generally.
17 But my understanding of an entrapment defense in a
18 bribery case would be for the defendant to say I did
19 accept the bribe but it wasn't my idea, I wasn't
20 predisposed to do it, but because of whatever
21 governmental conduct there was, overbearing
22 governmental conduct broke my will and pushed me into
23 doing it against my will. That's my understanding of
24 how an entrapment defense would work in a bribery

1 case. Is that how you understand it?

2 MR. HENDERSON: I would add some nuances
3 to that. But, again, I think each case is so unique
4 it stands on its own, but as a general principle. And
5 again, I would be more comfortable standing on the
6 principles as enunciated by the United States Supreme
7 Court in the Seventh Circuit, so I would not at this
8 point in time want to characterize the laws so as not
9 to misspeak in front of the committee. I think in
10 general how you see the law, without me being a
11 constitutional law expert in this particular area, I
12 think would be a fair characterization.

13 MR. ELLIS: Okay. I appreciate that. And
14 certainly, Mr. Henderson, if I've said this wrong,
15 and, you know, when this committee hearing is over and
16 you want to think about it, we're going to have a
17 transcript. You may know that all the transcripts of
18 the committee hearings are online. This one will be,
19 too. You can study what I've said. If you think I've
20 misspoken, then, please, for everyone's sake, you cite
21 me a correction.

22 MR. HENDERSON: I think what I would like
23 to do is take the opportunity and I will identify
24 cases that speak to the issue that you're discussing

1 and maybe submit some of them so they can be in the
2 record.

3 MR. ELLIS: Absolutely. Okay.

4 Mr. Henderson, we gave you a packet of information and
5 in that is the exhibits that were entered today, as
6 well as Exhibit 3, which is the criminal complaint.
7 Do you have a copy of that?

8 MR HENDERSON: I do.

9 MR. ELLIS: I would like to ask you some
10 questions. I think all the members have a copy in
11 their packets as well.

12 I would like to turn your attention -- I
13 just have a few questions about this to the extent
14 you're able to answer them.

15 I'd like to first go to page -- I guess
16 it's page 4, paragraph 16, of the criminal complaint.
17 This is Exhibit 3.

18 And first of all, let me just say this:
19 There are some individuals and entities in this
20 criminal complaint that are identified by code, not by
21 name. Right? You agree with that; right?

22 MR. HENDERSON: That's correct.

23 MR. ELLIS: Sure. So one is CS-1. It's
24 written as CS-1 and that refers, according to the

1 complaint, to a cooperating source. Is that your
2 understanding?

3 MR. HENDERSON: Yes.

4 MR. ELLIS: Okay. So consistent with this
5 committee's discussions with the U.S. Attorney's
6 office, we have agreed not to attempt to identify that
7 person by any means. And for that reason, I'm not
8 going to ask you if you could identify that person for
9 me. And beyond that, while I don't think I could stop
10 you from doing so, it would be my request that you not
11 reveal the name either. But again, I can't force that
12 on you but that would be my request.

13 MR. HENDERSON: Understood.

14 MR. ELLIS: Okay. In paragraph 16 there
15 is a long first sentence, and I'm just going to cut
16 that sentence to the last half of it. I'm just going
17 to read you something and then ask you some questions
18 about it. When it says Smith, it's referring to
19 Representative Derrick Smith, but they just use his
20 last name here. I will quote beginning in the middle
21 of that sentence after the second comma.

22 "... Smith agreed to and did write a
23 letter of support for Daycare Owner's purported ECGG
24 grant application in exchange for a \$7,000 bribe."

1 Now, do you understand that when it says
2 Daycare, it's referring to an unidentified but actual
3 daycare facility described in the complaint?

4 MR. HENDERSON: I've read the complaint
5 many times. There are some details that I'm not
6 completely sure about. The government has not yet
7 turned over the materials which is the subject of the
8 protective order. And so without having additional
9 information, again, all I can do is read it like you
10 are and pretty much draw the same conclusions.

11 MR. ELLIS: Okay. Fair enough. Do you
12 understand that when it says ECCG grant application
13 that it's referring to an application for an Early
14 Childhood Construction Grant from the Illinois Capital
15 Development Board?

16 MR. HENDERSON: Based on this limited
17 document and what I can glean from it, that's what I
18 took away from it.

19 MR. ELLIS: Okay. Fair enough. I just
20 want to make sure we're understanding each other. I
21 don't want confusions over terms.

22 I'm going to ask you to turn to page 5.
23 It's still paragraph 16. And I'm going to read you
24 the full first sentence.

1 "Ultimately, Smith agreed to write an
2 official letter of support for Daycare Owner's
3 purported ECG grant application. Smith provided the
4 official letter of support on March 2, 2012."

5 Mr. Henderson, did Representative Smith
6 provide this letter of support on March the 2nd, 2012?

7 MR. HENDERSON: With all due respect,
8 that's a question that we're not in a position to
9 answer right now.

10 MR. ELLIS: Could you explain to me why
11 you're not in a position to answer that?

12 MR. HENDERSON: Because you -- this line
13 of questions is starting to delve into his defense
14 and, clearly, this is a public proceeding, and, quite
15 candidly, we're not interested in letting the
16 prosecutors in Chicago know the nuances of the
17 Representative's defense because presumably they'll
18 read the transcript and they'll read the newspapers
19 like everybody else.

20 MR. ELLIS: Sure.

21 MR. HENDERSON: And so, with all due
22 respect, the questions are now starting to tread into
23 the area of his defense, which we do not intend to
24 compromise. Without -- with the exception of saying

1 that again the Representative has entered a plea of
2 not guilty and, obviously, our stated purpose going
3 forward is to vigorously defend him of the charges.

4 MR. ELLIS: So you're not going to admit
5 or deny this allegation?

6 MR. HENDERSON: Well, I think that -- from
7 my perspective, I think that even before you get to
8 the complaint, you -- I will encourage you and I'm
9 sure you will at some point in time to get to the
10 government's own acknowledgement about how they misled
11 the federal judge, the sitting judge. And so from my
12 perspective, all of these allegations in this
13 complaint have to be read in the context of the
14 government's own admission that they misled a federal
15 judge, either intentionally or unintentionally. The
16 answer to that I do not know. So, therefore, to me,
17 that's the foundation from which you have to start
18 questions regarding the complaint, because the
19 misrepresentations by the United States Government
20 preceded or predated this complaint. And so I think
21 it's almost as if we're getting, for lack of a better
22 term, maybe second or third grade before we got to
23 first grade, which is how it all started.

24 MR. ELLIS: I guess my thought was that

1 this was a somewhat innocuous piece of information.
2 Either he filled out this letter or he didn't. I
3 would assume that between you and the federal
4 government there's no secret on this issue. You know,
5 I'm not going to tell you what prejudices your case.
6 But I can tell you that my objection was it doesn't
7 seem like it's that much of a give on your part to
8 tell us if Representative Smith signed this letter.

9 MR. HENDERSON: And I understand and I
10 appreciate the committee's position, and I hope you
11 understand our position of asking the Representative
12 about it is starting down the slippery slope of
13 compromising his defense.

14 And in answering further, I think, again
15 by the government's own admission, they created the
16 documents, false documents. And so without having
17 access to discovery, which we're fighting over, who
18 created what I can't tell you. All I can tell you is
19 that they acknowledge creating false documents, fake
20 e-mail accounts, fake letters, and things of that
21 nature. So what's real and what's fake I think is
22 absolutely, at least initially, a question that's more
23 appropriate for the government and not for the
24 Representative.

1 MR. ELLIS: Okay. But, Mr. Henderson, you
2 know the answer to this question; don't you? There
3 were documents that were manufactured I understand as
4 part of a sting operation or what have you. I
5 understand that you're claiming the federal government
6 and apparently they seem to have conceded that they
7 did not do a full criminal background on the CS. But
8 I'm just asking you whether he wrote this letter of
9 support and I would assume you have that answer at the
10 ready. I don't think it's a question I need to ask
11 the government. I think we can ask you.

12 MR. HENDERSON: And with all due respect
13 again, given the context in which it happened, I don't
14 think it's safe to assume at this point in time that
15 any of the representations in this particular document
16 are accurate. Until we have the opportunity to get
17 access to discovery, which we've been fighting for,
18 which you've asked for and you have not been able to
19 get it, we're going to ask for it. And so that will
20 shed light on all of the questions I think, not just
21 the ones that you asked but the ones that may be
22 forthcoming.

23 MR. ELLIS: Okay. And the fact that you
24 want us to have this information and that you could

1 give it to us right now if you wanted to, can you
2 understand why that might not make sense to some
3 people? If you want to give the information, here's
4 your chance to give it.

5 MR. HENDERSON: I don't have all the
6 information -- or, we don't have all the information
7 to give you right now.

8 MR. ELLIS: Okay. Well, let me just ask
9 you this for the record. I think I know what your
10 answer's going to be. But I'd like you to turn to
11 paragraph 39, which is on page 17. This is a
12 paragraph that purports to describe the letter. There
13 is a block quote here and I'll read the block quote.
14 This purports to be -- and these are all allegations.
15 This alleges that this language was contained in the
16 letter.

17 "As a State Representative for the West
18 Humboldt Park neighborhood, I support [Daycare Owner's
19 purported organization] in their application for a
20 \$50,000 Early Childhood Construction Grant from the
21 Illinois Capital Development Board."

22 Do you deny that that was in a letter?

23 MR. HENDERSON: I think if you read
24 further that's, I believe, and I could be wrong, this

1 is a letter that the government wrote.

2 When we talk about manufacturing
3 documents, this is a document that, as best I know --
4 and again, I don't have all the information, so I
5 apologize. Again, we're trying to get the
6 information.

7 MR. ELLIS: Sure.

8 MR. HENDERSON: So it's not as if we don't
9 want to answer. But again, as best I know, my
10 interpretation of the complaint is this is a document
11 that the government wrote, that they created, and then
12 as I understand it, it may have been passed on to
13 CS-1, whoever that is. I don't know. So what they
14 wrote and what they didn't write I'm still having a
15 hard time trying to determine. But as best I know,
16 the paragraph you just read is something that's in a
17 letter the government created.

18 MR. ELLIS: Well, but this -- this
19 language, according to paragraph 39, found its way
20 onto a piece of official letterhead from
21 Representative Smith and was signed by Representative
22 Smith. Do you dispute those facts?

23 MR. HENDERSON: Again, we don't have all
24 the information right now to answer questions that

1 detailed. I just don't know.

2 MR. ELLIS: You don't know?

3 MR. HENDERSON: Do not know. Not right
4 now.

5 MR. ELLIS: Okay. Well, is there any
6 other context you'd like to give for this issue before
7 I get off of it? We've got a -- you know, I'm
8 obviously asking you one of the -- one of the elements
9 here, one of the major acts -- in fact, the official
10 act that Representative Smith is accused of committing
11 is writing this letter of support. Is there something
12 that you want to tell us about this, something that
13 you can point to in the criminal complaint that's
14 incorrect, that's taken out of context? Is there --
15 any -- you know, we're trying -- Mr. Henderson, this
16 is not an adversarial proceeding, believe it or not.
17 This is supposed to be a truth-finding function. I'm
18 doing what no cross-examiner would do and I'm giving
19 you the floor to explain. Can you help us here?
20 We're trying to figure out, did he write this letter?

21 MR. HENDERSON: Well, I think --

22 MR. ELLIS: By the way, it's not a crime
23 to write a letter. I mean, that's just part of the
24 story. But -- but was the letter written?

1 MR. HENDERSON: Well, for the record, I
2 know you're going enter the documents, but I'd like to
3 turn your attention to -- since you've given me the
4 opportunity to, I'd like to turn your attention to the
5 complaint, page 3, paragraph -- footnote 1.

6 MR. ELLIS: Okay.

7 MR. HENDERSON: And this was a
8 representation made. And then I'll walk you to end --
9 walk you to the back of the document, on the very last
10 page, just in order to put it in context, on page 23,
11 you have an FBI agent, Bryan M. Butler, Special Agent,
12 Federal Bureau of Investigation, swearing that the
13 information in this is true. That's in paragraph 54.

14 "Based on the above, Affiant submits there
15 is probable cause to believe that:" And then it goes
16 on to say things. And then this was presented to the
17 Honorable Nan R. Nolan, United States Magistrate
18 Judge. So that's on page 23.

19 I turn your attention back to page 3 in
20 which it states this confidential source -- and again,
21 I don't want to pretend that there aren't people who
22 know who he is. But "The confidential source has one
23 prior arrest for domestic assault, but no
24 convictions." And then it goes on to say "Over the

1 past 3-4 years, the confidential source has received
2 approximately \$1,200 from the FBI for his or her
3 assistance in other investigations. In connection
4 with this investigation, to date, the FBI has paid the
5 confidential source \$4,000. The government has also
6 provided the confidential source with financial
7 assistance for purposes of relocation. During the
8 period of the confidential source's cooperation, at
9 least some of the time at the direction of Smith ... "
10 is what it says in the document "... the confidential
11 source has taken down campaign signs of Smith's
12 challenger in the Democratic primary.

13 And that's -- this is the government's
14 representation.

15 And then I'd like to turn your attention
16 to what the government -- so this is what the
17 government told the judge on one day, and then on
18 April 10th, 2012 -- and this is in SIC, Special
19 Investigating Committee, Exhibit Number 10, and it's
20 the third page, a letter to Judge Nan R. Nolan by the
21 United States Attorney, Patrick Fitzgerald. And this
22 is -- again I think it's critical. It says "This
23 letter provides the Court with notice of two
24 inaccurate statements in the March 12, 2012 affidavit

1 of Special Agent Bryan Butler in the above-referenced
2 case, which the government discovered on April 6 and
3 April 9, respectively."

4 Now, also, in this case I submitted the
5 docket sheet to you. And Representative Smith -- and
6 this is on the docket sheet and I know dockets for
7 people not familiar with them may not be easy to
8 follow. But the Representative was not indicted until
9 April 10th. And that's on page 3 of 3. There's an
10 indictment -- there's a docket sheet and on page 3 of
11 3 the Representative was indicted or formally charged
12 on April 10th.

13 So the government is telling you in this
14 letter dated April 10th that they discovered false
15 information on April 6th and April -- April 9th. Yet,
16 despite learning false information, they continued
17 with the indictment.

18 It further goes on to say "On page 3,
19 footnote 1 ..." and that's the footnote we just read
20 to "... the affidavit states: 'CS-1 has one prior
21 arrest for domestic assault, but no convictions.'"
22 That's what they told the judge. But then they later
23 come back and say, but according to NCIC, which is the
24 national crime data, CS-1 actually has two prior

1 convictions, not one that was earlier represented, a
2 2004 drug conviction for which CS-1 was sentenced to
3 probation and a 1978 burglary conviction for which
4 CS-1 was sentenced to probation -- and now, as far as
5 we're concerned, here's the material information -- as
6 well as approximately 20 prior arrests. Now, for the
7 record we'll say approximately. The government should
8 know exactly how many prior arrests he has. But to
9 say approximately and when I raise to you that we're
10 concerned that not all the information has been made
11 available, this is what we're dealing with. They're
12 saying that he has received approximately 20 prior
13 arrests, including, but not limited to, arrests for
14 burglary, theft, I want to emphasize theft by
15 deception, drug offenses, and a weapons charge.

16 "On page 3, footnote 1, the affidavit
17 further states: 'Over the past 3-4 years, the
18 confidential source has received approximately \$1200
19 from the FBI ...'"

20 Over the past 3-4 years. So my take away
21 from that is this is somebody who had been on the
22 government payroll long before confidential source 1,
23 whoever that is, to the extent that he did, met
24 Representative Smith. This is somebody who's on their

1 payroll by their admission.

2 "Over the past 3-4 years ..." And who else
3 this confidential source has been dealing with, I
4 don't know. We're asking for the information.

5 "Over the past 3-4 years, the confidential
6 source has received approximately \$1200 from the FBI
7 for his or her assistance in other investigations."
8 And then it goes on to state "According to FBI
9 internal records, over the past 3-4 years, the
10 confidential source received approximately \$2,100 from
11 the FBI for his or her assistance in other
12 investigations."

13 My point is that when you ask me questions
14 about the complaint that was put together by this
15 particular special agent in conjunction with someone
16 who has been on the government payroll for many years,
17 who, among other things, has been charged with theft
18 by deception, I don't know the answers to many of the
19 questions that you're asking. That's why we are
20 attempting to get the records from the federal
21 government and have them disclose it.

22 Which is the same reason why -- and we
23 referenced earlier to Senator Ted Stevens. Senator
24 Stevens at that time was under siege and nobody wanted

1 to believe that he was an innocent man. People were
2 ready to draw the conclusion very early on that what
3 he had done was wrong or what he was charged with was
4 wrong, and no one ever thought that the federal
5 government would do anything untoward, or many people
6 did not.

7 And so when you ask me questions about the
8 complaint, all I can do is tell you what I read. We
9 don't have the information. We're going to be asking
10 for it, and if we get it, we will share it with you.
11 So all of the questions about the complaint, to me,
12 are put in the context of the fact that the
13 investigation started off with a misrepresentation to
14 a sitting federal judge.

15 MR. ELLIS: Okay. Well, let me first ask
16 you about that. So you note that the indictment was
17 handed down by the grand jury on April 10th and that
18 the discovery of this inaccurate information preceded
19 that indictment?

20 MR. HENDERSON: That's what the government
21 says.

22 MR. ELLIS: Do you have reason to believe
23 that the federal government did not give this updated
24 information to the grand jury?

1 MR. HENDERSON: Well --

2 MR. ELLIS: I would assume that they did.
3 Should I not assume that?

4 MR. HENDERSON: Well, we're all familiar
5 with the old adage that the grand jury will indict a
6 ham sandwich. We've all heard that. So whether the
7 prosecutors presented this information I don't know
8 because I have yet to see -- we have yet to see the
9 grand jury transcripts. What I can tell you is based
10 on their own letter that they did not present that
11 information to the federal magistrate.

12 MR. ELLIS: Sure.

13 MR. HENDERSON: Whether or not they gave
14 it to the grand jury I don't know.

15 MR. ELLIS: Sure. And I appreciate that
16 you are asking us not to -- to take the complaint with
17 a grain of salt. I understand your position. But
18 that's why we're asking -- that's why I'm asking these
19 questions. Because what we're saying to you, Mr.
20 Henderson, is we don't -- we're trying not to just
21 take them at their word. They're sworn statements by
22 a federal agent, but you're making a pitch that
23 there's some doubts to be cast upon them. And what
24 I'm asking you to do is deny them if they're wrong or

1 tell us how they're misleading, give us some
2 indication as to why we shouldn't believe them, other
3 than the fact that they misrepresented the criminal
4 background of the cooperating source. That's why I'm
5 trying to go through some of these.

