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BEFORE THE
ILLINOIS HOUSE OF REPRESENTATIVES
97TH GENERAL ASSEMBLY

HOUSE SPECIAL INVESTIGATING COMMITTEE

Hearing held, pursuant to Notice, on the
27th day of March, 2011, between the hours of
11:00 a.m. and 11:21 a.m., in Room 114, Capitol
Building, Springfield, Illinois.

TRANSCRIPT OF PROCEEDINGS

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I N D E X

WITNESSES

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Representative Jim Sacia

7

E X H I B I T S

EXHIBITS

DESCRIPTION

PAGE

Exhibit No. 1

e-mail

6

Exhibit No. 2

written charge

10

Exhibit No. 3

criminal complaint

10

(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 Franco Coladipietro,

9 Substituting for Member Jil Tracy

10

11 ALSO PRESENT:

12 Mr. Dave Ellis, Counsel

13

14 COURT REPORTER:

15 Ms. Dorothy J. Hart, CSR, RPR

16 Illinois CSR No. 084-001390

17 Midwest Litigation Services

18 15 South Old State Capitol Plaza

19 Springfield, Illinois 62701

20 (217) 522-2211

21 1-800-280-3376

22

23

24

1 (The hearing commenced at 11:04 a.m.)

2

3 CHAIRPERSON NEKRITZ: Good morning,
4 everyone. I'd like to call the House Special
5 Investigating Committee to order.

6 I have one initial order of business.
7 That would be that I have a letter from Republican
8 Leader Tom Cross replacing permanent Member Tracy with
9 temporary Member Franco Coladipietro.

10 Welcome, Franco.

11 With that, the clerk shall call the roll.

12 CLERK: Nekritz.

13 CHAIRPERSON NEKRITZ: Yes.

14 CLERK: Reboletti.

15 REPRESENTATIVE REBOLETTI: Present.

16 CLERK: William Davis.

17 REPRESENTATIVE DAVIS: Present.

18 CLERK: Osmond.

19 REPRESENTATIVE OSMOND: Present.

20 CLERK: Thapedi.

21 REPRESENTATIVE THAPEDI: Here.

22 CLERK: Coladipietro.

23 REPRESENTATIVE COLADIPIETRO: Present.

24 CHAIRPERSON NEKRITZ: Six members being

1 present, we have a quorum.

2 I would like to note that Representative
3 Derrick Smith is not here today. And we are required
4 to give him notice under the House Rules for the
5 special -- for the disciplinary proceedings. For
6 that, to talk about the notice that was provided to
7 Representative Smith, I would like to recognize the
8 counsel for the Special Investigating Committee,
9 Mr. Dave Ellis.

10 MR. ELLIS: Thank you, Madam Chair.

11 This special committee was created last
12 Wednesday, March 21st. On that day, at the direction
13 of the Chair, I telephoned Representative Derrick
14 Smith. I spoke with him briefly. I informed him of
15 the creation of the Special Investigating Committee
16 and that we were presented a petition to create the
17 committee.

18 The following day, Thursday, March 22nd, I
19 followed up with an e-mail. E-mail was his chosen
20 method of being contacted. In that e-mail I enclosed
21 a copy of the petition and again notified him of the
22 date and time of the hearing.

23 I do have a copy of that e-mail here that
24 is redacted, redacted just to take out his e-mail

1 address, and I would like to at the appropriate time
2 suggest that it be admitted as Exhibit Number 1 into
3 the record.

4 Subsequently, I have spoken with
5 Representative Smith. He assured me that he was aware
6 of the hearing. He had read the petition.

7 I also spoke with an attorney yesterday
8 who had authorization to contact me. I don't know if
9 this is the person who will be Derrick Smith's
10 attorney ultimately, but he did have authorization to
11 discuss the matter with me, and we discussed in
12 general terms what this hearing would be about and
13 obviously the timing of it.

14 And so, Madam Chair, I think it's clear
15 that the subject of this investigation has been made
16 fully aware of the date and time of this hearing. It
17 is my understanding from yesterday he was choosing not
18 to appear today. And in addition to the e-mail and
19 telephonic notice that we've discussed, there was also
20 public notice done pursuant to House Rule, six-day
21 posting. All of that being the case, I would submit
22 that notice has been more than proper thus far.

