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BEFORE THE
ILLINOIS HOUSE OF REPRESENTATIVES
97TH GENERAL ASSEMBLY
SELECT COMMITTEE ON DISCIPLINE

Hearing held, pursuant to Notice, on the 19th day of
July, 2012, scheduled to begin at 9:30 a.m., at the Michael
A. Bilandic Building, 160 North LaSalle Street, Room C-600,
Chicago, Illinois.

TRANSCRIPT OF PROCEEDINGS

1 COMMITTEE MEMBERS PRESENT:

2 Representative Barbara Currie, Chairperson
Representative Chapin Rose
3 Representative Edward Acevedo
Representative Michael Connelly
4 Representative Kimberly du Buclet
Representative Greg Harris
5 Representative Renee Kosel
Representative Camille Lilly
6 Representative Sidney Mathias
Representative Chris Nybo
7 Representative Al Riley
Representative Joe Sosnowski

8

9 ALSO PRESENT:

10 Attorney Dave Ellis
Counsel to the Committee

11

Representative Louis I. Lang
12 House Manager
13 Representative Jim Durkin
House Manager

14

Attorney Victor P. Henderson
15 Counsel for Representative Smith

16

17

18

19 *****

Reported by:

20 Karen K. Keim
CRR, RPR, CSR-IL, CRR-MO
21 Midwest Litigation Services
St. Louis, MO
22 1-800-280-3376

23

24

1 START TIME: 9:51 A.M.

2

3 CHAIRPERSON CURRIE: The House Select
4 Committee on Discipline will come to order, and the Clerk
5 will please read the roll.

6 CLERK: Currie?

7 CHAIRPERSON CURRIE: Here.

8 CLERK: Rose?

9 REPRESENTATIVE ROSE: Yes. Thank you.

10 CLERK: Acevedo?

11 REPRESENTATIVE ACEVEDO: Here.

12 CLERK: Connelly?

13 REPRESENTATIVE CONNELLY: Here.

14 CLERK: du Blucet?

15 REPRESENTATIVE du BLUCET: Present.

16 CLERK: Harris?

17 REPRESENTATIVE HARRIS: Here.

18 CLERK: Kosel?

19 REPRESENTATIVE KOSEL: Here.

20 CLERK: Lilly?

21 REPRESENTATIVE LILLY: Present.

22 CLERK: Mathias?

23 REPRESENTATIVE MATHIAS: Present.

24 CLERK: Nybo?

1 REPRESENTATIVE NYBO: Present.

2 CLERK: Riley?

3 REPRESENTATIVE RILEY: Here.

4 CLERK: Sosnowski?

5 REPRESENTATIVE SOSNOWSKI: Present.

6 CHAIRPERSON CURRIE: We have not only a quorum
7 we have a full complement of members. Today has been
8 billed as the final hearing before this committee. We will
9 hear evidence and arguments from the House Managers and
10 from the Respondent. The Committee will then recess, and
11 the members will deliberate on their reaction to the
12 Charges and Specifications. If we're able to come to a
13 conclusion, we will return to this room after the
14 deliberations are over, and proceed to a vote. If we're
15 not able to come to a conclusion today, we will reconvene.
16 We will recess to the call of the Chair. We will reconvene
17 in the near future, possibly as early as tomorrow.

18 Anything this committee recommends is not the
19 final word. The full House has to vote on our
20 recommendation, whatever that recommendation is, and it
21 does not become final unless adopted by two-thirds of the
22 members.

23 So, the Chair notes that Representative Smith
24 is not present today, but his lawyer, Mr. Henderson, is

1 here on his behalf, and the Chair notes that the House
2 Managers, Representatives Durkin and Lang are both with us.

3 As a preliminary matter, I'd like to recap
4 some of the litigation that has happened since our last
5 hearing. Mr. Henderson filed a motion with this committee,
6 asking for a continuance of this hearing date and the
7 Scheduling Order until an unspecified date in the future,
8 but at least 30 days beyond today. The motion was denied
9 by an order entered on July, I believe, 11th, 2012.