6 If you'll bear with me, I'm not going to
7 go through the entire complaint, but there are a few
8 passages that I would like to address. I would
9 encourage you to try to answer these questions, but
10 you know, I can't make you do so.

11 Turning back to page 5 of the criminal
12 complaint, sir. This is still on paragraph 16. At
13 the end of that paragraph we talked a little bit about
14 Representative Smith allegedly writing the letter.
15 The last sentence on page -- on paragraph 16, on page
16 5, it says as follows:

17 "On March 10, 2012, Smith accepted \$7,000
18 cash from CS-1."

19 Now, this sentence I've chosen carefully
20 here to ask you about because this doesn't say
21 anything about a bribe. It doesn't say anything about
22 lying. It just very plainly says on March 10th,
23 Representative Smith accepted 7,000 in cash from the
24 cooperating source. Do you deny that statement?

1 MR. HENDERSON: I don't want to admit or
2 deny it for the reasons that I've previously stated.

3 MR. ELLIS: You're not telling me you
4 don't know the answer?

5 MR. HENDERSON: What I'm telling you is
6 that there -- I don't know all of the facts and
7 circumstances yet because the government has refused
8 to disclose the information, and so I don't want to
9 lead the committee -- or, give an answer that's less
10 than -- based on less than full knowledge. And so
11 clearly, there are any number of allegations that are
12 raised in the complaint. But again, without full
13 knowledge, I don't want to be in a position on behalf
14 of the Representative to give an answer to something
15 when the government has all of the information and we
16 have almost none of the information. So there are
17 just things that we just don't know which make it
18 impossible for us to answer that question right now.

19 MR. ELLIS: Well, I would be happy to
20 accept that caveat to your answer. I would be happy
21 to accept the preface that you may not have all the
22 information. But based on the information you have
23 right now, can you answer this? Can you deny or admit
24 this statement?

1 MR. HENDERSON: Based on the information,
2 the limited information we have right now, we're just
3 not in a position to answer that.

4 MR. ELLIS: You're not going to?

5 MR. HENDERSON: No.

6 MR. ELLIS: You could if you wanted to.

7 MR. HENDERSON: No, we're not in a
8 position to.

9 MR. ELLIS: You can't admit or deny
10 whether Representative Smith accepted 7,000 in cash on
11 a particular date from a particular person?

12 MR. HENDERSON: That's correct. Not right
13 now we cannot.

14 MR. ELLIS: Okay. You can't because of
15 the legal strategy you're pursuing because you're
16 trying to protect your client's rights?

17 MR. HENDERSON: Not just because of legal
18 strategy but also because we don't have full
19 information. There's information that the government
20 has that we don't have which would bear light on any
21 answer that we give. And again, we want to be able to
22 -- be able to answer it -- be able to have access to
23 complete information and then answer, which is why I
24 think I alluded to earlier the Representative at some

1 point in time in the future, if we get access to all
2 the information and our hands aren't tied, then we
3 would be in a position to come back and answer
4 questions. So again, I think it's more about the
5 federal government being willing to disclose
6 information so we can all be on the same page and
7 answer, as opposed to asking one party not having part
8 of the information and being put in the position to
9 have to answer questions. It just would not be based
10 on knowledge. It just would be a guess.

11 MR. ELLIS: Okay. Well, other than what
12 you've already talked about with this criminal
13 background information not being provided to Judge
14 Nolan before the arrest warrant was issued, is there
15 anything you'd like to tell us as to why we should not
16 take this statement as true, why we should not believe
17 this statement? Is there any information you want to
18 give us before I move on?

19 MR. HENDERSON: Other than the general
20 caveat that I would encourage the committee to wait
21 until it gets full information and then decide, as
22 opposed to doing the opposite, which is decide and
23 then getting full information. And the Senator
24 Stevens matter, which again was just, you know,

1 relatively recent, is the one that we point to. I
2 think we all need to take heed of that.

3 MR. ELLIS: Okay. Paragraph 16 also
4 refers to multiple consensually recorded
5 conversations. So, obviously, this complaint is full
6 of quotes attributed to Representative Smith, CS-1,
7 and others that were taken pursuant to consensual
8 recordings. You know that, right?

9 MR. HENDERSON: Yes.

10 MR. ELLIS: You don't have those tapes?

11 MR. HENDERSON: No. We've asked for them.
12 Don't have them.

13 MR. ELLIS: You don't have transcripts?

14 MR. HENDERSON: We don't have anything.

15 I don't think it's a secret, I can tell
16 you this, that over the last few weeks the government
17 has asked us to voluntarily agree to a protective
18 order such that certain information would not be made
19 public. We refuse to do that. We want everything to
20 see the light of day. So as I mentioned to the
21 committee chairwoman earlier, that would be the topic
22 of dispute in front of the judge in a few weeks.

23 MR. ELLIS: Now, Mr. Henderson, in a lot
24 of ways I'm giving you the best of both worlds here.

1 I'm giving you the chance to give your side of the
2 story without the government giving their side.

3 MR. HENDERSON: Well, we like -- as
4 opposed --

5 MR. ELLIS: You don't have to win an
6 argument here, Mr. Henderson. I mean I'm not going to
7 argue back because I don't know any other evidence.
8 But if you have a take on some of this information,
9 this is your chance to tell us, and Pat Fitzgerald's
10 office is not going to be here to rebut it.

11 MR. HENDERSON: Our preference, as opposed
12 to trying to posture and spin information, is to have
13 all of the information come out so everybody can see
14 it at the same time so everybody can draw their own
15 conclusions, as opposed to posturing. That's not what
16 we want to do today.

17 MR. ELLIS: Okay. Well, in light of your
18 -- your position, I'm going to try to do this quickly.
19 Please indulge me. I think it's important that I ask
20 you these questions on the record, but I'll do them
21 quickly. I think I understand that you're not going
22 to answer them.

23 I'd like to go to page 6, which is a
24 continuation of paragraph 17, and I'd like to read a

1 short blurb from a long paragraph. This -- this is
2 allege -- describing -- it purports to a describe a
3 conversation between Representative Smith and CS-1 on
4 January 24th, 2012. It alleges a conversation in
5 which CS-1 told Representative Smith that a woman who
6 owned a daycare center was willing to pay \$7,000 for
7 Representative Smith's writing of a letter of support
8 for a capital grant. And specifically it alleges the
9 following, starting at the very last word on the top
10 line of page 6:

11 "Specifically, CS-1 told Smith that
12 Daycare was planning some 'renovations' and
13 'modifications.' CS-1 told Smith that Daycare Owner
14 was looking for 'a capital ..." and Smith finished
15 CS-1's sentence with 'improvement.' CS-1 said, 'Yeah.
16 That's what they tryin' to do. You know ... you think
17 you might be able to handle it?' Smith responded, 'We
18 can go talk to her [Daycare Owner], but be sure and
19 talk to, uh, [Alderman A].' Later in the meeting,
20 Smith said, 'I try to, I try to help ...'" And then
21 unintelligible. "'I know what you're saying.' CS-1
22 said, 'The broad [Daycare Owner] is gonna give ...'
23 Smith interrupted and said, 'I got you,'" blank "'I
24 told your'" blank "'I got you.'" CS-1 said, 'Look,

1 look. The broad is gonna give seven [7,000], with no
2 problem.' Smith responded, 'Okay.'"

3 One reading of this would be that
4 Representative Smith is discussing the idea with CS-1
5 of obtaining a bribe, obtaining money from this
6 daycare center in exchange for official actions. Can
7 you give us some reason why we should read this
8 another way?

9 MR. HENDERSON: Certainly. I'll give you
10 a great reason why you should read it another way.
11 Paragraph 17 starts off "On January 24, 2012 ..."

12 MR. ELLIS: Okay.

13 MR. HENDERSON: And I would take your
14 attention to March -- page 21, March 9, March 10.

15 MR. ELLIS: Okay. I'm sorry. Are you
16 finished?

17 MR. HENDERSON: Well, I'm trying to
18 respond to your question. The complaint seems to, at
19 least based on what I have before me -- and again, I
20 anticipate that there's other information that we
21 don't have that the government hasn't turned over.
22 This story lasts over a long period of time.

23 MR. ELLIS: I didn't hear the last thing
24 you said.

1 MR. HENDERSON: This story lasts over a
2 long period of time.

3 MR. ELLIS: Okay.

4 MR. HENDERSON: You're talking about a
5 conversation that took place on January 24th.

6 MR. ELLIS: Yes.

7 MR. HENDERSON: And the complaint
8 continues to go on and on and on and on.

9 MR. ELLIS: Into March, correct.

10 MR. HENDERSON: So -- and then also there
11 are other things. And again, I know that the
12 Representatives may not have the same ability to go
13 through the complaint in detail. Another response is
14 on page 12, footnote 5, as I alluded to you earlier in
15 the complaint, it says "As part of this investigation,
16 law enforcement registered a fictional not-for-profit
17 corporation with the Illinois Secretary of State's
18 office. CS-1 provided the name of this organization
19 to Smith and stated that this was Daycare Owner's
20 organization."

21 I don't know what to believe in this
22 complaint.

23 MR. ELLIS: Is there some reason you don't
24 believe that statement in the footnote?

1 MR. HENDERSON: When you take the
2 statement that our government is registering fictional
3 non-profit corporations and that our government is
4 standing in front of federal judges making one
5 representation on one day and another representation
6 afterwards, as of this point in time that, at least
7 from our perspective, goes to show the difficulty in
8 answers the questions. We just don't know.

9 MR. ELLIS: I mean, I'm not an expert on
10 criminal law, but this certainly seems to be alleging
11 a sting operation, right? Where some things were
12 manufactured to catch somebody in an act, a criminal
13 act. Is that not how you read this? I mean that's
14 not unusual; is it?

15 MR. HENDERSON: Well, you -- you earlier
16 alluded to the state of law which talks about things
17 that the government is not supposed to do, and I
18 alluded to earlier to what the government did in the
19 case of Ted Stevens, manufactured things. The law is
20 -- I wouldn't say a state of flux. It depends on if
21 you're a strict constructionist or not.

22 MR. ELLIS: Okay.

23 MR. HENDERSON: Some people believe that
24 the law is a living, breathing thing. Again, I

1 apologize for having difficulty answering some of
2 these questions, but given all of the deceit that
3 appears to have taken place, it's very difficult to
4 know at this point in time. That's not to say at some
5 point in time in the future we're not going to be able
6 to better answer these questions, but at this point in
7 time, trying to figure out what's real and what's not
8 has been difficult for us.

9 MR. ELLIS: Okay. But even if we didn't
10 go all the way to March, even if we just focused on
11 this one day on January 24th, doesn't this appear on
12 January 24th, as we read the passage I just quoted,
13 does that not sound an awful lot like Representative
14 Smith is saying okay to the idea of accepting \$7,000
15 in exchange for a support letter?

16 MR. HENDERSON: Well, again, I'm just
17 going to respond to what I see in the complaint.
18 They're talking about the same \$7,000 in the complaint
19 in December, in January, in February, in March.

20 MR. ELLIS: Okay.

21 MR. HENDERSON: I don't know.

22 MR. ELLIS: Okay. Well, let's -- let's go
23 to March 4th then. Let's -- you know what, let me do
24 this, let me read one more thing to you before that.

1 I just have a couple more of these, Mr. Henderson.

2 You're bearing with me. I appreciate it.

3 Let's go to paragraph 24, and it begins on
4 page 9, but I'm going to read page 11 to you. This
5 paragraph alleges a conversation on February 24th,
6 2012, between CS-1 and Representative Smith, and on
7 page 11 following conversation allegedly took place.
8 These are all allegations.

9 "CS-1 and Smith then discussed the amount
10 Daycare Owner was willing to pay:

11 "Smith: What's she [Daycare Owner] doin'?

12 CS-1: They gonna' to try to get that
13 buildin'. Knock that wall out.

14 SMITH: No I mean ...

15 CS-1: Expand her ..." blank

16 "SMITH: What she gonna do?

17 CS-1: For the money? Okay. What you
18 want man? It's a letter. What you want?
19 Tell me what to do?

20 SMITH: You said ...

21 CS-1: I'll see if I can get it done.

22 SMITH: You already said a number now.

23 I'm just tryin' to see if you remember
24 what you said.

1 CS-1: I know exactly what I said. Okay,
2 she, she's talkin' about gettin' us \$7,000
3 man.

4 SMITH: All right.

5 CS-1: All right. ... That's what you
6 want? That's what you get. That's what
7 you want? You got to tell me man, so I
8 know what to do.

9 SMITH: You already said what you said, I
10 ain't sayin' nothin'.

11 CS-1: Okay, that's good...

12 SMITH:" (Unintelligible) and then "said
13 what you said.

14 CS-1: We rock and roll. Get the letter,
15 I get that chop [money].

16 SMITH: I'll give her a letter of support.
17 But she gotta say who, to who."

18 So, Mr. Henderson, why shouldn't the
19 committee read this passage as being a continuing
20 negotiation where Representative Smith affirms that he
21 will accept \$7,000 in exchange for writing a letter of
22 support for this Daycare Owner?

23 MR. HENDERSON: Well, reading the passage
24 is one thing. The passage being true is something

1 different altogether. And then the third point that I
2 would add is the passage or any reading of any
3 document of allegations needs to be read in the
4 context of facts, none of which we know.

5 MR. ELLIS: Okay. Well, is there context
6 you want to add?

7 MR. HENDERSON: The only context that I'm
8 trying to add would be, again, we are fighting to try
9 to get all of the information from the federal
10 government so we can come and give you a full -- give
11 you honest answers based on complete understanding as
12 opposed to not knowing anything. We're not in a
13 position to respond to it. We just don't know.

14 MR. ELLIS: Mr. Henderson, obviously,
15 you've made your point about how this affidavit had
16 some mistakes in it concerning the criminal background
17 of the cooperating source, but I would --

18 MR. HENDERSON: I wouldn't call them
19 mistakes. I'd call them material misstatements. And
20 I don't know whether or not they were intentional or
21 unintentional. But I wouldn't use the word mistakes.
22 I'd call them material misstatements that may have
23 been intentionally or unintentionally made. I don't
24 know.

1 MR. ELLIS: Okay. Fair enough. I'll
2 accept that. But when these -- when these quotes are
3 made, are laid out in an affidavit in a sworn --
4 they're sworn to under oath by a federal agent.
5 Right? And the government knows that at some point
6 they're going to be turning these tapes over to you.
7 And unless they lack any brains at all, they know that
8 you're going to go through the tapes to see if the
9 government has correctly attributed this, all of the
10 different quotes. I mean, I assume that the FBI and
11 the U.S. Attorney's office knows that you're going to
12 check up on their quotes and point out any
13 inaccuracies. You've been quick to do so already.
14 You've done a very nice job of already making a good
15 point.

16 Is it unreasonable to think that given
17 that this information was sworn to by a federal agent,
18 who knows that this information is going to be made
19 public and who if he's lying about it will probably
20 lose his job and go to prison, that there is some
21 reason to put some faith in the truth of what we're
22 reading?

23 MR. HENDERSON: I wouldn't put any faith
24 into it for two reasons.

1 One, you asked about what's reasonable and
2 what isn't. I wouldn't think that the most powerful
3 law enforcement agency in the world, meaning the FBI,
4 either, A, would not know who they were dealing with
5 with the confidential informant. If they're dealing
6 with somebody for three or four years and they don't
7 know his background and they don't know what he is and
8 who is, that's by their admission, I -- so from our
9 perspective, from my perspective, I wouldn't put any
10 faith in anything that they've done, at least as
11 relates to this case.

12 And again, I continue to allude to Ted
13 Stevens, because I think that there's a tendency for
14 people to believe that government officials or FBI
15 agents or, you know, Assistant U.S. Attorneys -- you
16 know, they put their pants on one leg at a time like
17 the rest of us. They're subject to making flaws and
18 mistakes. They can be dishonest. You know, sitting
19 here in Springfield, you know, government officials
20 often engage in tyranny or tyrannous acts. And so I
21 don't put any faith in any of it. And I would
22 encourage all of you at this point in time, at this
23 juncture not to do so, either.

24 MR. ELLIS: Fair enough. A couple more

1 conversations. This one is in paragraph 44 on page
2 19. It alleges a phone conversation on March 4th,
3 2012, between CS-1 and Representative Smith. And I'm
4 just going to read the third sentence and then a
5 couple sentences that follow. This is March 4th,
6 2012. This is paragraph 44.

7 "During the call, Smith and CS-1 again
8 discussed the form of payment and CS-1 suggested that
9 Smith ask for 'cash.' Smith responded, 'Yeah.' CS-1
10 said, 'Ain't no strings attached.' Smith responded,
11 'Yeah, but ... what did they agree to, seven stacks?'
12 CS-1 said, 'Yeah.'"

13 Do you deny that these statements are
14 truthful in this?

15 MR. HENDERSON: I can't shed any more
16 light on this conversation that occurred on or around
17 March 4th than the same conversation that occurred, at
18 least based on this document, in February or January
19 or December. I just don't know.

20 MR. ELLIS: Is there some reason why the
21 length of time that transpired makes you somehow think
22 that this is a less plausible scenario? Is there
23 something about the fact that this took six -- 60
24 days, 90 days to happen makes it less likely to be

1 believed?

2 MR. HENDERSON: Right now I'm not in a
3 position to say. We want to get more information.

4 MR. ELLIS: I understand. Okay. A couple
5 more. Paragraph 48 on page 21. I'm getting to the
6 end here. This alleges a phone conversation on March
7 10th, 2012, in which the following is alleged to have
8 taken place. This is the third sentence in paragraph
9 48 on page 21.

10 "During the call, CS-1 asked Smith if he
11 could meet between 2:30 and 3:00 p.m. Smith told CS-1
12 to call him and Smith would give CS-1 his location.
13 Smith asked, 'You got it? You got it?' CS-1
14 answered, 'I got you. Don't worry about it.'"

15 Continuing on to paragraph 50, to the
16 third sentence, this now purports to describe the
17 meeting that apparently was discussed in paragraph 48.

18 "During the meeting, CS-1 stated, 'You
19 thought I was bs'ing didn't you?' (CS-1 and Smith
20 laugh.) CS-1 then stated (while counting the money),
21 'One. Two. Three. Four. Five. Damn, stuck
22 together. Six. Seven. Unintelligible. Talk to you
23 later.' Smith then asked, 'You don't want me to give
24 you yours now?'"

