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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

PAGE

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

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