10 As far as the disclosure of evidence is
11 concerned, House Managers disclosed 17 exhibits to use at
12 this hearing. Mr. Henderson objected only to Exhibit 15,
13 which is a certified copy of the Criminal Complaint and
14 Affidavit of Special Agent Bryan Butler in the matter of
15 United States versus Derrick Smith, filed in the United
16 States District Court for the Northern District of Illinois
17 on March 12th of this year.

18 Mr. Henderson's objection is sustained in part
19 and denied in part. I agree that Exhibit 15 cannot be
20 considered as to the truth of the matters that are asserted
21 therein. However, this committee can take equivalent
22 judicial notice, I guess I would say, official notice that
23 the Criminal Complaint was, in fact, filed and that it
24 contains public and serious allegations of improper

1 behavior by Mr. Smith. Exhibit 15 can only be considered
2 for that limited purpose and not, as is our agreement, that
3 it contains a true, accurate representation. I also would
4 note that portions of the Affidavit are contained in the
5 May 10, 2012 transcript of the Special Investigating
6 Committee hearing, so that evidence, I would say, is not
7 affected by the ruling I just made.

8 In addition, Mr. Henderson has been informed
9 that this committee is not able to subpoena Special Agent
10 Bryan Butler or the undercover cooperating source
11 identified in Exhibit 15 as CS-1.

12 Are there any other preliminary matters that
13 we need to consider before we proceed with opening
14 statements by the House Managers?

15 Mr. Henderson?

16 MR. HENDERSON: Yes, there is one preliminary
17 matter. I'm asking that the committee cite whatever rules,
18 for the record, there are which establishes that the
19 committee does not have the power to subpoena witnesses.

20 CHAIRPERSON CURRIE: I think it's in the House
21 Rules. Do we have a place where we talk about subpoena
22 powers?

23 ATTORNEY ELLIS: Mr. Henderson, it would be
24 better stated as the lack of a rule. The House Rules give

1 specific powers to certain committees, but they did not
2 give subpoena power to the Select Committee on Discipline.
3 In addition, I would note -- not that it's exactly what you
4 brought up, but under Rule 91 of our procedural rules, we
5 would not be seeking any evidence over the objection of the
6 United States Attorney. I think it's fair to say from
7 everything that's happened with the United States Attorney
8 with regard to this case in Federal Court -- and they made
9 it abundantly clear to us that they would object to the
10 subpoenaing of Bryan Butler or the cooperating source. So,
11 even if there were subpoena power, I think I'm confident in
12 saying this committee would have denied the subpoenas.

13 MR. HENDERSON: And simply for completion of
14 the record, A, at least based on our response, it appears
15 as if the Committee has the ability to request subpoena
16 power, even if it does not currently have subpoena power,
17 since subpoena power is given to all committees. That's A.

18 And B, simply for the record again, on behalf
19 of Representative Smith, we would not want to presuppose
20 that any prior representations by the U.S. Attorney would
21 stand today or in the future, and so we will continue to
22 stand on our request that the committee use all of its
23 powers, or powers it's able to obtain, in order to subpoena
24 the two most important witnesses, from our perspective, as

1 well as make the attempt to subpoena those persons,
2 irrespective of how they respond. And I would also add
3 that although the Government would have the ability to
4 potentially have Agent Butler not appear, the Government
5 does not have control over the confidential informant. The
6 confidential informant is a member of the public, like
7 anybody else, and so, therefore, the confidential informant
8 would not have the ability to deny a subpoena served by
9 this body, similar -- or dissimilar to possibly the
10 position the Government could take with respect to Agent
11 Butler. So, in the interest of fairness and in terms of
12 the way procedures should proceed, the Representative is of
13 the opinion that not only could this committee subpoena the
14 confidential informant, but that he would be required to
15 appear.