1 Reading those together, again I'll just
2 give you the chance to tell us why -- why should the
3 committee not read that as appearing to describe a
4 situation where CS-1 and Representative Smith finally
5 met and CS-1 delivered the \$7,000 in bribe money to
6 Representative Smith?

7 MR. HENDERSON: For the same reasons I've
8 stated before. They're allegations provided by an
9 agent who has already acknowledged making other
10 material misstatements of fact, so I think they all
11 have to be read in that context.

12 MR. ELLIS: Okay. And I thank you for
13 being patient with me as I've taken you through a
14 number of these paragraphs. The committee's been
15 patient with me, too.

16 Is there anything in here -- whether I've
17 talked about it or not, is there anything you want to
18 call attention to and say this is -- you've done one
19 thing already, the criminal background. I don't think
20 you need to repeat that for us, but is there anything
21 else in here where you would say "You need to
22 understand, members of the committee, this is out of
23 context? You need to understand, members of the
24 committee, this is false, this didn't happen?" Is

1 there anything of that nature that you'd like to tell
2 us?

3 MR. HENDERSON: I would encourage you --
4 at this point in time, no. Again, I think it all
5 starts with, at least from my perspective right now,
6 which is subject to change, the foundation upon which
7 this is built, which is a confidential source, the
8 government's person who has been on their payroll for
9 many, many years, and I want to reemphasize the fact
10 that either, A, they didn't know who their own
11 informant was, which would be not -- not saying much
12 for their thoroughness and efficiency, or,
13 alternatively, they misrepresented who this person was
14 to the judge. Either way, it's not -- not -- does not
15 speak highly. And we don't know the answer right now
16 to which one is which.

17 MR. ELLIS: Mr. Henderson, do you think
18 that holding the office of Illinois State
19 Representative is a right or a privilege?

20 MR. HENDERSON: I think it's probably some
21 of both.

22 MR. ELLIS: Do you agree that the
23 allegations against Representative Smith are serious?

24 MR. HENDERSON: Representative Smith and I

1 think everyone takes them seriously, yes.

2 MR. ELLIS: Do you agree that these
3 allegations, which are only allegations right now, but
4 if true, would constitute more than just misconduct
5 but misconduct that cuts to the very public duties of
6 his office? If true.

7 MR. HENDERSON: I wouldn't want to
8 speculate because I think that there's not enough
9 information right now. Again, the information has not
10 been made public. I think that the wise course of
11 action -- and I alluded earlier to my own tenure as a
12 staff member of the United States Congress for the
13 Ethics Committee. The order of business was to get
14 all the information and then determine how the facts
15 played out, as opposed to making premature
16 determinations. And so I think that that process
17 should hold true not just for Representative Smith but
18 for anybody who's a Representative, you know, here in
19 the State Capitol or anybody who's a Senator here in
20 the State Capitol that -- or any individual who has
21 been charged with a wrongdoing, that all of the facts
22 come out and then we decide, as opposed to deciding
23 before the facts are out. I think that's just the
24 basic notion of fairness and justice and fair play.

1 And if it should play out anyplace, it should play out
2 here in this building.

3 MR. ELLIS: Okay. Madam Chair -- thank
4 you, Mr. Henderson, very much for your time.

5 MR. HENDERSON: Thank you.

6 MR. ELLIS: Madam Chair.

7 CHAIRPERSON NEKRITZ: Thank you very much.
8 Would any of the committee members like to
9 ask some questions?

10 Representative Reboletti.

11 REPRESENTATIVE REBOLETTI: Thank you,
12 Madam Chair.

13 Mr. Henderson, you said that your client
14 would not testify today but may testify in the future.
15 I'm not sure how many times this committee is going to
16 meet before we begin our deliberations. Do you have a
17 time frame in which that may occur?

18 MR. HENDERSON: We will be in front of
19 Judge Nolan -- I'm sorry, Judge Coleman -- give me one
20 second.

21 REPRESENTATIVE REBOLETTI: Sure.

22 MR. HENDERSON: To the best of my
23 recollection, we're back in court on the 30th of May.
24 And prior to the 30th of May -- today is the 10th of

1 May -- we will be filing briefs asking the court to
2 release everything. And so, you know, we're not in
3 charge of the decision about whether or not everything
4 gets released, but in a matter of 20 days, or less
5 than three weeks, we'll be back in front of the judge
6 and making the same request to the judge that this
7 committee made of Patrick Fitzgerald, United States
8 Attorney Patrick Fitzgerald, which is to release all
9 the information. And at that point in time --

10 REPRESENTATIVE REBOLETTI: That next court
11 date is only with respect to the order, the protective
12 order to keep --

13 MR. HENDERSON: Yes.

14 REPRESENTATIVE REBOLETTI: -- to keep that
15 with -- not allowing you or your client to share that
16 with us or with anybody else, for that matter?

17 MR. HENDERSON: That's correct. We're
18 fighting that.

19 REPRESENTATIVE REBOLETTI: Is there -- has
20 the judge set a briefing schedule for any of the
21 affirmative defenses you may or may not file? Is
22 there some other time frame down the road, three
23 months, six months?

24 MR. HENDERSON: That -- right now that is

1 the only date, to the best of my recollection, that's
2 been set. Although, the parties also have the
3 opportunity to file briefs, which would affect that
4 schedule. And it's my expectation that the parties
5 will avail themselves of the opportunities to present
6 issues in front of the judge.

7 REPRESENTATIVE REBOLETTI: And there has
8 not been a trial date set; is that right?

9 MR. HENDERSON: At present, there has not
10 been a trial date set.

11 REPRESENTATIVE REBOLETTI: You have
12 indicated -- and I've read through your comments in
13 the press about this process. And I know that your
14 client is cloaked with a presumption of innocence and
15 I think all of us here agree with that. One of the
16 things I'd like to point to you is that under House
17 Rule 92 -- I know you don't have a copy of that, so
18 I'm -- I will tell you that our mission under
19 paragraph (b) is to determine if reasonable grounds
20 exist to bring charges against the member for formal
21 disciplinary actions -- formal proceedings by the
22 House. And so our standard is a much lower standard
23 than proof beyond a reasonable doubt. You realize
24 that we're more like a grand jury ourselves or maybe a

1 preliminary hearing. You understand that; right?

2 MR. HENDERSON: I wouldn't characterize it
3 quite the same way. I recognize that the standards
4 are different. However, I believe, based on my own
5 experience, that it's not a low standard. Rather,
6 it's a different standard. And that due process and
7 fair play would take place at every level of every
8 proceeding. And so that would be the expectation,
9 whether it would be the United States House of
10 Representatives or this State House or, you know, in
11 court in Chicago.

12 REPRESENTATIVE REBOLETTI: Your client
13 indicated that -- he said that the people of his
14 district elected him -- elected me. My understanding
15 was that your client was appointed to the seat and he
16 won a primary back in March. Is that fair to say?

17 MR. HENDERSON: In general, I think that's
18 correct. He was elected during the primary.

19 REPRESENTATIVE REBOLETTI: So he didn't
20 win election last November and was sworn in with this
21 General Assembly. It would've been an appointment
22 sometime after that because of the retirement of
23 another State Representative leaving a vacancy.

24 MR. HENDERSON: The Representative

1 obtained his seat in the confines of the law that
2 currently exist in the same way, as best I know, that
3 countless other members have been appointed to their
4 seats in the event of a vacancy for whatever reason.
5 So Representative Smith was -- filled the seat in the
6 same process like anybody else under similar
7 circumstances.

8 REPRESENTATIVE REBOLETTI: Well, you
9 talked about material misrepresentation, and I'm aware
10 as I look at the letters that the AUSA has sent
11 indicating that CS-1 had additional charges that the
12 court was not aware of at the time of the warrant
13 being issued for your client. I guess my concern is
14 that isn't that really left best to maybe you filing a
15 motion to quash the arrest and suppress evidence, and
16 it goes more to the veracity of CS-1 than anything
17 else. I don't know if you -- why we need to take that
18 into consideration. Because the bigger picture is I
19 haven't heard you disagree that the conversations that
20 are on -- that are in this complaint on the wire never
21 took place. And so my argument would be is that these
22 numerous conversations -- and I'm looking here on page
23 21, call number 148, and on and on and on, you're not
24 alleging or telling this committee that those phone

1 calls or this conversation didn't happen; are you?

2 MR. HENDERSON: What I'm saying to you is
3 that it would be unwise to answer questions now,
4 giving the impression that the answers are based on
5 full information, only to have to come back at some
6 later time to correct or amend an answer because the
7 answer that we gave was not based on full information.
8 And so some individuals might make a judgment call
9 that they want to answer a question that's posed to
10 them without knowing everything. And on behalf of the
11 Representative, we have made a judgment call that we
12 would like to know the information and then answer, as
13 opposed to answering and then knowing the information.

14 REPRESENTATIVE REBOLETTI: I appreciate
15 that you need full information to defend your client.
16 We'd like to have as much information as possible as
17 well. But what I guess here is that, what are you
18 anticipating? Will there be additional conversations
19 in this wiretap that you're awaiting that would be
20 more clarifying to this committee that would show us
21 that your client was not involved in this activity?
22 I'm not exactly sure what you're suggesting.

23 MR. HENDERSON: Well, I guess the answer
24 to that is, I'm being asked to tell you the

1 information that the government has. I don't know
2 what they have. And so, therefore, I don't work under
3 the assumption and I don't think most -- the way --
4 generally speaking, for non-lawyers, you're generally
5 trained to get the information and then decide, as
6 opposed to decide and then get the information. So it
7 just would be unwise, again, to speculate what the
8 government has.

9 For example, and I'll give you an example,
10 I never would have thought, for example, that the
11 government would use an informant for a multitude of
12 years and not know the informant's background. That
13 just would not have occurred to me. I never would
14 have thought, again, that the government would find
15 out that an informant that they are using has either,
16 A, misrepresented himself to them and then that they
17 would proceed with the indictment without first
18 getting to the judge. I never would have thought
19 that.

20 I would not have thought -- and again I've
21 made this reference several times -- that we would
22 have prosecutorial misconduct that would make the
23 pages all over the United States that you would have a
24 sitting Republican Senator, Ted Stevens, who would be

1 affected by that.

2 So there are a lot of things that have
3 happened that I never would have envisioned. So,
4 therefore, we're not in a position to say what these
5 people have done by way of the information. We just
6 don't know. And until we get access to the
7 information, we're not going to be in a position to
8 respond. In the same way that you've asked for the
9 information and haven't received it. We just want to
10 get access to the information and then sit down and
11 answer.

12 REPRESENTATIVE REBOLETTI: You've
13 indicated that the government has manufactured
14 documents. Is there any particular ones that you'd
15 like to show us or enter into as an exhibit that was
16 manufactured?

17 MR. HENDERSON: Well, again, I pointed out
18 to -- and I have to read the complaint. I can respond
19 later. I pointed out to page 12, footnote 5, "As part
20 of this investigation, law enforcement registered a
21 fictional not-for-profit corporation with the Illinois
22 Secretary of State's office." That's their admission.
23 So to the extent that they created a fictional
24 not-for-profit corporation, they would have had to

1 make fake documents. There are other references in
2 this complaint as well, I believe to e-mail accounts
3 and also to -- you have to read between the lines, but
4 I think there are multiple instances where things were
5 made up or manufactured or created. But that -- but
6 again, this is their complaint. This is what they're
7 saying.

8 REPRESENTATIVE REBOLETTI: I'm just trying
9 to get to the bigger picture, which is you're saying
10 that basically everything has been misrepresented or
11 manufactured, and you want time for the process to
12 play out so that we, sitting up here, can see all of
13 that.

14 MR. HENDERSON: No, I'm not saying that
15 everything has been misrepresented. What I'm saying
16 is -- I'm just pointing out what the government itself
17 has acknowledged has been misrepresented.

18 And what I'm saying is that what we're
19 encouraging not just this body but any body across the
20 country to do is to get the significant material
21 information it needs and then decide. I believe the
22 old adage is -- I think it goes you don't want to
23 shoot and then ask questions later, you want to ask
24 questions and then decide. In other words, the

1 information should come out and everybody should have
2 access to it and everyone should have equal access to
3 the information. In other words, transparency.

4 We would like the federal government in
5 this context in which Representative Smith is sitting
6 here to be transparent with the information that it
7 has, give you the information that you previously
8 requested, let us have access to the same information,
9 and then we can reconvene and discuss what it means.

10 REPRESENTATIVE REBOLETTI: In the bill of
11 indictment there's a forfeiture provision that
12 indicates that the federal government seized a certain
13 amount of money. Are you aware of how that seizure
14 took place?

15 MR. HENDERSON: I am not.

16 REPRESENTATIVE REBOLETTI: That's in the
17 information you'd be awaiting?

18 MR. HENDERSON: Yes.

19 REPRESENTATIVE REBOLETTI: But you're not
20 sure how they arrived at the dollar amount of \$4500
21 that they are basically due and owing upon a
22 conviction?

23 MR. HENDERSON: I can make some guesses
24 based on the complaint, but I really don't know. It

1 would be just that, a guess.

2 REPRESENTATIVE REBOLETTI: Because one of
3 the things that troubles me, as somebody who has
4 worked with undercover law enforcement in sting
5 operations, many times in narcotics cases, is that on
6 page 21, in paragraph 49, it says "On March 10, 2012,
7 CS-1 met with law enforcement, in anticipation of a
8 meeting with Smith. Law enforcement searched CS-1's
9 person and CS-1's vehicle for money and contraband,
10 with negative results." Which is a common practice in
11 these types of investigations. "Law enforcement then
12 provided CS-1 with \$7,000 of United States currency in
13 pre-recorded \$100 bills." And then -- basically what
14 is known as official advance funds.

15 And then -- and that happens sometime
16 between 2:30 and 3:00, and by 2:56, in paragraph 50,
17 the allegation is that the CS-1 took that money and
18 had a meeting with your client and then counted that
19 money out.

20 And so while I can appreciate your stance
21 and that you have to zealously defend your client, if
22 these are to be taken in the context of the four
23 corners of the document that a wiretap caught your
24 client saying these things and these things occurred,

1 I would suggest that that is enough for this committee
2 to take action and to deliberate, and most likely,
3 deliberate and suggest that we move forward -- or,
4 that the House move forward for punishment.

5 So you're saying that I should assume that
6 this has been manufactured or misrepresented at this
7 point?

8 MR. HENDERSON: No. What I'm saying is
9 that if the standard is that merely by the federal
10 government leveling charges and if the standard is
11 that the federal government has to create a document
12 that on its face says what it says, then it's a
13 standard for not just Representative Smith but for
14 everybody who sits in this House and any other House
15 across the country that the standard now has changed
16 such that the mere raising of an allegation means that
17 there should be disciplinary action. That's never
18 been my understanding of what the law and due process
19 requires, and I don't believe that that -- the law and
20 due process requires -- that that's the standard now.

21 If that was the standard, then the House
22 Rules could simply say when the federal government
23 raises charges, we should take them as true. And I
24 don't think that that's the state of the law.

1 REPRESENTATIVE REBOLETTI: Well, I also
2 know that we impeached Governor Blagojevich prior to
3 his conviction and the Senate removed him after a
4 trial. He was given an opportunity to testify. He
5 chose not to testify, but he also gave a closing
6 statement. And that to me I see some similarities in
7 both of the situations, that we were asked a few years
8 back to make a judgment call and that there were
9 conversations on a wire and that we had determined
10 that those were enough to impeach a sitting governor
11 and then turned that case over for prosecution to the
12 Senate. So, having been through that process, I'm
13 somewhat familiar with what some of the standards are
14 that we have to deal with. Which are much different
15 than the burden that the federal government has.

16 So I'm just trying to figure out how much
17 longer you're going to need to provide us with
18 whatever information you think would be helpful for us
19 to be dispositive in our mission. Is that going to be
20 30 days, 90 days, a year?

21 MR. HENDERSON: The answer again is we're
22 going to go to court on May 30th. Because we
23 appreciate and understand the significance of the
24 information to this body, to the House, the

1 Representative wants to clear his name, we're going to
2 be going in and asking in 20 days for all of it to be
3 released. We're not in control of whether it gets
4 released, but we want it released. And we encourage
5 this body to again ask the U.S. Attorney, given the
6 significance and the importance of the information to
7 this investigative committee, given the importance of
8 the information to Representative Smith, given the
9 importance of the information to other people who want
10 to know, let's get it released. And we're going to go
11 in and ask for it on May 30th, so in 20 days.

12 REPRESENTATIVE REBOLETTI: Let's assume
13 that your request to release all the discovery is
14 denied. Is there anything else that you would
15 anticipate that you could provide to us after May 30th
16 that we could use to deliberate with?

17 MR. HENDERSON: I'm not in a position to
18 answer that right now. However, what I can say is
19 that we have started the process of formulating the
20 defense for the Representative, which of course is
21 something that happens over time, and so I would not
22 say that there will not be any additional information
23 that we have to turn over, and some of that
24 information may come in the process of a court

1 proceeding. And I've also made a representation to
2 the special counsel that as material information
3 becomes available, we're going to be the first ones to
4 send it to you. We're looking forward to sending you
5 additional information as we get it, and we're in the
6 process of gathering information now. So we look
7 forward to that process.

8 REPRESENTATIVE REBOLETTI: On this May
9 30th date, do you have a briefing schedule? Are you
10 filing -- is there a deadline for you to file
11 something with the court to indicate that you would
12 like a protective order not to enter?

13 MR. HENDERSON: Yes. We were in court
14 yesterday. I believe -- and again, this is off the
15 top of my head. There is a briefing schedule entered.
16 I believe that the Representative's brief is due on
17 the 15th of May. And I will be sure to send a copy of
18 it to Special Counsel Ellis. I believe the
19 government's brief may be due the 15th of May or the
20 17 and ours is due the 25th. Somewhere in that time
21 frame. The order has not yet come down. We were just
22 in court yesterday at approximately 9 a.m. So as soon
23 as it's available.

24 REPRESENTATIVE REBOLETTI: So the

1 government will have an opportunity to respond to your
2 motion. And then there will be oral arguments on May
3 30th?

4 MR. HENDERSON: I don't know whether the
5 judge will entertain oral argument. The judge may
6 rule just based on the paper itself. But she did
7 enter a briefing schedule yesterday. So the
8 government has an opportunity to file a motion in
9 connection with the protective order and it is our
10 expectation that we're going -- we represented in
11 court we're going to oppose it. And then I don't know
12 whether the judge -- I don't know whether she would
13 rule -- I'm expecting her to rule on the 30th, but I
14 don't know that.