23 CHAIRPERSON NEKRITZ: Thank you,
24 Mr. Ellis.

1 So I think at this point I'd like to enter
2 a copy of the e-mail from Counsel Ellis to
3 Representative Smith into the record as Exhibit 1.
4 And, as Mr. Ellis noted, Representative Smith's e-mail
5 address has been redacted. And the attachment to the
6 e-mail, which is in fact a copy of the petition, will
7 also not be included, as it is, under the House Rules
8 to remain confidential.

9 This Special Investigating Committee has
10 been created by the Speaker pursuant to House Rule 91,
11 and for the most part, this committee will operate as
12 any other House committee, under the same House Rules.

13 There are some special provisions,
14 however, governing disciplinary proceedings such as
15 this. So in accordance with those rules, I believe
16 our first order of business is for this Special
17 Investigating Committee to hear from Representative
18 Sacia, who will present and file with this committee a
19 written charge.

20 So, Representative Sacia, are you prepared
21 to present the committee with a written charge?

22 REPRESENTATIVE SACIA: I am, Madam Chair.

23 CHAIRPERSON NEKRITZ: Please, proceed.

24 REPRESENTATIVE SACIA: Thank you, Madam

1 Chair, Members of the Committee.

2 The House Rules for the 97th General
3 Assembly were adopted by a majority of the members of
4 the House on February 8th, 2011.

5 Article XII of the House Rules details
6 procedures for disciplinary proceedings against
7 members of the House. House Rule 91(a) specifies
8 mandatory creation of a Special Investigating
9 Committee if a petition containing suggested charges
10 is signed by three or more members of the Illinois
11 House.

12 The petition signed by five members of the
13 Illinois House and filed with the Speaker of the House
14 on Wednesday, March 21st, 2012, contains charges
15 which, if true, may subject the member named in the
16 petition to disciplinary action by the House.

17 Pursuant to House Rule 92(b), a list of
18 suggested charges is submitted to the Special
19 Investigating Committee for a thorough investigation
20 of all allegations and charges of impropriety
21 concerning Representative Derrick Smith, 10th
22 District. Detailed below is the charge brought
23 forward for the committee's consideration.

24 In addition, a copy of the sworn criminal

1 complaint, United States of America versus Derrick
2 Smith, filed in the United States District Court,
3 Northern District of Illinois, on March 12th, 2012, is
4 submitted to the committee for its review and
5 consideration. The criminal complaint made by Special
6 Agent Bryan M. Butler of the Federal Bureau of
7 Investigation before the Honorable Nan R. Nolan, U.S.
8 Magistrate Judge, details the alleged facts of the
9 complaint. It is relevant to the charge and
10 allegations set forth against Representative Smith.

11 Charge number 1: Representative Smith
12 provided an official letter of support on his
13 letterhead for a daycare owner's application for a
14 state grant from the Illinois Capital Development
15 Board in exchange for personally accepting a \$7,000
16 bribe.

17 Conclusion: The acts detailed in this
18 charge constitute a level of misconduct and misuse of
19 the office to which Representative Smith was
20 appointed, a gross breach of the public trust, and a
21 violation of federal and state laws, prompting me to
22 submit this charge to the Special Investigating
23 Committee for its consideration.

24 Submitted March 27th, 2012, and signed by

1 me, Jim Sacia, State Representative, 89th District.

2 CHAIRPERSON NEKRITZ: Thank you,
3 Representative Sacia.

4 So the committee is in receipt of the
5 charges -- charge, which will be entered into the
6 record as Exhibit 2.

7 The committee is also in receipt of the
8 document that you referenced entitled a Criminal
9 Complaint in the matter of United States of America
10 versus Derrick Smith, and a copy of that document will
11 be entered into the record as Exhibit 3.

12 Is there any other evidence that you have
13 that you're aware of that we would need to admit?

14 REPRESENTATIVE SACIA: Only at your
15 direction, Madam Chair.

16 CHAIRPERSON NEKRITZ: Okay. I'm not aware
17 of anything. So I appreciate your being here,
18 Representative Sacia.

19 REPRESENTATIVE SACIA: Thank you, Madam
20 Chair and members of the committee.

21 CHAIRPERSON NEKRITZ: Now that we have
22 completed the formal -- the formal submission of the
23 charge, I'd like to make some opening remarks and will
24 offer that opportunity to my colleagues to do the same

1 if they choose.

2 I'd first like to thank the members of the
3 committee for -- of the Special Investigating
4 Committee for their willingness to serve. This is not
5 easy duty that we're undertaking here. And I know
6 that each of us will take the task before us very
7 seriously.