16 CHAIRPERSON CURRIE: Can I just reiterate the
17 point that we do not presently have subpoena powers, so we
18 denied your request that we exercise that authority that we
19 do not have to compel the testimony of either the agent or
20 the cooperating source.

21 Anything else of a preliminary nature, or may
22 we then proceed to hear the opening statement of the House
23 Managers, not to take longer than 15 minutes?

24 There is a preliminary matter, and that is

1 that if you're not actually speaking, it would be a good
2 idea to turn off your microphone, and that goes for Members
3 of the Committee as well as the Managers and the
4 Respondent. And I just turned my own off.

5 REPRESENTATIVE DURKIN: Madam Chair, thank you
6 very much. For the record, my name is James Durkin, State
7 Representative from the 82nd District. I'm the Co-Manager,
8 along with the Leader, Lou Lang, in presenting our case
9 today. And good morning, colleagues and Representatives of
10 the Illinois House Select Committee on Discipline.

11 You have been convened due to actions taken by
12 the Illinois House of Representatives Special Investigative
13 Committee on June 6th, 2012, where the Committee found that
14 actions of State Representative Derrick Smith demonstrate a
15 gross breach of his public duties and constitutes
16 misconduct. The Special Investigative Committee
17 unanimously charged that Representative Smith abused the
18 power of his office by participating in a scheme to obtain
19 a personal benefit in exchange for an official act. He
20 accepted a bribe of \$7,000 cash to influence the awarding
21 of a State grant. On March 13th, 2012, he was arrested,
22 subsequently charged, and indicted by a Federal Grand Jury.

23 I'd like to read the Specifications to you.
24 They were previously entered into the record at the last

1 hearing.

2 Charge and Specifications. Representative
3 Derrick Smith abused the power of his office by
4 participating in a scheme to obtain a personal benefit in
5 exchange for his official acts. Some or all of the
6 following specifications support this Charge.

7 Representative Smith, in his official capacity
8 as a State Representative, has an obligation to faithfully
9 discharge his duties in the best interests of the people of
10 the State of Illinois and not for his own personal benefit.

11 2. During the time period beginning on or
12 about December 2011 through March 2012, Representative
13 Smith agreed that, in exchange for a cash bribe, he would
14 provide an official letter of support for a daycare's Early
15 Childhood Construction Grant to the Illinois Capital
16 Development Board.

17 3. On or about March 1st, 2012,
18 Representative Smith did, in fact, sign the official letter
19 of support in his official capacity as a State
20 Representative and planned or intended for that letter to
21 be submitted to the Illinois Capital Development Board.

22 4. On or about March 10th, 2012,
23 Representative Smith did, in fact, receive a cash bribe in
24 exchange for providing this official letter of support.

1 5. Accepting a cash bribe in exchange for an
2 official act, or even plotting or attempting to do so,
3 constitutes a breach of Representative Smith's obligations
4 as a public official to faithfully discharge his duties in
5 the best interests of the People of the State of Illinois
6 and warrants disciplinary action by the House of
7 Representatives.

8 Let's be very clear. We are here this morning
9 for one reason, and we are not here because of the United
10 States Attorney's office. We are not here because of the
11 Federal Bureau of Investigation. We are not here because
12 of the Speaker of the House. We are not here because of
13 the Minority Leader of the Illinois House. We are here
14 because of the conscious decisions and actions made by
15 Representative Derrick Smith in his official capacity as
16 Illinois State Representative in the 10th District.

17 He isn't here today. I want you to look at
18 that empty chair during the course of these proceedings and
19 remember that. We talked about this before, but I want you
20 to know that this is not a criminal nor a civil trial.
21 This is a disciplinary hearing, and it's an important
22 internal function of the Illinois House. It's nothing
23 more, nothing less.