15 REPRESENTATIVE REBOLETTI: And do you
16 anticipate then if your request is denied that
17 Representative Smith would testify and share with us
18 what actually happened then sometime after May 30th?

19 MR. HENDERSON: We haven't had those
20 discussions yet. We're not in a position to answer
21 that right now.

22 REPRESENTATIVE REBOLETTI: Thank you very
23 much.

24 CHAIRPERSON NEKRITZ: Thank you,

1 Mr. Reboletti.

2 Representative Davis.

3 REPRESENTATIVE DAVIS: Thank you very
4 much, Madam Chair.

5 And thank you, Mr. Henderson, for
6 appearing in front of us. I just have a couple of
7 questions.

8 Based on your conversations with
9 Representative Smith, how much do you know or
10 recognize about how our offices function and the
11 things, types of things that we do as Representatives?

12 MR. HENDERSON: Not as familiar as all of
13 you are, obviously, but I have both a general
14 knowledge and conversations based with the
15 Representative.

16 REPRESENTATIVE DAVIS: Okay. And I guess
17 what I'm getting at just with regard to that is that
18 you recognize that writing letters of support are kind
19 of a regular, mundane kind of function of our offices,
20 things that we do often, often in our offices; right?

21 MR. HENDERSON: Yes.

22 REPRESENTATIVE DAVIS: Okay. Just wanted
23 to make sure you understood that.

24 And I just wanted to -- I think

1 Representative Reboletti kind of asked the question
2 that I wanted to ask, but I just want to get some --
3 make sure I understood it. With regard to what we
4 have read in the complaint where it acknowledges that
5 there is a conversation or it indicates there's a
6 conversation between an individual named CS-1 and
7 Representative Smith, are you able to confirm for us
8 that that indeed is a conversation that took place
9 between those two individuals?

10 MR. HENDERSON: I'm not right now, no.
11 We're not in a position to confirm or deny it.

12 REPRESENTATIVE DAVIS: So what we're
13 reading is -- well, obviously, it's, you know, what
14 they put in the complaint, but just you can't
15 acknowledge that that is indeed a conversation between
16 those two persons?

17 MR. HENDERSON: The only information that
18 we have access to publicly is what you have. We've
19 asked for the information. We've asked for the tapes.
20 Or we will be asking for that information. The
21 government is obligated to turn that information over.
22 And because they did not want to turn it over because
23 they did not want to have it disclosed publicly, at
24 least based on their representations yesterday,

1 they're going to be asking the judge to enter a
2 protective order, which we're going to oppose. If we
3 prevail, then all the information will be available
4 for everybody to see, including the Representatives.

5 REPRESENTATIVE DAVIS: Thank you very
6 much.

7 CHAIRPERSON NEKRITZ: Any other members?
8 Representative Tracy.

9 REPRESENTATIVE TRACY: Thank you, Madam
10 Chair.

11 Just to clarify, in going back to the
12 letter of support in question, do you -- did I
13 understand you to say that you dispute the actual
14 letter exists?

15 MR. HENDERSON: What I'm saying is since
16 we have not had access to discovery from the
17 government, I can't tell you what's true and what's
18 not. I just don't know right now.

19 REPRESENTATIVE TRACY: But I would presume
20 that you and your client have discussed, and you're
21 telling us that you do not know if such a letter
22 exists or not?

23 MR. HENDERSON: As of this point in time
24 we do not.

1 REPRESENTATIVE TRACY: So I -- my next
2 question is, do you have an internal copy of a letter
3 that perhaps Representative Smith's office retained?

4 MR. HENDERSON: As I sit here now, I guess
5 I'm going to respond to that two ways. One, that to
6 the extent that we would, that would be protected by
7 the attorney-client and/or attorney work product
8 privilege. So I would -- without violating the
9 ethical responsibilities I have as an attorney, I
10 would not be able to answer that question.

11 REPRESENTATIVE TRACY: Okay. Would it be
12 possible for you to give me the name of the employees
13 who are the office assistants that are employed by
14 Representative Smith in his district office?

15 MR. HENDERSON: At this point in time I
16 cannot.

17 REPRESENTATIVE TRACY: Okay. Thank you.

18 CHAIRPERSON NEKRITZ: Representative
19 Reboletti.

20 REPRESENTATIVE REBOLETTI: Mr. Henderson,
21 have you received any discovery from the federal
22 government as of yet?

23 MR. HENDERSON: I have not.

24 REPRESENTATIVE REBOLETTI: When is that

1 supposed to be completed or is that by the May 30th
2 date?

3 MR. HENDERSON: The government has taken
4 the position that they will not release any discovery
5 until the judge rules on the protective order. So
6 we've asked for discovery. We've asked for some
7 informally. We've not received anything. So
8 sometimes the government will give you discovery
9 informally. Sometimes they'll -- they will follow a
10 formal process. I've seen it done both ways. As of
11 this point in time we have not received any discovery.
12 And so that would be -- they have taken the position
13 that they will not turn anything over to us, as
14 they've told you they won't give you anything, and so
15 that will be a point of conversation with the court on
16 May 30th.

17 REPRESENTATIVE REBOLETTI: Okay. And then
18 at some point thereafter discovery should be complete
19 in a week or two weeks? No matter what happens,
20 you'll be able -- there'll be a protective order and
21 you'll have discovery and maybe you can then shed some
22 light after you've had a chance to review things, or
23 there won't be a protective order and you'll be more
24 than willing to share all those documents with us. Is

1 that what you're saying?

2 MR. HENDERSON: If there's no protective
3 order -- again, you're asking me to speculate and talk
4 about information I haven't seen. So again, I don't
5 want to go too far out on a limb and tell you I'm
6 going to do something with information that I don't
7 know what it contains, because it -- but the general
8 principle is, with that caveat, that the
9 Representative wants whatever information there is out
10 to be out there, the same way you do.

11 REPRESENTATIVE REBOLETTI: And I
12 understand. Because I -- I just want to make sure if
13 we're going to continue this committee for any longer
14 period of time, we have to speculate as well, which is
15 we have to speculate that you'll share some additional
16 information with us. Because, otherwise, if this is
17 it, we're going to have to move into deliberations and
18 make the determination sometime in the next couple
19 weeks, I would assume. We haven't had a conversation
20 to that and I don't want to speak for the committee,
21 but we have to take a look and see on our time
22 schedule, you know, do we need to wait past the 30th
23 and meet again June and then see what else is going to
24 be present.

1 And just to confirm, you will be sending
2 us courtesy copies of any motions that you file on
3 behalf of your client?

4 MR. HENDERSON: What I represented to
5 Special Counsel Ellis was that when we believe there
6 is something of significance, we will be sharing that.

7 REPRESENTATIVE REBOLETTI: Thank you.

8 MR. HENDERSON: I made that representation
9 weeks ago.

10 REPRESENTATIVE REBOLETTI: Thank you,
11 Counsel.

12 CHAIRPERSON NEKRITZ: Thank you,
13 Representative.

14 So again appreciate your willingness to be
15 here today. I don't think any of us on the committee
16 knew quite -- we appreciate your willingness to answer
17 questions. I don't think we quite knew how this was
18 all going to unfold today.

19 It has been the goal of this committee as
20 we've gone through this process in conjunction with
21 the criminal proceedings to make sure we give
22 ourselves every opportunity to have access to the
23 evidence and to all the information that we will be
24 able to gather to make the decision that is before us.

1 So it would be my recommendation -- and I
2 think I heard you say the same thing, Representative
3 Reboletti -- that we recess to call of the Chair,
4 engage in some deliberations among the committee to
5 figure out, you know, how we want to proceed in light
6 of the additional court dates and the briefing
7 schedule and the protective order and all that that's
8 out there, and then we will reconvene at the -- at
9 such time as we've sort of figured it all that out and
10 decided what we want to do.

11 I don't see anybody objecting to that. So
12 with that, we will recess the Special Investigating
13 Committee to the call of the chair.

14 (The committee recessed at 12:08 p.m.)

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CERTIFICATE OF REPORTER

STATE OF ILLINOIS)

) ss

COUNTY OF SANGAMON)

I, DOROTHY J. HART, a Certified
Shorthand Reporter, Registered Professional 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 involved in this
proceeding, 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

A				
abandon 7:22,22	Accordingly 14:23	admission 13:14 13:20 25:14	against 7:13,19 8:19 11:15,20	already 7:11 41:12 49:22
ability 46:12 83:9	accounts 26:20 67:2	26:15 35:1 53:8 66:22	11:23 12:5,8 13:2,8 15:17	50:9 52:13,14 56:9,19
able 10:3 12:12 21:14 27:18 40:21,22,22 44:17 48:5 76:7 78:10 79:20 81:24	accurate 27:16	admit 18:18 25:4 39:1,23 40:9	15:21 19:23 57:23 61:20	alternatively 57:13
about 8:14 15:3 18:15,16 19:5 20:16 21:13 22:18 23:6 25:10 26:12 29:2 30:12 35:14 36:7,11 36:16 38:13,20 38:21,21 41:4 41:12 46:4 47:16 48:18 50:2 51:15 52:19 53:1 54:23 55:14 56:17 60:3 61:13 63:9 75:10 80:4	accused 8:10 30:10	advance 69:14	agency 53:3	Although 61:2
above 31:14	acknowledge 14:3 26:19 76:15	advanced 18:12	agent 31:11,11 33:1 35:15	altogether 51:1
above-referen... 33:1	acknowledged 56:9 67:17	adversarial 30:16	37:22 52:4,17 56:9	amend 64:6
absolutely 16:23 21:3 26:22	acknowledge... 25:10	advice 8:15	agents 17:12 53:15	Americans 11:17 12:3
accept 19:19 39:20,21 50:21 52:2	acknowledges 76:4	affect 61:3	ago 7:6 81:9	among 35:17 82:4
accepted 38:17 38:23 40:10	acknowledging 13:22	affected 7:8 66:1	agree 15:19 18:3 21:21 42:17 54:11 57:22 58:2 61:15	amount 49:9 68:13,20
accepting 48:14	acquittal 18:1 18:22	Affiant 31:14	agreed 22:6,22 24:1	Andre 3:7
access 10:2 26:17 27:17 40:22 41:1 66:6,10 68:2,2 68:8 76:18 77:16 81:22	across 67:19 70:15	affidavit 32:24 33:20 34:16 51:15 52:3	ain't 50:10 54:10	and/or 78:7
according 21:24 29:19 33:23 35:8	act 30:10 47:12 47:13	affirms 50:20	Alaska 14:12	another 45:8,10 46:13 47:5 62:23
	action 10:8 58:11 70:2,17 83:16	after 12:24 22:21 62:22 71:3 72:15 74:18 79:22	Alderman 44:19	answer 8:13 9:2 10:4 15:5 16:13 21:14 24:9,11 25:16 27:2,9 29:9,24 38:9 39:4,9,14 39:18,20,23 40:3,21,22,23 41:3,7,9 43:22 48:6 57:15 64:3,6,7,9,12 64:23 66:11 71:21 72:18 74:20 78:10 81:16
	actions 45:6 61:21	afterwards 47:6	allegation 25:5 69:17 70:16	answered 4:20 55:14
	activity 64:21	again 5:14 9:7 10:17 14:2,6 15:14 16:6 18:23 20:3,5 22:11 23:9 25:1 26:14 27:13 29:4,5,9 29:23 31:20 32:22 39:12 40:21 41:4,24 45:19 46:11 47:24 48:16 51:8 53:12 54:7 56:1 57:4 58:9 65:7,14 65:20 66:17 67:6 71:21 72:5 73:14 80:3,4,23 81:14	allegations 25:12 28:14 39:11 49:8 51:3 56:8 57:23 58:3,3	answering 9:5 26:14 48:1 64:13
	acts 17:13 30:9 53:20	afterwards 47:6	allege 44:2	answers 35:18 47:8 51:11 64:4
	actual 23:2 77:13	again 5:14 9:7 10:17 14:2,6 15:14 16:6 18:23 20:3,5 22:11 23:9 25:1 26:14 27:13 29:4,5,9 29:23 31:20 32:22 39:12 40:21 41:4,24 45:19 46:11 47:24 48:16 51:8 53:12 54:7 56:1 57:4 58:9 65:7,14 65:20 66:17 67:6 71:21 72:5 73:14 80:3,4,23 81:14	alleged 14:5 55:7	answer's 28:10
	actually 33:24 74:18	again 5:14 9:7 10:17 14:2,6 15:14 16:6 18:23 20:3,5 22:11 23:9 25:1 26:14 27:13 29:4,5,9 29:23 31:20 32:22 39:12 40:21 41:4,24 45:19 46:11 47:24 48:16 51:8 53:12 54:7 56:1 57:4 58:9 65:7,14 65:20 66:17 67:6 71:21 72:5 73:14 80:3,4,23 81:14	allegedly 14:17 38:14 49:7	anticipate 19:1 45:20 72:15 74:16
	adage 37:5 67:22	again 5:14 9:7 10:17 14:2,6 15:14 16:6 18:23 20:3,5 22:11 23:9 25:1 26:14 27:13 29:4,5,9 29:23 31:20 32:22 39:12 40:21 41:4,24 45:19 46:11 47:24 48:16 51:8 53:12 54:7 56:1 57:4 58:9 65:7,14 65:20 66:17 67:6 71:21 72:5 73:14 80:3,4,23 81:14	alleges 28:15 44:4,8 49:5 54:2 55:6	
	Adam 8:7,16	again 5:14 9:7 10:17 14:2,6 15:14 16:6 18:23 20:3,5 22:11 23:9 25:1 26:14 27:13 29:4,5,9 29:23 31:20 32:22 39:12 40:21 41:4,24 45:19 46:11 47:24 48:16 51:8 53:12 54:7 56:1 57:4 58:9 65:7,14 65:20 66:17 67:6 71:21 72:5 73:14 80:3,4,23 81:14	alleging 47:10 63:24	
	add 20:2 51:2,6 51:8	again 5:14 9:7 10:17 14:2,6 15:14 16:6 18:23 20:3,5 22:11 23:9 25:1 26:14 27:13 29:4,5,9 29:23 31:20 32:22 39:12 40:21 41:4,24 45:19 46:11 47:24 48:16 51:8 53:12 54:7 56:1 57:4 58:9 65:7,14 65:20 66:17 67:6 71:21 72:5 73:14 80:3,4,23 81:14	allowing 60:15	
	additional 23:8 63:11 64:18 72:22 73:5 80:15 82:6	again 5:14 9:7 10:17 14:2,6 15:14 16:6 18:23 20:3,5 22:11 23:9 25:1 26:14 27:13 29:4,5,9 29:23 31:20 32:22 39:12 40:21 41:4,24 45:19 46:11 47:24 48:16 51:8 53:12 54:7 56:1 57:4 58:9 65:7,14 65:20 66:17 67:6 71:21 72:5 73:14 80:3,4,23 81:14	allude 53:12	
	address 38:8	again 5:14 9:7 10:17 14:2,6 15:14 16:6 18:23 20:3,5 22:11 23:9 25:1 26:14 27:13 29:4,5,9 29:23 31:20 32:22 39:12 40:21 41:4,24 45:19 46:11 47:24 48:16 51:8 53:12 54:7 56:1 57:4 58:9 65:7,14 65:20 66:17 67:6 71:21 72:5 73:14 80:3,4,23 81:14	alluded 13:10 40:24 46:14 47:16,18 58:11	
	addressed 5:13	again 5:14 9:7 10:17 14:2,6 15:14 16:6 18:23 20:3,5 22:11 23:9 25:1 26:14 27:13 29:4,5,9 29:23 31:20 32:22 39:12 40:21 41:4,24 45:19 46:11 47:24 48:16 51:8 53:12 54:7 56:1 57:4 58:9 65:7,14 65:20 66:17 67:6 71:21 72:5 73:14 80:3,4,23 81:14	almost 7:6 25:21 39:16	