8 In carrying out this responsibility, I
9 hope to keep three things in mind: First, being fair
10 to Representative Smith; second is respecting and
11 protecting the institution of the House of
12 Representatives, which is something I hold near and
13 dear to my heart; and last, but certainly not least,
14 is safeguarding the public trust.

15 A couple of notes just on the process.

16 The purpose of this committee is not to
17 discipline Representative Smith. We are in fact only
18 to inquire into the underlying facts as thoroughly as
19 possible and to determine whether disciplinary charges
20 are in fact warranted.

21 If they are, under the House Rules,
22 another tribunal of twelve House members will
23 determine whether or not to recommend discipline to
24 the full House. If that tribunal so chooses, the

1 House as a body will ultimately determine the
2 appropriate discipline for Representative Smith.

3 Representative Smith has not been
4 convicted of a crime. He has been arrested on the
5 basis of a sworn criminal complaint. He is accused
6 but presumed innocent until proven guilty beyond a
7 reasonable doubt following a full, fair trial.

8 Nonetheless, I have to say the allegations
9 in the criminal complaint allege a gross breach of
10 public trust that is placed in every elected official.
11 They're very serious allegations to be investigated by
12 this committee. Our work will be as thorough as
13 possible, despite the fact that an ongoing federal
14 investigation is taking place, which may very well
15 limit our ability to do so.

16 This committee will at times provide
17 Representative Smith with as much notice and
18 information as possible. He and his attorneys will
19 have the right to be present at all public hearings.

20 Representative Smith will have the right
21 to speak to the substance of these charges if he so
22 chooses, but he will do so under oath. Representative
23 Smith will also have the right to provide this
24 committee with any evidence that he believes will lead

1 to his exoneration.

2 This committee will do its best to make
3 all information public that comes into our possession.
4 And I think we're proposing to establish a website
5 where the exhibits will appear. To the extent that
6 the House Rules do not otherwise require, we will post
7 all exhibits on the website.

8 We will give as much public notice as we
9 can for the dates of all hearings.

10 In the end, in committee's work must be
11 thorough, open, and transparent. And as I indicated
12 earlier, its conclusion must be fair for
13 Representative Smith, for this institution, the
14 Illinois of the House of Representatives, and for the
15 public.

16 Representative Reboletti, would you like
17 to make some remarks?

18 REPRESENTATIVE REBOLETTI: Thank you,
19 Madam Chair, members of the committee.

20 My name is Dennis Reboletti. I'm a
21 Representative from northeast Du Page County. Prior
22 to coming to the General Assembly, I worked as a Will
23 County assistant state's attorney and have prosecuted
24 numerous misdemeanor and felony cases. During that

1 professional experience I was involved in grand jury
2 investigations of hundreds of felony cases.

3 And this is a first for this state. I'd
4 like to thank our legal research unit for providing as
5 much of the legislative history as possible. But
6 never before have we had a sitting State
7 Representative alleged to have used his office to
8 exact a bribe for an official act.

9 Pursuant to House Rules 91 and 92, this
10 committee has been duly constituted by the Speaker and
11 House Republican Leader, and that following the filing
12 of the petition by five individual members of the
13 House. Our mission will be to review the sole charge
14 presented by Representative Sacia, which he has signed
15 and testified to, and to review the exhibits in
16 support of the charge.

17 We must thoroughly investigate this charge
18 and use our subpoena powers judiciously in pursuit of
19 all relevant and probative evidence. It is our charge
20 to determine if grounds exist to bring charges against
21 Representative Smith for formal disciplinary
22 proceedings because the charges contain a level of
23 misconduct and misuse of the office and a gross breach
24 of the public's trust.

1 Pursuant to House Rule 92, Representative
2 Sacia, as the principal sponsor of the petition, has
3 submitted a charge and all relevant information at his
4 appearance before this committee.

5 As I see it, the Special Investigating
6 Committee is a hybrid that blends elements of a grand
7 jury and elements of a preliminary hearing.

8 We are convened with multiple members, and
9 like a grand jury, if the majority of members prefer
10 charges, we must sign a report indicating that and the
11 reasons behind our decision, similar to a grand jury
12 signing a true bill, and also indicating that there's
13 probable cause to support an indictment or a charge.

14 If we do not prefer charges, it is like a
15 no bill in the grand jury, and Representative Smith
16 would be exonerated.