<p>anticipating 64:18</p> <p>anticipation 69:7</p> <p>anybody 58:18 58:19 60:16 63:6 82:11</p> <p>anyplace 59:1</p> <p>anything 14:9 36:5 38:21,21 41:15 42:14 51:12 53:10 56:16,17,20 57:1 63:16 72:14 79:7,13 79:14</p> <p>apologize 29:5 48:1</p> <p>apparently 27:6 55:17</p> <p>appear 8:22 11:11 48:11</p> <p>appearance 9:12</p> <p>appeared 7:12</p> <p>appearing 56:3 75:6</p> <p>appears 48:3</p> <p>application 22:24 23:12,13 24:3 28:19</p> <p>appointed 62:15 63:3</p> <p>appointment 62:21</p> <p>appreciate 9:11 12:17 15:7 20:13 26:10 37:15 49:2 64:14 69:20 71:23 81:14,16</p> <p>appropriate 26:23</p> <p>approximately 32:2 34:6,7,9 34:12,18 35:6 35:10 73:22</p> <p>April 32:18 33:2 33:3,9,12,14</p>	<p>33:15,15,15 36:17</p> <p>area 20:11 24:23</p> <p>areas 19:13</p> <p>argue 43:7</p> <p>argument 43:6 63:21 74:5</p> <p>arguments 74:2</p> <p>around 54:16</p> <p>arrest 7:8 31:23 33:21 41:14 63:15</p> <p>arrested 7:5</p> <p>arrests 34:6,8,13 34:13</p> <p>arrived 68:20</p> <p>asked 8:14 9:14 9:22 11:21 27:18,21 42:11 42:17 53:1 55:10,13,23 64:24 66:8 71:7 76:1,19 76:19 79:6,6</p> <p>asking 16:14,15 26:11 27:8 30:8 35:4,19 36:9 37:16,18 37:18,24 41:7 60:1 72:2 76:20 77:1 80:3</p> <p>assault 31:23 33:21</p> <p>Assembly 1:3 5:18 62:21</p> <p>assistance 32:3,7 35:7,11</p> <p>Assistant 53:15</p> <p>assistants 78:13</p> <p>assume 15:19 26:3 27:9,14 37:2,3 52:10 70:5 72:12 80:19</p> <p>assumption 65:3</p> <p>attached 54:10</p>	<p>attachments 5:15</p> <p>attempt 22:6</p> <p>attempting 35:20</p> <p>attempts 9:24 10:15</p> <p>attention 21:12 31:3,4,19 32:15 45:14 56:18</p> <p>attorney 4:22 6:10 9:14,16 9:23 10:1 32:21 60:8 72:5 78:7,9 83:14</p> <p>attorneys 8:16 53:15</p> <p>Attorney's 22:5 52:11</p> <p>attorney-client 78:7</p> <p>attributed 42:6 52:9</p> <p>AUSA 63:10</p> <p>avail 19:11 61:5</p> <p>available 16:18 17:5 34:11 73:3,23 77:3</p> <p>awaiting 64:19 68:17</p> <p>aware 7:7 11:19 63:9,12 68:13</p> <p>away 23:18 34:20</p> <p>awful 48:13</p> <p>a.m 1:14 4:1 73:22</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>b 2:6 61:19</p> <p>back 10:3,10 31:9,19 33:23 38:11 41:3 43:7 59:23 60:5 62:16 64:5 71:8</p>	<p>77:11</p> <p>background 27:7 38:4 41:13 51:16 53:7 56:19 65:12</p> <p>based 6:23 16:8 23:16 31:14 37:9 39:10,22 40:1 41:9 45:19 51:11 54:18 62:4 64:4,7 68:24 74:6 75:8,14 76:24</p> <p>basic 17:13 58:24</p> <p>basically 67:10 68:21 69:13</p> <p>bear 8:8 38:6 40:20</p> <p>bearing 10:3 49:2</p> <p>becomes 73:3</p> <p>before 1:1 5:3,4 5:23 6:4 7:19 8:23 11:12,22 13:10 25:7,22 30:6 34:22 41:14,18 45:19 48:24 56:8 58:23 59:16 81:24</p> <p>begin 59:16</p> <p>beginning 22:20</p> <p>begins 49:3</p> <p>behalf 14:23 39:13 64:10 81:3</p> <p>behind 17:9</p> <p>being 9:3 20:10 41:5,8,13 50:19,24 56:13 63:13 64:24</p> <p>believe 5:6 10:10 10:11 17:20 28:24 30:16 31:15 36:1,22</p>	<p>38:2 41:16 46:21,24 47:23 53:14 62:4 67:2,21 70:19 73:14,16,18 81:5</p> <p>believed 55:1</p> <p>best 29:3,9,15 42:24 59:22 61:1 63:2,14 83:9</p> <p>better 25:21 48:6</p> <p>between 1:13 6:23 8:17 12:18 26:3 44:3 49:6 54:3 55:11 67:3 69:16 76:6,9 76:15</p> <p>beyond 17:23 18:19 22:9 61:23</p> <p>bigger 63:18 67:9</p> <p>bill 68:10</p> <p>bills 69:13</p> <p>bit 38:13</p> <p>Blagojevich 71:2</p> <p>blank 44:23,24 49:15</p> <p>block 28:13,13</p> <p>blurb 44:1</p> <p>Board 23:15 28:21</p> <p>body 11:3 67:19 67:19 71:24 72:5</p> <p>both 5:17 11:24 42:24 57:21 71:7 75:13 79:10</p> <p>brains 52:7</p> <p>break 14:16</p> <p>breathing 47:24</p> <p>bribe 19:19 22:24 38:21</p>
---	---	--	---	---

<p>45:5 56:5 bribery 19:18,24 brief 73:16,19 briefing 10:9,20 60:20 73:9,15 74:7 82:6 briefs 60:1 61:3 bring 61:20 brings 11:15 broad 44:22 45:1 broke 14:13,14 19:22 Bryan 31:11 33:1 bs'ing 55:19 buildin 49:13 building 1:15 59:2 built 57:7 burden 71:15 Bureau 31:12 burglary 34:3 34:14 business 4:6 11:6 58:13 Butler 31:11 33:1</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>call 4:4 51:18,19 51:22 54:7 55:10,12 56:18 63:23 64:8,11 71:8 82:3,13 calls 11:19 64:1 campaign 32:11 candidly 24:15 capital 23:14 28:21 44:8,14 Capitol 1:14 3:21 58:19,20 carefully 38:19 case 7:2 12:22 13:3,6,15 15:24 19:18 20:1,3 26:5 33:2,4 47:19</p>	<p>53:11 71:11 cases 19:7,7,11 20:24 69:5 cash 38:18,23 40:10 54:9 cast 37:23 catch 47:12 caught 69:23 cause 31:15 caveat 39:20 41:20 80:8 center 44:6 45:6 certain 42:18 68:12 certainly 20:14 45:9 47:10 CERTIFICATE 83:1 Certified 83:5 certify 83:8 chair 15:11 59:3 59:6,12 75:4 77:10 82:3,13 Chairperson 3:2 4:3,8,19 6:7,14 6:22 8:24 9:6 9:10 10:5,20 10:24 11:4 15:6 59:7 74:24 77:7 78:18 81:12 chairwoman 42:21 challenger 32:12 chance 13:1 28:4 43:1,9 56:2 79:22 change 57:6 changed 70:15 characterizati... 20:12 characterize 20:8 62:2 charge 7:13,14 7:19 8:19 11:14 12:5,7,8 13:2,8 34:15 60:3</p>	<p>charged 11:20 12:9 33:11 35:17 36:3 58:21 charges 12:10 25:3 61:20 63:11 70:10,23 check 52:12 Chicago 13:4,24 16:1 24:16 62:11 Childhood 23:14 28:20 chop 50:15 chose 8:5 71:5 chosen 38:19 Circuit 20:7 circumstances 39:7 63:7 cite 20:20 citizens 8:18 claiming 27:5 clarify 9:1 77:11 clarifying 64:20 clear 6:16 7:14 8:12 12:12 72:1 cleared 8:20 clearly 24:14 39:11 CLERK 4:7,9 4:11,13,15,17 client 59:13 60:15 61:14 62:12,15 63:13 64:15,21 69:18 69:21,24 77:20 81:3 client's 40:16 cloaked 61:14 closing 71:5 code 21:20 Coleman 59:19 colleagues 7:5,9 come 8:5,5 10:3 33:23 41:3 43:13 51:10 58:22 64:5</p>	<p>68:1 72:24 73:21 comes 17:24 comfortable 20:5 coming 13:21 14:7 comma 22:21 commenced 4:1 comments 61:12 commit 17:10 committee 1:4 2:12 3:1,11 4:5 4:24 5:1,3,22 6:2,5,17 9:14 9:22 10:4 11:8 11:12 12:15,16 13:10 14:2 19:10 20:9,15 20:18 32:19 39:9 41:20 42:21 50:19 56:3,22,24 58:13 59:8,15 60:7 63:24 64:20 70:1 72:7 80:13,20 81:15,19 82:4 82:13,14 committee's 22:5 26:10 56:14 committing 17:12 30:10 common 69:10 commonly 12:16 communication 5:6 complaint 21:6 21:16,20 22:1 23:3,4 25:8,13 25:18,20 29:10 30:13 31:5 35:14 36:8,11 37:16 38:7,12 39:12 42:5 45:18 46:7,13 46:15,22 48:17</p>	<p>48:18 63:20 66:18 67:2,6 68:24 76:4,14 complete 40:23 51:11 79:18 completed 79:1 completely 23:6 compromise 16:12 24:24 compromising 13:5 26:13 conceded 27:6 concern 63:13 concerned 34:5 34:10 concerning 51:16 concluded 11:23 conclusion 36:2 conclusions 6:19 12:23,24 23:10 43:15 conduct 17:11 19:21,22 conducted 13:16 confidential 31:20,22 32:1 32:5,6,8,10 34:18,22 35:3 35:5,10 53:5 57:7 confines 63:1 confirm 76:7,11 81:1 confusions 23:21 Congress 58:12 conjunction 35:15 81:20 connection 32:3 74:9 consensual 42:7 consensually 42:4 consider 6:17 consideration 63:18</p>
---	--	---	---	---

<p>considered 16:21</p> <p>considering 16:16</p> <p>consistent 22:4</p> <p>constitute 58:4</p> <p>constitutional 18:3 20:11</p> <p>Construction 23:14 28:20</p> <p>constructionist 47:21</p> <p>contained 28:15</p> <p>contains 80:7</p> <p>context 25:13 27:13 30:6,14 31:10 36:12 51:4,5,7 56:11 56:23 68:5 69:22</p> <p>continuation 43:24</p> <p>continue 7:16 53:12 80:13</p> <p>continued 33:16</p> <p>continues 46:8</p> <p>continuing 50:19 55:15</p> <p>contraband 69:9</p> <p>control 72:3</p> <p>conversation 6:23 44:3,4 46:5 49:5,7 54:2,16,17 55:6 64:1 76:5 76:6,8,15 79:15 80:19</p> <p>conversations 42:5 54:1 63:19,22 64:18 71:9 75:8,14</p> <p>Conversely 13:14</p> <p>convicted 8:11</p> <p>conviction 18:22 34:2,3 68:22 71:3</p>	<p>convictions 31:24 33:21 34:1</p> <p>cooperating 22:1 38:4,24 51:17</p> <p>cooperation 32:8</p> <p>copies 81:2</p> <p>copy 21:7,10 61:17 73:17 78:2</p> <p>core 11:18</p> <p>corners 69:23</p> <p>corporation 46:17 66:21,24</p> <p>corporations 47:3</p> <p>correct 15:22 17:8 21:22 40:12 46:9 60:17 62:18 64:6</p> <p>correction 20:21</p> <p>correctly 52:9</p> <p>counsel 3:11,15 5:4,13 6:2,24 11:9 12:14 15:9 73:2,18 81:5,11 83:11 83:14</p> <p>count 11:20</p> <p>counted 69:18</p> <p>counting 55:20</p> <p>countless 63:3</p> <p>country 14:19 67:20 70:15</p> <p>COUNTY 83:4</p> <p>couple 49:1 53:24 54:5 55:4 75:6 80:18</p> <p>course 58:10 72:20</p> <p>court 3:17 7:12 9:12,17,20,24 10:9,18 12:18 13:4,7 15:18</p>	<p>15:21 16:1 17:17 18:7 19:8 20:7 32:23 59:23 60:1,10 62:11 63:12 71:22 72:24 73:11,13 73:22 74:11 79:15 82:6</p> <p>courtesy 81:2</p> <p>courtroom 12:20</p> <p>court's 10:13</p> <p>create 14:5 70:11</p> <p>created 26:15,18 29:11,17 66:23 67:5</p> <p>creating 26:19</p> <p>crime 8:11 14:6 17:10,22 18:19 30:22 33:24</p> <p>criminal 6:16 15:23,24 17:17 21:6,16,20 27:7 30:13 38:3,11 41:12 47:10,12 51:16 56:19 81:21</p> <p>critical 32:22</p> <p>cross-examiner 30:18</p> <p>CS 27:7</p> <p>CSR 3:18,19</p> <p>CS-1 21:23,24 29:13 33:20,24 34:2,4 38:18 42:6 44:3,5,11 44:13,15,21,24 45:4 46:18 49:6,9,12,15 49:17,21 50:1 50:5,11,14 54:3,7,8,9,12 55:10,11,12,13 55:18,19,20 56:4,5 63:11 63:16 69:7,12</p>	<p>69:17 76:6</p> <p>CS-1's 44:15 69:8,9</p> <p>currency 69:12</p> <p>current 18:5</p> <p>currently 63:2</p> <p>cut 22:15</p> <p>cuts 58:5</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D 2:1 3:6</p> <p>Damn 55:21</p> <p>data 33:24</p> <p>date 9:20 32:4 40:11 60:11 61:1,8,10 73:9 79:2</p> <p>dated 5:13 33:14</p> <p>dates 82:6</p> <p>Dave 3:11 15:9</p> <p>Davis 3:5 4:11 4:12 75:2,3,16 75:22 76:12 77:5</p> <p>day 1:13 12:9 13:7 32:17 42:20 47:5 48:11</p> <p>daycare 22:23 23:2,3 24:2 28:18 44:6,12 44:13,18,22 45:6 46:19 49:10,11 50:22</p> <p>daylight 13:7,9</p> <p>days 14:19 54:24 54:24 60:4 71:20,20 72:2 72:11</p> <p>deadline 73:10</p> <p>deal 71:14</p> <p>dealing 34:11 35:3 53:4,5</p> <p>dear 7:4</p> <p>deceit 48:2</p> <p>December 48:19 54:19</p> <p>deception 34:15</p>	<p>35:18</p> <p>decide 41:21,22 58:22 65:5,6 67:21,24</p> <p>decided 82:10</p> <p>deciding 58:22</p> <p>decision 60:3 81:24</p> <p>decisions 18:8</p> <p>deeper 19:10</p> <p>defend 25:3 64:15 69:21</p> <p>defendant 17:10 19:18</p> <p>defending 19:2</p> <p>defense 16:18 17:5,17,21 18:17 19:4,17 19:24 24:13,17 24:23 26:13 72:20</p> <p>defenses 18:15 60:21</p> <p>deliberate 70:2 70:3 72:16</p> <p>deliberations 59:16 80:17 82:4</p> <p>delivered 56:5</p> <p>delve 24:13</p> <p>democracy 11:17</p> <p>Democratic 32:12</p> <p>denied 72:14 74:16</p> <p>Dennis 3:3</p> <p>deny 25:5 28:22 37:24 38:24 39:2,23 40:9 54:13 76:11</p> <p>department 14:10</p> <p>depends 47:20</p> <p>Derrick 3:13 11:13 14:24 22:19</p>
---	--	--	---	--

<p>describe 28:12 44:2 55:16 56:3 described 23:3 describing 44:2 DESCRIPTION 2:7 desires 8:12,13 despite 7:18 8:12,13 33:16 detail 46:13 detailed 30:1 details 13:5 23:5 determination 80:18 determinations 58:16 determine 29:15 58:14 61:19 determined 71:9 detractors 11:24 Development 23:15 28:21 difference 12:17 different 18:6 51:1 52:10 62:4,6 71:14 difficult 48:3,8 difficulty 47:7 48:1 direction 32:9 83:11 disagree 63:19 disciplinary 61:21 70:17 disclose 16:3 35:21 39:8 41:5 disclosed 76:23 discovered 33:2 33:14 discovery 26:17 27:17 36:18 72:13 77:16 78:21 79:4,6,8 79:11,18,21 discuss 68:9</p>	<p>discussed 49:9 54:8 55:17 77:20 discussing 20:24 45:4 discussion 11:18 discussions 22:5 74:20 dishonest 53:18 dispositive 71:19 dispute 29:22 42:22 77:13 distant 12:13 distinct 19:3 district 7:9,15 7:17,22 8:2,18 8:21 11:22 14:21 16:1 62:14 78:14 docket 10:13 33:5,6,10 dockets 33:6 document 23:17 27:15 29:3,10 31:9 32:10 51:3 54:18 69:23 70:11 documents 13:19 14:1,4,7 14:8 16:8 26:16,16,19 27:3 29:3 31:2 66:14 67:1 79:24 doin 49:11 doing 19:23 22:10 30:18 41:22 dollar 68:20 domestic 31:23 33:21 done 36:3 49:21 52:14 53:10 56:18 66:5 79:10 Dorothy 3:18 83:5</p>	<p>doubt 17:23 18:20 61:23 doubts 37:23 down 19:7 26:12 32:11 36:17 60:22 66:10 73:21 draw 12:23 23:10 36:2 43:14 drug 34:2,15 due 10:10 12:21 24:7,21 27:12 62:6 68:21 70:18,20 73:16 73:19,20 during 32:7 54:7 55:10,18 62:18 duties 58:5</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>E 2:1,6 each 12:22 14:24 20:3 23:20 eager 13:7 earlier 9:14 13:10 34:1 35:23 40:24 42:21 46:14 47:15,18 58:11 early 10:11,12 23:13 28:20 36:2 easy 33:7 ECCG 22:23 23:12 24:3 efficiency 57:12 either 18:13 22:11 25:15 26:2 53:4,23 57:10,14 65:15 Elaine 3:2 elected 7:18 62:14,14,18 election 62:20 elements 17:22 18:19 30:8 Ellis 3:11 5:4</p>	<p>14:1 15:9,11 15:14,23 16:14 16:21,24 17:3 17:7,16,21 18:14 19:14 20:13 21:3,9 21:23 22:4,14 23:11,19 24:10 24:20 25:4,24 27:1,23 28:8 29:7,18 30:2,5 30:22 31:6 36:15,22 37:2 37:12,15 39:3 39:19 40:4,6,9 40:14 41:11 42:3,10,13,23 43:5,17 45:12 45:15,23 46:3 46:6,9,23 47:9 47:22 48:9,20 48:22 51:5,14 52:1 53:24 54:20 55:4 56:12 57:17,22 58:2 59:3,6 73:18 81:5 embrace 18:11 18:13 emphasize 14:16 34:14 employed 78:13 83:12,14 employee 83:14 employees 12:7 78:12 encourage 25:8 38:9 41:20 53:22 57:3 72:4 encouraging 67:19 end 31:8 38:13 55:6 enforcement 46:16 53:3 66:20 69:4,7,8 69:11</p>	<p>engage 53:20 82:4 enjoyed 12:6 enjoys 12:3 enough 16:10 23:11,19 52:1 53:24 58:8 70:1 71:10 enter 5:9,14 31:2 66:15 73:12 74:7 77:1 entered 7:12 13:19 21:5 25:1 73:15 entertain 74:5 entire 38:7 entities 21:19 entrapment 16:2,17 17:3,8 17:9,13,16 18:1,16,18 19:17,24 enunciated 20:6 envisioned 66:3 equal 68:2 ethical 78:9 Ethics 12:16 58:13 even 11:22 18:15 25:7 48:9,10 event 63:4 ever 36:4 every 12:3,9,23 15:1 16:18 17:5 62:7,7 81:22 everybody 24:19 43:13,14 68:1 70:14 77:4 everyone 11:3 11:24 58:1 68:2 everyone's 20:20 everything 9:18 42:19 60:2,3 64:10 67:10,15</p>
--	---	--	---	--

evidence 10:24 43:7 63:15 81:23 exactly 34:8 50:1 64:22 example 65:9,9 65:10 exception 24:24 exchange 22:24 45:6 48:15 50:21 excluded 16:20 exhibit 2:8,9,10 5:16 21:6,17 32:19 66:15 exhibits 2:7,12 5:11,17 21:5 exist 61:20 63:2 existed 14:6 exists 77:14,22 Expand 49:15 expect 12:11 expectation 61:4 62:8 74:10 expecting 74:13 experience 62:5 expert 18:3 20:11 47:9 explain 8:7 24:10 30:19 extent 19:10 21:13 34:23 66:23 78:6 e-mail 2:8 5:5,9 26:20 67:2	39:6 51:4 58:14,21,23 fair 12:21 17:14 20:12 23:11,19 52:1 53:24 58:24 62:7,16 fairness 58:24 faith 52:21,23 53:10,21 fake 14:5 26:19 26:20,21 67:1 false 26:16,19 33:14,16 56:24 familiar 33:7 37:4 71:13 75:12 families 7:24 family 7:10,16 8:20 14:20 far 34:4 80:5 fathers 7:23 FBI 31:11 32:2,4 34:19 35:6,8 35:11 52:10 53:3,14 February 48:19 49:5 54:18 federal 7:5 8:11 11:14 13:3,15 13:17,21,23 15:24 17:17 25:11,14 26:3 27:5 31:12 35:20 36:4,14 36:23 37:11,22 41:5 47:4 51:9 52:4,17 68:4 68:12 70:9,11 70:22 71:15 78:21 few 5:19 19:7 21:13 38:7 42:16,22 71:7 fictional 46:16 47:2 66:21,23 fight 7:14 8:19 fighting 9:24 26:17 27:17	51:8 60:18 figure 30:20 48:7 71:16 82:5 figured 82:9 file 60:21 61:3 73:10 74:8 81:2 filed 10:7 11:14 12:5,7 filing 60:1 63:14 73:10 filled 26:2 63:5 final 6:18 finally 8:12 56:4 financial 32:6 financially 83:15 find 65:14 finished 44:14 45:16 firm 8:7 first 4:5 12:2 21:15,18 22:15 23:24 25:23 36:15 65:17 73:3 Fitzgerald 9:15 32:21 60:7,8 Fitzgerald's 43:9 Five 55:21 five-four 18:8 flaws 53:17 floor 30:19 flux 47:20 focused 48:10 follow 8:15 33:8 54:5 79:9 following 44:9 49:7 55:7 follows 38:16 footnote 31:5 33:19,19 34:16 46:14,24 66:19 force 22:11 foregoing 83:8	forfeiture 68:11 form 5:5 54:8 formal 9:17 61:20,21 79:10 formally 33:11 former 12:14 formulating 72:19 forthcoming 27:22 forward 17:24 25:3 70:3,4 73:4,7 found 29:19 foundation 25:17 57:6 four 53:6 55:21 69:22 frame 59:17 60:22 73:21 frequently 18:8 friends 7:10,16 8:20 from 5:12,24 6:1 9:15 11:7,8 13:21 14:7,9 14:11 15:10 22:10 23:14,17 23:18 25:6,11 25:17 28:20 29:20 32:2 34:19,21 35:6 35:10,20 38:18 38:23 40:11 44:1 45:5 47:7 51:9 53:8,9 57:5 77:16 78:21 front 10:4,11,17 16:9 18:7 20:9 42:22 47:4 59:18 60:5 61:6 75:6 full 23:24 27:7 39:10,12 40:18 41:21,23 42:5 51:10 64:5,7 64:15	function 30:17 75:10,19 funds 69:14 further 26:14 28:24 33:18 34:17 83:13 future 6:12 9:8 12:13 41:1 48:5 59:14
G				
face 70:12 facility 23:3 fact 7:18 13:17 13:23 16:6 18:9 27:23 30:9 36:12 38:3 54:23 56:10 57:9 factor 6:18 facts 9:19 13:1 15:3 29:22				gather 81:24 gathering 73:6 gave 15:17 21:4 37:13 64:7 71:5 general 1:3 5:18 18:23 19:6 20:4,10 41:19 62:17,21 75:13 80:7 generally 18:15 19:16 65:4,4 gentlemen 4:4 gets 41:21 60:4 72:3 gettin 50:2 getting 25:21 41:23 55:5 65:18 75:17 give 26:7 28:1,3 28:4,7 30:6 36:23 38:1 39:9,14 40:21 41:18 43:1 44:22 45:1,7,9 50:16 51:10,10 55:12,23 56:2 59:19 65:9 68:7 78:12 79:8,14 81:21 given 27:13 31:3 48:2 52:16 71:4 72:5,7,8 giving 30:18 42:24 43:1,2 64:4 glean 23:17

<p>go 11:5 14:22 16:15 18:7 21:15 38:5,7 43:23 44:18 46:8,12 48:10 48:22 49:3 52:8,20 71:22 72:10 80:5 goal 81:19 goes 31:15,24 33:18 35:8 47:7 63:16 67:22 going 5:8 15:8 16:3,15 18:12 20:16 22:8,15 22:16 23:22,23 25:2,4 26:5 27:19 28:10 31:2 36:9 38:6 40:4 43:6,10 43:18,21 48:5 48:17 49:4 52:6,8,11,18 54:4 59:15 66:7 71:17,19 71:22 72:1,2 72:10 73:3 74:10,11 77:1 77:2,11 78:5 80:6,13,17,23 81:18 gone 81:20 gonna 44:22 45:1 49:12,16 good 4:3 7:4 9:6 9:10 11:4,5 15:12,13 50:11 52:14 gotta 50:17 government 7:6 7:18 8:11 11:1 11:15 12:7 13:15,22 14:4 14:10,13,15,16 23:6 25:19 26:4,23 27:5 27:11 29:1,11</p>	<p>29:17 32:5,16 32:17 33:2,13 34:7,22 35:16 35:21 36:5,20 36:23 39:7,15 40:19 41:5 42:16 43:2 45:21 47:2,3 47:17,18 51:10 52:5,9 53:14 53:19 65:1,8 65:11,14 66:13 67:16 68:4,12 70:10,11,22 71:15 74:1,8 76:21 77:17 78:22 79:3,8 governmental 17:12 19:21,22 government's 10:15 14:3 25:10,14 26:15 32:13 57:8 73:19 governor 71:2 71:10 grade 25:22,23 grain 37:17 grand 36:17,24 37:5,9,14 61:24 grant 22:24 23:12,14 24:3 28:20 44:8 great 45:10 grounds 61:19 guess 21:15 25:24 41:10 63:13 64:17,23 69:1 75:16 78:4 guesses 68:23 guilty 7:12 8:9 12:4 16:2,22 25:2</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>H 2:6</p>	<p>half 22:16 ham 37:6 hand 14:22 handed 19:7 36:17 handful 12:7 handle 44:17 hands 41:2 happen 54:24 56:24 64:1 happened 27:13 66:3 74:18 happens 69:15 72:21 79:19 happy 4:22 15:5 39:19,20 hard 29:15 Hart 3:18 83:5 having 4:19 23:8 26:16 29:14 41:7 48:1 71:12 head 9:21 73:15 healthcare 7:24 hear 15:1 45:23 heard 37:6 63:19 82:2 hearing 1:12 4:1 4:24 20:15 62:1 hearings 13:11 20:18 heed 42:2 held 1:12 help 30:19 44:20 helpful 71:18 Henderson 3:14 4:22 5:2,6,13 6:1,6,9,9,21,24 8:6,7,16 9:4,7 9:12 10:6,9,23 11:1,5,10 15:7 15:12,13,22 16:3,18,23 17:2,5,14,19 18:2,23 20:2 20:14,22 21:4 21:8,22 22:3</p>	<p>22:13 23:4,16 24:5,7,12,21 25:6 26:9 27:1 27:12 28:5,23 29:8,23 30:3 30:15,21 31:1 31:7 36:20 37:1,4,13,20 39:1,5 40:1,5,7 40:12,17 41:19 42:9,11,14,23 43:3,6,11 45:9 45:13,17 46:1 46:4,7,10 47:1 47:15,23 48:16 48:21 49:1 50:18,23 51:7 51:14,18 52:23 54:15 55:2 56:7 57:3,17 57:20,24 58:7 59:4,5,13,18 59:22 60:13,17 60:24 61:9 62:2,17,24 64:2,23 66:17 67:14 68:15,18 68:23 70:8 71:21 72:17 73:13 74:4,19 75:5,12,21 76:10,17 77:15 77:23 78:4,15 78:20,23 79:3 80:2 81:4,8 her 32:2 35:7,11 44:18 49:15 50:16 74:13 highly 57:15 him 5:5 11:20,21 11:23 13:8 14:14 15:18 17:12 19:16 25:3 55:12 62:14 71:3 himself 65:16 history 14:10</p>	<p>hold 13:11 58:17 holding 57:18 honest 51:11 Honorable 31:17 hope 26:10 hours 1:13 House 1:2,4 7:9 12:15,16,19,21 61:16,22 62:9 62:10 70:4,14 70:14,21 71:24 Humboldt 28:18</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>idea 9:11 19:19 45:4 48:14 identified 21:20 identify 6:8 20:23 22:6,8 Illinois 1:2,15 3:19,22 12:19 23:14 28:21 46:17 57:18 66:21 83:2,8 83:21 impeach 71:10 impeached 71:2 importance 72:6 72:7,9 important 15:3 43:19 impossible 39:18 impression 64:4 improvement 44:15 inaccuracies 52:13 inaccurate 32:24 36:18 include 5:23 13:3 including 11:3 34:13 77:4 incorrect 30:14 indeed 76:8,15 indicate 73:11</p>
---	---	--	--	---

<p>indicated 61:12 62:13 66:13 indicates 68:12 76:5 indicating 63:11 indication 18:9 38:2 indict 37:5 indicted 33:8,11 indictment 33:10,17 36:16 36:19 65:17 68:11 individual 58:20 76:6 individuals 21:19 64:8 76:9 induce 17:12 indulge 43:19 informally 79:7 79:9 informant 53:5 57:11 65:11,15 informant's 65:12 information 9:15,23 10:2 10:15 11:2 13:12 14:3,5 21:4 23:9 26:1 27:24 28:3,6,6 29:4,6,24 31:13 33:15,16 34:5,10 35:4 36:9,18,24 37:7,11 39:8 39:15,16,22,22 40:1,2,19,19 40:23 41:2,6,8 41:13,17,21,23 42:18 43:8,12 43:13 45:20 51:9 52:17,18 55:3 58:9,9,14 60:9 64:5,7,12 64:13,15,16 65:1,5,6 66:5,7</p>	<p>66:9,10 67:21 68:1,3,6,7,8,17 71:18,24 72:6 72:8,9,22,24 73:2,5,6 76:17 76:19,20,21 77:3 80:4,6,9 80:16 81:23 initially 26:22 innocence 61:14 innocent 8:9,10 12:4 36:1 innocuous 26:1 insanity 18:17 instances 67:4 integrity 12:18 13:12 intend 7:13 8:15 8:17,18 24:23 intention 10:14 16:1 intentional 51:20 intentionally 25:15 51:23 interested 24:15 83:16 interests 7:17 8:18 internal 35:9 78:2 interpret 18:10 interpretation 17:15 18:11 29:10 interpretations 18:6 interrupted 44:23 Investigating 1:4 4:5 32:19 82:12 investigation 31:12 32:4 36:13 46:15 66:20 investigations 32:3 35:7,12</p>	<p>69:11 investigative 72:7 involved 13:16 64:21 83:12 issue 10:21 19:8 20:24 26:4 30:6 issued 41:14 63:13 issues 5:22 19:3 19:9 61:6</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>J 3:18 83:5 January 44:4 45:11 46:5 48:11,12,19 54:18 Jil 3:8 JoAnn 3:6 job 52:14,20 jobs 7:24 joined 9:13 judge 10:11,17 13:17,23 25:11 25:11,15 31:18 32:17,20 33:22 36:14 41:13 42:22 57:14 59:19,19 60:5 60:6,20 61:6 65:18 74:5,5 74:12 77:1 79:5 judges 47:4 judgment 15:2 64:8,11 71:8 juncture 53:23 June 10:11,12 80:23 jurists 18:9 jury 36:17,24 37:5,9,14 61:24 just 6:19 7:19 9:1 10:5 14:19 16:15 18:11,14</p>	<p>19:16 21:13,18 22:15,16,19 23:19 27:8,20 28:8 29:16 30:1,23 31:10 33:19 37:20 38:22 39:17,17 40:2,17 41:9 41:10,24 47:8 48:10,12,16 49:1,23 51:13 54:4,19 56:1 58:4,17,23 65:7,13 66:5,9 67:8,16,19 69:1 70:13 71:16 73:21 74:6 75:6,17 75:22,24 76:2 76:14 77:11,18 80:12 81:1 justice 14:17 58:24 justification 17:24</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>keep 10:1,15 11:2 14:21 60:12,14 kind 75:18,19 76:1 knew 81:16,17 Knock 49:13 know 7:11 9:13 14:12 17:8 18:7 20:15,17 24:16 25:16 26:4 27:2 28:9 29:3,9,13,15 30:1,2,3,7,15 31:2,22 33:6 34:8 35:4,18 37:7,14 38:10 39:4,6,17 41:24 42:8 43:7 44:16,21 46:11,21 47:8</p>	<p>48:4,21,23 50:1,8 51:4,13 51:20,24 52:7 53:4,7,7,15,16 53:18,19 54:19 57:10,15 58:18 60:2 61:13,17 62:10 63:2,17 64:12 65:1,12 66:6 68:24 71:2 72:10 74:4,11,12,14 75:9 76:13 77:18,21 80:7 80:22 82:5 knowing 51:12 64:10,13 knowledge 39:10,13 41:10 75:14 known 10:18 12:16 14:18 69:14 knows 52:5,11 52:18</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>lack 25:21 52:7 lacks 17:10 ladies 4:3 laid 52:3 land 8:8 language 28:15 29:19 last 4:24 13:18 14:19 22:16,20 31:9 38:15 42:16 44:9 45:23 62:20 lasts 45:22 46:1 late 10:12 later 33:22 44:19 55:23 64:6 66:19 67:23 laugh 55:20 law 8:6,7 14:17 17:15 18:3,5,5</p>
--	---	---	---	--

<p>18:10,11,24 19:1,6,11,13 20:10,11 46:16 47:10,16,19,24 53:3 63:1 66:20 69:4,7,8 69:11 70:18,19 70:24 laws 12:10 14:13 14:14 20:8 lawyer 8:6 lawyers 12:11 lead 39:9 learn 14:9 learning 33:16 least 8:15 26:22 32:9 45:19 47:6 53:10 54:18 57:5 76:24 leave 8:4 19:16 leaving 62:23 left 63:14 leg 53:16 legal 11:23 13:6 16:4,12 17:24 40:15,17 legally 18:20 length 54:21 less 12:24 39:9 39:10 54:22,24 60:4 lesson 14:21 let 10:5 21:18 28:8 36:15 48:23,24 68:8 letter 2:9,10 5:1 5:5,9,12,15,20 6:15 22:23 24:2,4,6 26:2,8 27:8 28:12,16 28:22 29:1,17 30:11,20,23,24 32:20,23 33:14 37:10 38:14 44:7 48:15 49:18 50:14,16 50:21 77:12,14</p>	<p>77:21 78:2 letterhead 29:20 letters 26:20 63:10 75:18 letting 24:15 let's 48:22,22,23 49:3 72:10,12 level 62:7 leveling 70:10 levied 7:19 8:19 light 27:20 40:20 42:20 43:17 54:16 79:22 82:5 like 4:4,21 7:1 9:19 11:18 20:22 21:9,12 21:15 23:9 24:19 26:7 28:10 30:6 31:2,4 32:15 38:8 41:15 43:3,23,24 48:13 53:16 57:1 59:8 61:16,24 63:6 64:12,16 66:15 68:4 73:12 likely 54:24 70:2 limb 80:5 limited 23:16 34:13 40:2 line 24:12 44:10 lines 67:3 Litigation 3:20 little 38:13 living 47:24 location 55:12 long 7:23 22:15 34:22 44:1 45:22 46:2 longer 71:17 80:13 look 44:24 45:1 63:10 73:6 80:21 looking 44:14 63:22 73:4</p>	<p>lose 52:20 lot 42:23 48:13 66:2 Lots 12:9 low 62:5 lower 61:22 lying 38:22 52:19</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>M 3:3,7 31:11 Madam 15:11 59:3,6,12 75:4 77:9 made 14:18 31:8 34:10 42:18 51:15,23 52:3 52:18 58:10 60:7 64:11 65:21 67:5 73:1 81:8 magistrate 31:17 37:11 major 30:9 make 6:15,19 7:1 10:5,6,18 12:8 15:20 23:20 28:2 38:10 39:17 64:8 65:22 67:1 68:23 71:8 75:23 76:3 80:12,18 81:21,24 makes 54:21,24 making 9:17 37:22 47:4 52:14 53:17 56:9 58:15 60:6 man 8:10,10 36:1 49:18 50:3,7 manufactured 14:4 27:3 47:12,19 66:13 66:16 67:5,11 70:6</p>	<p>manufacturing 29:2 many 7:15,16 11:18 19:8 23:5 34:8 35:16,18 36:5 57:9,9 59:15 69:5 March 7:6 24:4 24:6 32:24 38:17,22 45:14 45:14,14 46:9 48:10,19,23 54:2,5,17 55:6 62:16 69:6 material 13:1,16 13:22 34:5 51:19,22 56:10 63:9 67:20 73:2 materials 23:7 matter 5:4,19 8:14 10:1,12 10:16 12:20 14:18 15:3 41:24 60:4,16 79:19 matters 19:3 may 1:13 5:13 6:17 8:4 9:8 10:12 11:7 15:1 20:17 27:21 29:12 33:7 39:21 46:12 51:22 59:14,17,23,24 60:1,21,21 71:22 72:11,15 72:24 73:8,17 73:19,19 74:2 74:5,18 79:1 79:16 maybe 21:1 25:22 61:24 63:14 79:21 mean 30:23 43:6 47:9,13 49:14 52:10</p>	<p>meaning 14:13 53:3 means 22:7 68:9 70:16 meet 55:11 59:16 80:23 meeting 44:19 55:17,18 69:8 69:18 member 3:5,6,7 3:8 58:12 61:20 members 3:1 4:19 6:2,17 11:8 15:10 21:10 56:22,23 59:8 63:3 77:7 mentioned 6:14 42:20 mere 70:16 merely 70:9 met 34:23 56:5 69:7 microphone 6:8 middle 22:20 Midwest 3:20 might 9:11 28:2 44:17 64:8 minutes 5:19 misconduct 58:4 58:5 65:22 misleading 38:1 misled 25:10,14 misrepresenta... 36:13 63:9 misrepresenta... 13:17,23 25:19 misrepresented 38:3 57:13 65:16 67:10,15 67:17 70:6 mission 61:18 71:19 misspeak 20:9 misspoken 20:20 misstatements 51:19,22 56:10</p>
--	--	--	--	--