17 However, we do meet in public, like a
18 preliminary hearing. And like a preliminary hearing,
19 Representative Smith is allowed to attend and testify
20 on his behalf, be represented by counsel, confront and
21 cross-examine any witnesses that appear before this
22 committee. And after a thorough investigation, this
23 committee must review all evidence and determine if we
24 should author a report preferring charges, which must

1 be supported by a majority of the members of this
2 committee.

3 If the majority does not prefer charges,
4 we must file a resolution to exonerate Representative
5 Smith and state our reasons why.

6 We are committed to working in bipartisan
7 fashion and follow the evidence wherever it may take
8 us. We are prepared to take the necessary time to
9 obtain and review all evidence before a decision is
10 rendered, which will somewhat be dictated by what, if
11 anything, the U.S. Attorney is able to provide us.

12 We also want to make sure that we're not
13 interfering with the criminal prosecution of
14 Representative Smith, and that we will act as the
15 finders of fact and are charged with rendering a
16 decision that is supported and based on the totality
17 of the evidence that has been submitted to us or been
18 obtained by way of subpoena.

19 We must definitely preserve the integrity
20 and dignity of the legislative institution and its
21 proceedings.

22 And we also must take a look at if
23 Representative Smith is in some way disabled,
24 handicapped, or impeded from discharging the duties of

1 his office.

2 Madam Chair and members of the committee,
3 I look forward to working with you in expeditious
4 fashion to review all the evidence, to take the time
5 that we need to consume to resolve this matter, and
6 that we do so in a bipartisan fashion.

7 Thank you.

8 CHAIRPERSON NEKRITZ: Thank you,
9 Representative.

10 Any other members wishing to make some
11 opening remarks?

12 All right. Seeing none, I think our next
13 order of business is to determine what the first step
14 is in our investigation going forward.

15 Based on some discussions that we've had
16 with Representative Reboletti and Counsel, before we
17 would want look further into the realm of subpoenas or
18 otherwise gathering information, we feel we should
19 consult with the U.S. Attorney in Chicago.

20 And there is precedence for doing this --
21 precedent for doing this. During the House
22 investigation of Governor Blagojevich, the Special
23 Investigating Committee agreed at the outset that it
24 would consult with Mr. Fitzgerald and avoid taking any

1 action that he would consider an interference with an
2 ongoing federal investigation.

3 So again, Representative Reboletti and I,
4 along with the attorneys, would suggest to the
5 committee that we contact Mr. Fitzgerald in order to
6 obtain any relevant information that he may possess
7 and to seek his guidance on whether any independent
8 investigation undertaken by this committee would be
9 considered an interference with the federal
10 investigation.

11 So I would ask for approval of the
12 committee to take this first step. Is there a motion
13 that Representative Reboletti and I contact
14 Mr. Fitzgerald for this purpose?

15 Representative Davis so moves.

16 Is there any discussion from the committee
17 members?

18 Seeing none, the clerk shall call the
19 roll.

20 CLERK: Nekritz.

21 CHAIRPERSON NEKRITZ: Aye.

22 CLERK: Reboletti.

23 REPRESENTATIVE REBOLETTI: Aye.

24 CLERK: Davis.

1 REPRESENTATIVE DAVIS: Yes.

2 CLERK: Osmond.

3 REPRESENTATIVE OSMOND: Yes.

4 CLERK: Thapedi.

5 REPRESENTATIVE THAPEDI: Yes.

6 CLERK: Coladipietro.

7 REPRESENTATIVE COLADIPIETRO: Aye.

8 CHAIRPERSON NEKRITZ: Aye votes, six

9 voting yes, none voting no, none voting present on the
10 motion, and it's carried to proceed at once to contact
11 the U.S. Attorney in Chicago to have this discussion.

12 We will be scheduling the next meeting
13 after receiving the response from the U.S. Attorney.
14 My expectation, based on some prior history and
15 discussion, is that we would anticipate that taking
16 place the week of April 9th, although we don't have a
17 date set yet. We will give notice of that public
18 hearing out to the public, and we will provide
19 Representative Smith and his counsel with that same
20 notice.

21 Again, I appreciate the remarks from
22 Representative Reboletti, and I do look forward to
23 working with everyone on the committee in open and
24 bipartisan fashion.

1 So unless there's any other business to
2 come before the committee today, seeing none, the
3 House Special Investigating Committee will stand in
4 recess until the call of the Chair. Thank you, all.