<p>mistakes 51:16 51:19,21 53:18 modifications 44:13 money 45:5 49:17 50:15 55:20 56:5 68:13 69:9,17 69:19 month 13:18 months 7:6 60:23,23 more 12:16,17 17:19 20:5 26:22 41:4 48:24 49:1 53:24 54:15 55:3,5 58:4 61:24 63:16 64:20 79:23 Moreover 14:1 morning 4:3 7:4 11:12,16 15:12 15:13 most 7:11 12:17 53:2 65:3 70:2 mothers 7:23 motion 63:15 74:2,8 motions 81:2 move 41:18 70:3 70:4 80:17 much 12:23 18:6 23:10 26:7 57:11 59:4,7 61:22 64:16 71:14,16 74:23 75:4,9 77:6 multiple 16:7 42:4 67:4 multitude 65:11 mundane 75:19 must 12:22</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>N 2:1 name 7:14 8:13 8:20 12:12</p>	<p>14:17 21:21 22:11,20 46:18 72:1 78:12 named 76:6 Nan 31:17 32:20 narcotics 69:5 national 33:24 nature 26:21 57:1 NCIC 33:23 near 14:22 necessarily 18:2 need 6:7,8 7:23 7:24 8:1 27:10 42:2 56:20,21 56:23 63:17 64:15 71:17 80:22 needs 51:3 67:21 negative 69:10 negotiation 50:20 neighborhood 28:18 neighborhoods 8:2 neither 83:11 Nekritz 3:2 4:3 4:7,8,19 6:7,14 6:22 8:24 9:6 9:10 10:5,20 10:24 11:4 15:6 59:7 74:24 77:7 78:18 81:12 never 63:20 65:10,13,18 66:3 70:17 nevertheless 18:21 newspapers 24:18 next 11:6 60:10 78:1 80:18 nice 15:14 52:14 nobody 35:24 Nolan 31:17 32:20 41:14</p>	<p>59:19 none 14:6 39:16 51:4 nonetheless 18:1 non-lawyers 65:4 non-profit 47:3 Notary 83:7,20 note 36:16 nothin 50:10 Nothing 16:19 notice 1:12 32:23 notion 58:24 notions 12:21 not-for-profit 46:16 66:21,24 November 62:20 nuances 19:12 20:2 24:16 number 2:8,9,10 32:19 39:11 49:22 56:14 63:23 numerous 63:22</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>oath 5:3,24 6:1,2 6:4,12,18 7:2 9:3 52:4 objecting 82:11 objection 5:8,14 10:18 26:6 obligated 76:21 obtained 63:1 obtaining 45:5,5 obviously 19:2 25:2 30:8 42:5 51:14 75:13 76:13 occasions 16:8 occur 59:17 occurred 54:16 54:17 65:13 69:24 off 9:21 17:1,3 30:7 36:13 45:11 73:14</p>	<p>offenses 34:15 office 22:6 43:10 46:18 52:11 57:18 58:6 66:22 78:3,13 78:14 offices 75:10,19 75:20 official 12:15 24:2,4 29:20 30:9 45:6 69:14 officials 14:14 14:15,16 53:14 53:19 often 17:19 53:20 75:20,20 oftentimes 12:10 okay 10:24 11:5 15:23 16:24 19:14 20:13 21:3 22:4,14 23:11,19 27:1 27:23 28:8 30:5 31:6 36:15 40:14 41:11 42:3 43:17 45:2,12 45:15 46:3 47:22 48:9,14 48:20,22 49:17 50:1,11 51:5 52:1 55:4 56:12 59:3 75:16,22 78:11 78:17 79:17 old 3:21 37:5 67:22 one 11:20 12:3 12:23 15:1,18 18:24 20:18 21:23 30:8,8,9 31:22 32:17 33:20 34:1 36:4 41:7 42:1 45:3 47:4,5 48:11,24 50:24 53:1,16 54:1</p>	<p>55:21 56:18 57:16 59:19 61:15 69:2 78:5 ones 27:21,21 66:14 73:3 online 20:18 only 51:7 58:3 60:11 61:1 64:5 76:17 onto 29:20 open 11:2 18:6 operation 27:4 47:11 operations 69:5 opportunities 61:5 opportunity 8:22 11:11 20:23 27:16 31:4 61:3 71:4 74:1,8 81:22 oppose 10:14 74:11 77:2 opposed 41:7,22 43:4,11,15 51:12 58:15,22 64:13 65:6 opposite 41:22 oral 74:2,5 order 4:5,5 9:18 10:22 11:6 16:11 23:8 31:10 42:18 58:13 60:11,12 73:12,21 74:9 77:2 79:5,20 79:23 80:3 82:7 organization 28:19 46:18,20 Osmond 3:6 4:13,14 other 19:9 23:20 30:6 32:3 35:7 35:11,17 38:2 41:11,19 43:7 45:20 46:11</p>
---	--	---	--	---

<p>56:9 60:22 63:3 67:1,24 68:3 70:14 72:9 77:7 others 15:1 42:7 otherwise 80:16 83:15 ourselves 61:24 81:22 out 9:19 11:2 12:3,10 19:16 26:2 30:14,20 43:13 48:7 49:13 52:3,12 56:22 58:15,22 58:23 59:1,1 65:15 66:17,19 67:12,16 68:1 69:19 71:16 80:5,9,10 82:5 82:8,9 outcome 83:16 over 10:22 14:18 15:8 20:15 23:7,21 26:17 31:24 34:17,20 35:2,5,9 42:16 45:21,22 46:1 52:6 65:23 71:11 72:21,23 76:21,22 79:13 overbearing 19:21 overborne 17:11 owing 68:21 own 13:14 20:4 25:10,14 26:15 37:10 43:14 57:10 58:11 62:4 owned 44:6 Owner 44:13,18 44:22 49:10,11 50:22 Owner's 22:23 24:2 28:18 46:19</p>	<p style="text-align: center;">P</p> <p>P 3:14 packet 21:4 packets 21:11 page 2:2,7 21:15 21:16 23:22 28:11 31:5,10 31:10,18,19 32:20 33:9,10 33:18 34:16 38:11,15,15 41:6 43:23 44:10 45:14 46:14 49:4,4,7 54:1 55:5,9 63:22 66:19 69:6 pages 65:23 paid 32:4 painfully 7:7 panel 15:1 pants 53:16 paper 74:6 paragraph 21:16 22:14 23:23 28:11,12 29:16,19 31:5 31:13 38:12,13 38:15 42:3 43:24 44:1 45:11 49:3,5 54:1,6 55:5,8 55:15,17 61:19 69:6,16 paragraphs 56:14 Park 28:18 part 26:7 27:4 30:23 41:7 46:15 66:19 particular 20:11 27:15 35:15 40:11,11 66:14 parties 61:2,4 83:12,15 party 41:7 passage 48:12</p>	<p>50:19,23,24 51:2 passages 38:8 passed 29:12 past 32:1 34:17 34:20 35:2,5,9 80:22 Pat 43:9 patient 56:13,15 Patrick 9:14 32:21 60:7,8 pay 44:6 49:10 payment 54:8 payroll 34:22 35:1,16 57:8 pending 5:23 15:24 people 7:15,17 7:21,24 8:2,8 8:21 11:21,22 12:9 14:20 16:8,10 28:3 31:21 33:7 36:1,5 47:23 53:14 62:13 66:5 72:9 perception 7:8 8:8 perhaps 78:3 period 32:8 45:22 46:2 80:14 person 12:20 22:7,8 40:11 57:8,13 69:9 persons 76:16 perspective 25:7 25:12 47:7 53:9,9 57:5 phone 54:2 55:6 63:24 picture 63:18 67:9 piece 26:1 29:20 pitch 37:22 place 46:5 48:3 49:7 55:8 62:7 63:21 68:14</p>	<p>76:8 placed 14:2 plainly 38:22 plan 19:1 planning 44:12 plausible 54:22 play 12:22 58:24 59:1,1 62:7 67:12 played 58:15 Plaza 3:21 plea 7:12 25:1 plead 16:2 pleading 16:21 please 20:20 43:19 point 9:8 15:8 20:8 25:9 27:14 30:13 35:13 41:1 42:1 47:6 48:4 48:5,6 51:1,15 52:5,12,15 53:22 57:4 60:9 61:16 70:7 77:23 78:15 79:11,15 79:18 pointed 12:2 66:17,19 pointing 67:16 police 8:1 posed 64:9 position 16:13 19:12 24:8,11 26:10,11 37:17 39:13 40:3,8 41:3,8 43:18 51:13 55:3 66:4,7 72:17 74:20 76:11 79:4,12 possibility 6:20 possible 64:16 78:12 possibly 6:12 15:17 16:16</p>	<p>posture 43:12 posturing 43:15 powerful 53:2 practice 69:10 preceded 25:20 36:18 predated 25:20 predisposed 19:20 predisposition 17:10 preface 39:21 preference 43:11 prejudices 26:5 preliminary 5:23 62:1 premature 12:24 58:15 present 3:1,10 4:10,12,20 37:10 61:5,9 80:24 presented 16:5,7 31:16 37:7 press 61:13 presumably 24:17 presume 77:19 presumption 12:4,5 18:4 61:14 presupposes 17:22 pretend 31:21 pretty 23:10 prevail 12:22 77:3 previously 39:2 68:7 pre-recorded 69:13 primary 7:20 32:12 62:16,18 principle 20:4 80:8 principles 11:16 20:6</p>
---	--	---	--	---

<p>prior 31:23 33:20,24 34:6 34:8,12 59:24 71:2 prison 52:20 privilege 57:19 78:8 probable 31:15 probably 15:18 52:19 57:20 probation 34:3,4 problem 45:2 proceed 7:3 65:17 82:5 proceeding 6:16 11:23 24:14 30:16 62:8 73:1 83:13 proceedings 1:21 12:18 13:13 14:22 61:21 81:21 83:9 process 12:21 58:16 61:13 62:6 63:6 67:11 70:18,20 71:12 72:19,24 73:6,7 79:10 81:20 product 78:7 Professional 83:6 proof 61:23 prosecute 14:14 prosecuting 14:11 prosecution 71:11 prosecutorial 65:22 prosecutors 24:16 37:7 protect 8:1 40:16 protected 78:6 protecting 12:18</p>	<p>protective 10:22 23:8 42:17 60:11 73:12 74:9 77:2 79:5 79:20,23 80:2 82:7 proven 8:9 12:4 17:23 18:19 provide 5:21 24:6 71:17 72:15 provided 24:3 32:6 41:13 46:18 56:8 69:12 provides 32:23 provision 68:11 public 10:12 24:14 42:19 52:19 58:5,10 83:7,20 publicly 76:18 76:23 punishment 70:4 purported 22:23 24:3 28:19 purports 28:12 28:14 44:2 55:16 purpose 25:2 purposes 32:7 pursuant 1:12 42:7 pursuing 40:15 pushed 19:22 put 6:7 13:15 31:10 35:14 36:12 41:8 52:21,23 53:9 53:16,21 76:14 p.m 1:14 55:11 82:14</p> <hr/> <p style="text-align: center;">Q</p> <p>quash 63:15 question 16:5,7 16:9,11 24:8</p>	<p>26:22 27:2,10 39:18 45:18 64:9 76:1 77:12 78:2,10 questioned 13:13 questioning 5:24 questions 6:1 8:13 9:2,5 10:4 11:8 15:5,9,10 19:5 21:10,13 22:17 24:13,22 25:18 27:20 29:24 35:13,19 36:7,11 37:19 38:9 41:4,9 43:20 47:8 48:2,6 59:9 64:3 67:23,24 75:7 81:17 quick 52:13 quickly 43:18,21 quiet 8:17 quit 8:2,3 quite 19:6 24:14 62:3 81:16,17 quorum 4:20 quote 22:20 28:13,13 quoted 48:12 quotes 42:6 52:2 52:10,12</p> <hr/> <p style="text-align: center;">R</p> <p>R 31:17 32:20 raise 34:9 raised 16:10 39:12 raises 70:23 raising 70:16 Rather 62:5 reaching 6:18 read 15:2 22:17 23:4,9,23 24:18,18 25:13 28:13,23 29:16 33:19 36:8 43:24 45:7,10</p>	<p>47:13 48:12,24 49:4 50:19 51:3 54:4 56:3 56:11 61:12 66:18 67:3 76:4 reading 16:8 45:3 50:23 51:2 52:22 56:1 76:13 ready 27:10 36:2 real 26:21 48:7 realize 61:23 really 63:14 68:24 reason 16:2 18:21 22:7 35:22 36:22 45:7,10 46:23 52:21 54:20 63:4 reasonable 17:23 18:20 53:1 61:19,23 reasons 15:18 39:2 52:24 56:7 Reboletti 3:3 4:9 4:10 59:10,11 59:21 60:10,14 60:19 61:7,11 62:12,19 63:8 64:14 66:12 67:8 68:10,16 68:19 69:2 71:1 72:12 73:8,24 74:15 74:22 75:1 76:1 78:19,20 78:24 79:17 80:11 81:7,10 82:3 rebut 43:10 received 5:12 32:1 34:12,18 35:6,10 66:9 78:21 79:7,11</p>	<p>recent 11:14 14:10 42:1 recently 13:18 recess 82:3,12 recessed 82:14 recognize 62:3 75:10,18 recognized 18:21 recollection 59:23 61:1 recommendati... 82:1 reconvene 68:9 82:8 record 5:15 6:10 9:8 10:13 13:19 14:2 21:2 28:9 31:1 34:7 43:20 recorded 42:4 recordings 42:8 records 35:9,20 reduced 83:10 reemphasize 57:9 reference 65:21 referenced 35:23 references 67:1 referring 22:18 23:2,13 refers 21:24 42:4 reflected 13:18 refusal 6:17 refuse 42:19 refused 9:16 39:7 regard 75:17 76:3 regarding 10:15 13:1 25:18 registered 46:16 66:20 83:6 registering 47:2 regular 75:19</p>
---	---	--	---	--

<p>reject 18:12 relate 19:4 related 83:11 relates 19:1 53:11 relative 83:13 relatively 42:1 release 9:15,23 60:2,8 72:13 79:4 released 9:18 60:4 72:3,4,4 72:10 relocation 32:7 remain 8:16 remember 49:23 removed 71:3 renovations 44:12 repeat 56:20 Reporter 3:17 83:1,6,6 represent 7:17 8:17 representation 31:8 32:14 47:5,5 73:1 81:8 representations 27:15 76:24 representative 3:2,3,5,6,7,8 3:13,15 4:10 4:12,14,16,18 4:21 5:2,10,10 5:21 6:3,10,11 6:24 7:4 9:1,4 11:15,19 12:2 12:6,8,12 13:2 13:6,21 14:7 14:23 15:15,21 16:19 17:6 19:2,15 22:19 24:5 25:1 26:8 26:11,24 28:17 29:21,21 30:10 33:5,8,11 34:24 38:14,23</p>	<p>39:14 40:10,24 42:6 44:3,5,7 45:4 48:13 49:6 50:20 54:3 56:4,6 57:19,23,24 58:17,18 59:10 59:11,21 60:10 60:14,19 61:7 61:11 62:12,19 62:23,24 63:5 63:8 64:11,14 66:12 67:8 68:5,10,16,19 69:2 70:13 71:1 72:1,8,12 72:20 73:8,24 74:15,17,22 75:2,3,9,15,16 75:22 76:1,7 76:12 77:5,8,9 77:19 78:1,3 78:11,14,17,18 78:20,24 79:17 80:9,11 81:7 81:10,13 82:2 Representatives 1:2 46:12 62:10 75:11 77:4 Representativ... 13:6 16:12 19:4 24:17 73:16 represented 34:1 74:10 81:4 representing 11:22 Republican 3:4 14:12 65:24 request 9:17 10:7 14:24 22:10,12 60:6 72:13 74:16 requested 5:7,21 68:8</p>	<p>requesting 5:2 requires 70:19 70:20 reserve 15:2 resolution 13:3 respect 24:7,22 27:12 60:11 respectfully 14:24 respectively 33:3 respond 11:20 45:18 48:17 51:13 66:8,18 74:1 78:5 responded 44:17 45:2 54:9,10 response 7:13 19:5 46:13 responsibilities 78:9 rest 53:17 result 18:1,21 resulted 14:19 results 69:10 retained 2:12 78:3 retirement 62:22 reveal 22:11 review 13:1 79:22 right 13:4 18:1 21:21,21 24:9 28:1,7 29:24 30:3 39:18,23 40:2,12 42:8 47:11 50:4,5 52:5 55:2 57:5 57:15,19 58:3 58:9 60:24 61:8 62:1 72:18 74:21 75:20 76:10 77:18 rights 40:16 road 60:22</p>	<p>rock 50:14 roll 4:6,20 50:14 room 1:14 12:21 RPR 3:18 rule 10:19 61:17 74:6,13,13 rules 70:22 79:5</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>S 2:6 safe 27:14 sake 20:20 salt 37:17 Sam 8:16 same 7:21 9:22 12:1 14:10 18:10 23:10 35:22 41:6 43:14 46:12 48:18 54:17 56:7 60:6 62:3 63:2,6 66:8 68:8 80:10 82:2 sandwich 37:6 SANGAMON 83:4 sayin 50:10 saying 24:24 34:12 37:19 44:21 48:14 57:11 64:2 67:7,9,14,15 67:18 69:24 70:5,8 77:15 80:1 says 22:18 23:1 23:12 32:10,22 36:21 38:16,22 46:15 69:6 70:12,12 scenario 54:22 schedule 10:10 10:21 60:20 61:4 73:9,15 74:7 80:22 82:7 searched 69:8</p>	<p>seat 62:15 63:1,5 seats 63:4 second 12:14 22:21 25:22 59:20 secret 10:16 11:2 13:16 26:4 42:15 Secretary 46:17 66:22 see 11:3 15:14 20:10 37:8,8 42:20 43:13 48:17 49:21,23 52:8 67:12 71:6 77:4 80:21,23 82:11 seem 26:7 27:6 seems 45:18 47:10 seen 79:10 80:4 seized 68:12 seizure 68:13 self-defense 18:18 seminal 19:7 Senate 71:3,12 Senator 14:11 14:20 35:23,23 41:23 58:19 65:24 send 5:1 73:4,17 sending 73:4 81:1 sense 28:2 sent 5:5,9,20 63:10 sentence 22:15 22:16,21 23:24 38:15,19 44:15 54:4 55:8,16 sentenced 34:2,4 sentences 54:5 serious 15:3 57:23 seriously 58:1 Services 3:20</p>
---	---	---	--	---

<p>set 9:20 10:9 60:20 61:2,8 61:10 seven 45:1 54:11 55:22 Seventh 20:7 several 65:21 share 13:5,11 36:10 60:15 74:17 79:24 80:15 sharing 81:6 shed 13:7 27:20 54:15 79:21 sheet 10:13 33:5 33:6,10 shoot 67:23 short 9:18 44:1 Shorthand 83:6 show 47:7 64:20 66:15 SIC 32:18 side 11:13 43:1,2 siege 35:24 signed 26:8 29:21 significance 71:23 72:6 81:6 significant 67:20 signs 32:11 similar 63:6 similarities 71:6 simply 12:6 70:22 since 7:5 31:3 77:15 single 7:13 sir 38:12 sit 11:12 66:10 78:4 sits 70:14 sitting 13:17,23 25:11 36:14 53:18 65:24 67:12 68:5 71:10</p>	<p>situation 56:4 situations 71:7 six 4:19 54:23 55:22 60:23 slippery 26:12 slope 26:12 Smith 3:13,15 4:21 5:2,10,21 6:3,10,11 7:1,4 9:1 11:13,15 11:19 12:6 13:21 14:8,24 15:15,21 19:15 22:18,19,22 24:1,3,5 26:8 29:21,22 30:10 32:9 33:5 34:24 38:14,17 38:23 40:10 42:6 44:3,5,11 44:13,14,17,20 44:23 45:2,4 46:19 48:14 49:6,9,11,14 49:16,20,22 50:4,9,12,16 50:20 54:3,7,9 54:9,10 55:10 55:11,12,13,19 55:23 56:4,6 57:23,24 58:17 63:5 68:5 69:8 70:13 72:8 74:17 75:9 76:7 78:14 Smith's 32:11 44:7 78:3 some 6:12 8:4 9:8 10:7 11:7,8 14:15,16 15:9 20:2 21:1,9,19 22:17 23:5 25:9 28:2 32:9 37:23 38:1,5 40:24 43:8 44:12 45:7 46:23 47:11,23 48:1,4 51:16</p>	<p>52:5,20,21 54:20 57:20 59:9 60:22 64:5,8 68:23 71:6,13 72:23 76:2 79:6,18 79:21 80:15 82:4 somebody 34:21 34:24 47:12 53:6 69:3 somehow 54:21 someone 35:15 something 22:17 29:16 30:11,12 39:14 50:24 54:23 72:21 73:11 80:6 81:6 sometime 62:22 69:15 74:18 80:18 sometimes 79:8 79:9 somewhat 26:1 71:13 Somewhere 73:20 soon 10:2 73:22 sorry 45:15 59:19 sort 82:9 sound 48:13 source 22:1 31:20,22 32:1 32:5,6,11 34:18,22 35:3 35:6,10 38:4 38:24 51:17 57:7 source's 32:8 South 3:21 speak 17:11 19:3 19:12,16 20:24 57:15 80:20 speaking 13:9 65:4</p>	<p>special 1:4 4:4 31:11 32:18 33:1 35:15 73:2,18 81:5 82:12 specific 19:15 specifically 44:8 44:11 speculate 58:8 65:7 80:3,14 80:15 spin 43:12 Spokesperson 3:4 Springfield 1:15 3:22 53:19 ss 83:3 stacks 54:11 staff 12:14 58:12 stance 69:20 stand 8:9 9:13 11:12 standard 61:22 61:22 62:5,6 70:9,10,13,15 70:20,21 standards 12:15 62:3 71:13 standing 20:5 47:4 stands 13:4 20:4 start 11:11 25:17 started 25:23 36:13 72:19 starting 24:13 24:22 26:12 44:9 starts 45:11 57:5 state 3:21 9:7 12:19 18:4,5,5 28:17 35:8 47:16,20 57:18 58:19,20 62:10 62:23 70:24 83:2,7,21 stated 25:2 39:2 46:19 55:18,20</p>	<p>56:8 statement 5:24 7:1,3 11:7 38:24 39:24 41:16,17 46:24 47:2 71:6 statements 15:20 32:24 37:21 54:13 states 12:15 14:11 15:24 19:8 20:6 25:19 31:17,20 32:21 33:20 34:17 58:12 60:7 62:9 65:23 69:12 State's 46:17 66:22 Stevens 14:11,18 35:23,24 41:24 47:19 53:13 65:24 still 23:23 29:14 38:12 sting 27:4 47:11 69:4 stop 11:21 22:9 story 30:24 43:2 45:22 46:1 strategy 16:12 40:15,18 strict 47:21 strings 54:10 stuck 55:21 study 20:19 subject 5:4 17:24 23:7 53:17 57:6 submit 21:1 submits 31:14 submitted 33:4 suggest 19:9 70:1,3 suggested 54:8 suggesting 64:22 support 7:14,15 22:23 24:2,4,6</p>
---	--	---	---	--

<p>27:9 28:18 30:11 44:7 48:15 50:16,22 75:18 77:12 supporters 11:24 supposed 30:17 47:17 79:1 suppress 63:15 Supreme 18:7 19:8 20:6 sure 6:15,19 10:6 21:23 23:6,20 24:20 25:9 29:7 37:12,15 44:18 59:15,21 64:22 68:20 73:17 75:23 76:3 80:12 81:21 swearing 31:12 sworn 5:22 37:21 52:3,4 52:17 62:20</p> <hr/> <p style="text-align: center;">T</p> <p>T 2:6 table 16:16,19 17:1,2,4,6 take 15:10 18:4 20:23 34:20 37:16,21 41:16 42:2 43:8 45:13 47:1 62:7 63:17 70:2,23 80:21 taken 10:8 16:24 30:14 32:11 42:7 48:3 55:8 56:13 69:22 79:3,12 83:9 takes 58:1 taking 4:6 talk 18:16 29:2 44:18,19 55:22 80:3 talked 38:13 41:12 56:17</p>	<p>63:9 talkin 50:2 talking 18:14 46:4 48:18 talks 47:16 tapes 42:10 52:6 52:8 76:19 Ted 14:11,18 35:23 47:19 53:12 65:24 tell 9:21 16:14 26:5,6,8,18,18 30:12 36:8 37:9 38:1 41:15 42:15 43:9 49:19 50:7 56:2 57:1 61:18 64:24 77:17 80:5 telling 33:13 39:3,5 63:24 77:21 tendency 53:13 tenure 58:11 term 25:22 terms 23:21 testified 2:3 testify 5:3 6:4,18 59:14,14 71:4 71:5 74:17 testifying 6:12 15:16,19 testimony 5:22 15:17 thank 6:22 8:22 8:23,24 9:10 11:10 15:4,6 15:11 56:12 59:3,5,7,11 74:22,24 75:3 75:5 77:5,9 78:17 81:7,10 81:12 thanking 11:11 Thapedi 3:7 4:15,16 theft 34:14,14 35:17</p>	<p>their 8:1 13:14 13:20 14:5,6,8 21:11 28:19 34:24 35:1 37:10,21 43:2 43:14 52:12 53:8,16 57:8 57:10,12 63:3 66:22 67:6 76:24 themselves 14:17 19:11 61:5 theories 16:4 theory 17:9 thereto 83:15 thing 18:24 45:23 47:24 48:24 50:24 56:19 82:2 things 26:20 31:16 35:17 39:17 46:11 47:11,16,19 61:16 66:2 67:4 69:3,24 69:24 75:11,11 75:20 79:22 think 11:6 16:9 17:14 18:8 20:3,9,12,16 20:19,22 21:10 22:9 25:6,7,20 26:14,21 27:10 27:11,14,20 28:9,23 30:21 32:22 40:24 41:4 42:2,15 43:19,21 44:16 52:16 53:2,13 54:21 56:10,19 57:4,17,20 58:1,8,10,16 58:23 61:15 62:17 65:3 67:4,22 70:24 71:18 75:24 81:15,17 82:2</p>	<p>third 13:9 25:22 32:20 51:1 54:4 55:8,16 thoroughness 57:12 though 7:1 9:8 thought 25:24 36:4 55:19 65:10,14,18,20 three 53:6 55:21 60:5,22 through 5:2 14:22 38:5,7 46:13 52:8 56:13 61:12 71:12 81:20 tied 41:2 time 6:5,13 10:14 15:4 16:6 20:8 25:9 27:14 29:15 32:9 35:24 41:1 43:14 45:22 46:2 47:6 48:4,5,7 53:16,22 54:21 57:4 59:4,17 60:9,22 63:12 64:6 67:11 72:21 73:20 77:23 78:15 79:11 80:14,21 82:9 times 23:5 59:15 65:21 69:5 today 4:22 6:6 6:12,13 7:1 8:5 8:6,23 9:5,9 15:16,19 21:5 43:16 59:14,24 81:15,18 today's 11:18 together 11:16 13:15 35:14 55:22 56:1 told 32:17 33:22 44:5,11,13,24 55:11 79:14</p>	<p>top 9:21 44:9 73:15 topic 42:21 Tracy 3:8 4:17 4:18 77:8,9,19 78:1,11,17 trained 65:5 transcript 1:21 20:17 24:18 transcripts 20:17 37:9 42:13 transparency 68:3 transparent 68:6 transpired 54:21 travesty 14:20 tread 24:22 trial 61:8,10 71:4 troubles 69:3 true 12:9 17:20 31:13 41:16 50:24 58:4,6 58:17 70:23 77:17 truly 11:17 truth 52:21 truthful 54:14 truth-finding 30:17 try 38:9 43:18 44:20,20 49:12 51:8 tryin 44:16 49:23 trying 18:4 29:5 29:15 30:15,20 37:20 38:5 40:16 43:12 45:17 48:7 51:8 67:8 71:16 turn 12:10 15:8 21:12 23:22 28:10 31:3,4</p>
---	---	--	--	---

<p>31:19 32:15 72:23 76:21,22 79:13 turned 23:7 45:21 71:11 turning 38:11 52:6 two 7:6 19:2 32:23 33:24 52:24 55:21 76:9,16 78:5 79:19 types 69:11 75:11 typewriting 83:10 tyrannous 53:20 tyranny 53:20</p> <hr/> <p style="text-align: center;">U</p> <p>uh 44:19 ultimate 13:3 Ultimately 24:1 unanimously 5:1 under 5:3,24 6:1 6:2,4,12,18 7:2 9:3 10:1,16 35:24 52:4 61:16,18 63:6 65:2 83:10 undercover 69:4 understand 6:20 6:23 10:6 15:15 17:7,15 20:1 23:1,12 26:9,11 27:3,5 28:2 29:12 37:17 43:21 55:4 56:22,23 62:1 71:23 77:13 80:12 understanding 9:16 17:13 18:16,24 19:6 19:10,14,17,23 22:2 23:20 51:11 62:14</p>	<p>70:18 understood 22:13 75:23 76:3 unfair 16:10 unfold 81:18 unfounded 12:11 unidentified 23:2 unintelligible 44:21 50:12 55:22 unintentional 51:21 unintentionally 25:15 51:23 unique 20:3 United 12:15 14:11 15:24 19:8 20:6 25:19 31:17 32:21 58:12 60:7 62:9 65:23 69:12 unless 5:8,14 52:7 unreasonable 52:16 until 8:9,19 12:4 12:24 15:2 27:16 33:8 41:21 66:6 79:5 untoward 36:5 unusual 47:14 unwise 64:3 65:7 updated 36:23 uploaded 5:18 urge 12:22 13:10 14:21 use 19:1 22:19 51:21 65:11 72:16 used 15:17,21 using 65:15 uttered 14:4</p>	<p>U.S 9:14,16,22 9:24 22:5 52:11 53:15 72:5</p> <hr/> <p style="text-align: center;">V</p> <p>vacancy 62:23 63:4 values 11:17 vehicle 69:9 veracity 63:16 very 6:15 9:6,10 11:4,4 15:3 18:6 31:9 36:2 38:22 44:9 48:3 52:14 58:5 59:4,7 74:22 75:3 77:5 via 5:5 Victor 3:14 6:9 8:6,16 vigorously 8:19 9:24 25:3 violating 12:10 78:8 virtue 16:6 voluntarily 42:17 volunteer 8:5 voted 5:1</p> <hr/> <p style="text-align: center;">W</p> <p>wait 41:20 80:22 walk 31:8,9 wall 49:13 want 6:15,19 9:1 9:7,19 11:2,10 14:16 20:8,16 23:20,21 27:24 28:3 29:9 30:12 31:21 34:14 39:1,8 39:13 40:21 41:17 42:19 43:16 49:18,18 50:6,7 51:6 55:3,23 56:17</p>	<p>57:9 58:7 64:9 66:9 67:11,22 67:23 72:4,9 76:2,22,23 80:5,12,20 82:5,10 wanted 28:1 35:24 40:6 75:22,24 76:2 wants 11:1 19:10 72:1 80:9 warrant 41:14 63:12 wasn't 19:19,19 way 7:21 9:22 16:15 18:10 29:19 30:22 45:8,10 48:10 57:14 62:3 63:2 65:3 66:5 66:8 80:10 ways 42:24 78:5 79:10 weapons 34:15 website 5:18 week 7:19 79:19 weeks 42:16,22 60:5 79:19 80:19 81:9 welcome 4:21 well 11:9 18:14 19:14 21:6,11 25:6 28:8 29:18 30:5,21 31:1 34:6 36:15 37:1,4 39:19 41:11 43:3,17 45:17 47:15 48:16,22 50:23 51:5 63:8 64:17,23 66:17 67:2 71:1 76:13 80:14 were 2:12 13:22 16:9 21:5 27:3 27:3 36:1 42:7</p>	<p>47:11 51:20 53:4 67:4 71:7 71:8,10 73:13 73:21 83:9 West 28:17 we'll 15:10 34:7 60:5 we're 10:10 16:12 20:16 23:20 24:8,15 25:21 26:17 27:19 29:5 30:15,20 34:5 34:9,11 35:4 36:9 37:4,18 37:19,20 40:2 40:7 48:5 51:12 52:21 59:23 60:2,17 61:24 66:4,7 67:18 71:21 72:1,3,10 73:3 73:4,5 74:10 74:11,20 76:11 76:12 77:2 80:13,17 we've 5:12 27:17 30:7 37:6 42:11 76:18,19 79:6,6,7 81:20 82:9 while 11:20 22:9 55:20 69:20 William 3:5 willing 6:4 9:2 41:5 44:6 49:10 79:24 willingness 81:14,16 win 43:5 62:20 wire 63:20 71:9 wiretap 64:19 69:23 wise 58:10 witnesses 2:2,3 woman 44:5 won 62:16</p>
---	---	---	--	--

<p>wonder 8:4 word 37:21 44:9 51:21 words 15:2 67:24 68:3 work 19:24 65:2 78:7 worked 69:4 world 53:3 worlds 42:24 worry 55:14 wouldn't 47:20 51:18,21 52:23 53:2,9 58:7 62:2 would've 62:21 wraps 10:1,16 write 22:22 24:1 29:14 30:20,23 writing 30:11 38:14 44:7 50:21 75:18 written 21:24 30:24 wrong 17:9 20:14 28:24 36:3,4 37:24 wrongdoing 58:21 wrote 27:8 29:1 29:11,14</p>	<p style="text-align: center;">Z</p> <p>zeal 14:5 zealously 69:21</p> <hr/> <p style="text-align: center;">\$</p> <p>\$1,200 32:2 \$100 69:13 \$1200 34:18 35:6 \$2,100 35:10 \$4,000 32:5 \$4500 68:20 \$50,000 28:20 \$7,000 22:24 38:17 44:6 48:14,18 50:2 50:21 56:5 69:12</p> <hr/> <p style="text-align: center;">0</p> <p>084-001390 3:19</p> <hr/> <p style="text-align: center;">1</p> <p>1 31:5 33:19 34:16,22 1-800-280-3376 3:24 10 2:10 5:16 32:19 38:17 45:14 69:6 10th 1:13 32:18 33:9,12,14 36:17 38:22 55:7 59:24 10:30 1:14 10:40 4:1 11 49:4,7 114 1:14 12 32:24 46:14 66:19 12:08 1:14 82:14 13th 7:6 148 63:23 15 3:21 15th 73:17,19 16 21:16 22:14 23:23 38:12,15 42:3</p>	<p>17 28:11 43:24 45:11 73:20 19 54:2 1978 34:3</p> <hr/> <p style="text-align: center;">2</p> <p>2 24:4 2nd 24:6 2:30 55:11 69:16 2:56 69:16 20 34:6,12 60:4 72:2,11 2004 34:2 2012 1:13 5:14 7:6 24:4,6 32:18,24 38:17 44:4 45:11 49:6 54:3,6 55:7 69:6 21 45:14 55:5,9 63:23 69:6 217 3:23 23 31:10,18 24 45:11 49:3 24th 44:4 46:5 48:11,12 49:5 25th 73:20</p> <hr/> <p style="text-align: center;">3</p> <p>3 21:6,17 31:5 31:19 33:9,9 33:10,11,18 34:16 3-4 32:1 34:17 34:20 35:2,5,9 3:00 55:11 69:16 30 71:20 30th 59:23,24 71:22 72:11,15 73:9 74:3,13 74:18 79:1,16 80:22 39 28:11 29:19</p> <hr/> <p style="text-align: center;">4</p> <p>4 21:16 4th 48:23 54:2,5 54:17</p>	<p>44 54:1,6 48 55:5,9,17 49 69:6</p> <hr/> <p style="text-align: center;">5</p> <p>5 2:8,9,10 23:22 38:11,16 46:14 66:19 50 55:15 69:16 522-2211 3:23 54 31:13</p> <hr/> <p style="text-align: center;">6</p> <p>6 33:2 43:23 44:10 6th 33:15 60 54:23 62701 3:22</p> <hr/> <p style="text-align: center;">7</p> <p>7,000 38:23 40:10 45:1</p> <hr/> <p style="text-align: center;">8</p> <p>8 2:8 5:11 8th 5:13</p> <hr/> <p style="text-align: center;">9</p> <p>9 2:9 5:11 33:3 45:14 49:4 73:22 9th 33:15 90 14:19 54:24 71:20 92 61:17 97TH 1:3</p>	
<hr/> <p style="text-align: center;">X</p> <p>X 2:1,6</p> <hr/> <p style="text-align: center;">Y</p> <p>Yeah 44:15 54:9 54:11,12 year 71:20 years 32:1 34:17 34:20 35:2,5,9 35:16 53:6 57:9 65:12 71:7 yesterday 9:13 9:20 10:7,8,10 73:14,22 74:7 76:24</p>				