5 (The committee recessed at 11:21 a.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

<p style="text-align: center;">A</p> <p>ability 12:15 21:9 able 16:11 about 5:6 6:12 accepting 9:15 accordance 7:15 accused 12:5 act 14:8 16:14 action 8:16 18:1 21:16 acts 9:17 addition 6:18 8:24 address 6:1 7:5 admit 10:13 admitted 6:2 adopted 8:3 after 15:22 19:13 again 5:21 18:3 19:21 against 8:6 9:10 14:20 Agent 9:6 agreed 17:23 allegations 8:20 9:10 12:8,11 allege 12:9 alleged 9:8 14:7 allowed 15:19 along 18:4 although 19:16 America 9:1 10:9 Andre 3:7 another 11:22 anticipate 19:15 anything 10:17 16:11 appear 6:18 13:5 15:21 appearance 15:4 application 9:13 appointed 9:20 appreciate 10:17 19:21</p>	<p>appropriate 6:1 12:2 approval 18:11 April 19:16 arrested 12:4 Article 8:5 Assembly 1:3 8:3 13:22 assistant 13:23 assured 6:5 attachment 7:5 attend 15:19 attorney 6:7,10 13:23 16:11 17:19 19:11,13 21:14 attorneys 12:18 18:4 author 15:24 authorization 6:8,10 avoid 17:24 aware 6:5,16 10:13,16 Aye 18:21,23 19:7,8 a.m 1:16,16 4:1 20:5</p> <p style="text-align: center;">B</p> <p>B 2:8 based 16:16 17:15 19:14 basis 12:5 before 1:1 9:7 11:6 14:6 15:4 15:21 16:9 17:16 20:2 behalf 15:20 behind 15:11 being 4:24 5:20 6:21 10:17 11:9 believe 7:15 believes 12:24 below 8:22 best 13:2 21:9 between 1:15</p>	<p>beyond 12:6 bill 15:12,15 bipartisan 16:6 17:6 19:24 Blagojevich 17:22 blends 15:6 Board 9:15 body 12:1 breach 9:20 12:9 14:23 bribe 9:16 14:8 briefly 5:14 bring 14:20 brought 8:22 Bryan 9:6 Building 1:17 Bureau 9:6 business 4:6 7:16 17:13 20:1 Butler 9:6</p> <p style="text-align: center;">C</p> <p>call 4:4,11 18:18 20:4 Capital 9:14 Capitol 1:16 3:18 carried 19:10 carrying 11:8 case 6:21 cases 13:24 14:2 cause 15:13 certainly 11:13 CERTIFICATE 21:1 Certified 21:5 certify 21:8 Chair 5:10,13 6:14 7:22 8:1 10:15,20 13:19 17:2 20:4 Chairperson 3:2 4:3,13,24 6:23 7:23 10:2,16 10:21 17:8 18:21 19:8</p>	<p>charge 2:11 7:19 7:21 8:22 9:9 9:11,18,22 10:5,23 14:13 14:16,17,19 15:3,13 charged 16:15 charges 8:9,14 8:18,20 10:5 11:19 12:21 14:20,22 15:10 15:14,24 16:3 Chicago 17:19 19:11 choose 11:1 chooses 11:24 12:22 choosing 6:17 chosen 5:19 clear 6:14 clerk 4:11,12,14 4:16,18,20,22 18:18,20,22,24 19:2,4,6 Coladipietro 3:8 4:9,22,23 19:6 19:7 colleagues 10:24 come 20:2 comes 13:3 coming 13:22 commenced 4:1 committed 16:6 committee 1:6 2:13 3:1 4:5 5:8,11,15,17 7:9,11,12,17 7:18,21 8:1,9 8:19 9:4,23 10:4,7,20 11:3 11:4,16 12:12 12:16,24 13:2 13:19 14:10 15:4,6,22,23 16:2 17:2,23 18:5,8,12,16 19:23 20:2,3,5</p>	<p>committee's 8:23 13:10 complaint 2:12 9:1,5,9 10:9 12:5,9 completed 10:22 concerning 8:21 conclusion 9:17 13:12 confidential 7:8 confront 15:20 consider 18:1 consideration 8:23 9:5,23 considered 18:9 constitute 9:18 constituted 14:10 consult 17:19,24 consume 17:5 contact 6:8 18:5 18:13 19:10 contacted 5:20 contain 14:22 containing 8:9 contains 8:14 convened 15:8 convicted 12:4 copy 5:21,23 7:2 7:6 8:24 10:10 counsel 3:12 5:8 7:2 15:20 17:16 19:19 21:11,14 County 13:21,23 21:4 couple 11:15 Court 3:14 9:2 create 5:16 created 5:11 7:10 creation 5:15 8:8 crime 12:4 criminal 2:12 8:24 9:5 10:8 12:5,9 16:13</p>
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BEFORE THE
ILLINOIS HOUSE OF REPRESENTATIVES
97TH GENERAL ASSEMBLY

HOUSE SPECIAL INVESTIGATING COMMITTEE

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

TRANSCRIPT OF PROCEEDINGS

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I N D E X

WITNESSES

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(No witnesses presented.)

E X H I B I T S

EXHIBIT

DESCRIPTION

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(The exhibits were retained by the committee.)

1 COMMITTEE MEMBERS PRESENT:

2 Representative Elaine Nekritz, Chairperson

3 Representative Dennis M. Reboletti,

4 Minority Spokesman

5 Representative William Davis, Member

6 Representative JoAnn D. Osmond, Member

7 Representative Andre' M. Thapedi, Member

8 Representative Jil Tracy, Member

9

10 ALSO PRESENT:

11 Mr. Dave Ellis, Counsel

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Court Reporter:

20 Robin A. Enstrom, RPR, CSR

Illinois CSR #084-002046

21 Midwest Litigation Services

15 S. Old State Capitol Plaza

22 Springfield, Illinois 62701

217.522.2211

23 800.280.3376

24

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

2

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

7 CLERK: Nekritz.

8 CHAIRPERSON NEKRITZ: Yes.

9 CLERK: Reboletti.

10 REPRESENTATIVE REBOLETTI: Present.

11 CLERK: Davis.

12 REPRESENTATIVE DAVIS: Present.

13 CLERK: Osmond.

14 REPRESENTATIVE OSMOND: Here.

15 CLERK: Thapedi.

16 REPRESENTATIVE THAPEDI: Here.

17 CLERK: Tracy.

18 REPRESENTATIVE TRACY: Present.

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

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

24 I'd like to hear from our counsel,

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

3 MR. ELLIS: Thank you, Madam Chair.

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

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

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

23 CHAIRPERSON NEKRITZ: Thank you.

24 So unless there's an objection, we will

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

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

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

14 Representative Reboletti.

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

22 CHAIRPERSON NEKRITZ: Thank you.

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

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

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

9 Two things we wanted to request:

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

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

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

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

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

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

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

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

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

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

18 REPRESENTATIVE REBOLETTI: Thank you,
19 Madam Chair.

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

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

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

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

10 Any other thoughts from members?

11 All right. Representative Davis.

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

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

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

1 REPRESENTATIVE REBOLETTI: That's correct.

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

6 REPRESENTATIVE DAVIS: I see. I see.

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

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

11 REPRESENTATIVE DAVIS: Okay.

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

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

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

20 Any additional discussion?

21 The clerk shall take the roll.

22 CLERK: Nekritz.

23 CHAIRPERSON NEKRITZ: Aye.

24 CLERK: Reboletti.

1 REPRESENTATIVE REBOLETTI: Aye.

2 CLERK: Davis.

3 REPRESENTATIVE DAVIS: Aye.

4 CLERK: Osmond.

5 REPRESENTATIVE OSMOND: Yes.

6 CLERK: Thapedi.

7 REPRESENTATIVE THAPEDI: Aye.

8 CLERK: Tracy.

9 REPRESENTATIVE TRACY: Yes.

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

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

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

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

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

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

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

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

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

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

8 Any thoughts from any other committee
9 members?

10 Representative Davis.

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

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

22 REPRESENTATIVE DAVIS: Okay. Thank you.

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

1 REPRESENTATIVE DAVIS: Thank you.

2 CHAIRPERSON NEKRITZ: Thank you.

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

5 REPRESENTATIVE REBOLETTI: Yes.

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

11 Is that correct, Counsel?

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

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

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

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

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

16 Thank you.

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

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

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

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

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

12 Representative Thapedi.

13 REPRESENTATIVE THAPEDI: Thank you, Madam
14 Chair.

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

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

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

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

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

17 Any other comments from members?

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

21 Thank you, everybody.

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

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CERTIFICATE OF REPORTER

STATE OF ILLINOIS)
) ss.
COUNTY OF SANGAMON)

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

Notary Public in and for
the State of Illinois

My commission expires May 21, 2012.

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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 ECCG
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

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