24 Because of that, the focus of this hearing is

1 learned from Rob Blagojevich that there is zero tolerance
2 for corruption and bribery? These alleged acts impugn the
3 integrity of our chamber, the People's chamber.

4 Representative Derrick Smith took an oath and
5 signed his name to it not too long ago. That was March
6 24th, 2011. In specific, that oath reads as follows: "I,
7 Derrick Smith, do solemnly swear and affirm that I will
8 support the Constitution of the United States, and the
9 Constitution of the State of Illinois, and I will
10 faithfully discharge the duties of the office of
11 Representative in the General Assembly for the 10th
12 Representative District of the State of Illinois to the
13 best of my ability."

14 My question to you today: Shouldn't that oath
15 mean something more today than it ever has considering what
16 we have witnessed and what we've gone through in the last
17 few years? I challenge Representative Smith to stand
18 before you, swear to tell the truth, the whole truth and
19 nothing but the truth. He owes that to you. He owes it to
20 his colleagues, and he owes it to his constituents.

21 Now, under the House procedural rules, we're
22 allowed under Rule 11 to make an offer of proof of what the
23 witness, exhibit, or testimony would have proven had been
24 allowed. If Representative Smith invokes the Fifth

1 Amendment right to self-incrimination or declines to
2 appear -- and that's what I think is going to happen --
3 before the Committee at the final hearing, the Managers may
4 make an offer of proof as to questions they would have
5 asked had he been willing to testify.

6 You'll hear through an offer of proof the
7 dialogue between Representative Smith and the cooperating
8 source about how a daycare center was in need of a State
9 grant. You will hear how Representative Smith decided he
10 would help this owner out, with one caveat. He wanted to
11 get paid cash \$7,000 so it could not be traced. You will
12 also hear how he accepted \$7,000 after signing the letter
13 of support.

14 Representative Smith was sworn into the House
15 of Representatives a little over a year ago, March 24th,
16 2011. Now, all of us remember our first days serving in
17 the Illinois House of Representatives. It's a chamber
18 richly filled with history, filled with great public
19 servants, past and present. You also remember as a
20 freshman those early days of those first few months and
21 even the first year. The first year you had that kind of
22 lost look on your face, like a deer in the headlights. You
23 spent time to understand this process, learn the committee
24 process, learn how to interchange with Staff, learn how to

1 be the best advocate for your constituency. Thousands have
2 done that, and thousands have placed the public good ahead
3 of their self-interests. It only took nine months on the
4 job for Representative Smith to figure out a way to line
5 his pocket, with full force and power of his appointed
6 office. Even more troubling, during the offer of proof I
7 will mention specific dates. These are dates which
8 Representative Smith and the cooperating source were
9 recorded speaking about the scheme and following through
10 with that scheme. You will find out that many of these
11 days, Representative Smith was in session in Springfield.
12 While we were trying to figure out how to balance a budget,
13 reform Medicaid, and how to reform our public pension
14 systems, Representative Smith, on the other hand, was
15 working on a bribe.

16 Ladies and gentlemen, on any given day in
17 session, most of you spend your time and a good portion of
18 your time in the House of Representatives before a
19 committee hearing or in the Legislative office, and this is
20 my statement to Representative Smith: You need to respect
21 that institution, the Capitol, the House, and the chamber,
22 and you did not.

23 Counsel will tell you that he was denied due
24 process and we're moving too fast for political reasons.

1 Representative Smith has been given three opportunities
2 before today to give us his side of the story. That was
3 before the Special Investigating Committee. He could have
4 called witnesses. He could have introduced evidence,
5 because our rules allow it. However, Representative Lang
6 and I are restricted on the use of evidence -- much of the
7 evidence -- due to a clause in the House Rules which states
8 that the rules of evidence in criminal proceedings apply,
9 and we will adhere to that.

10 Remember, a few years back, we did move
11 quickly, thoroughly, decisively with Governor Blagojevich,
12 because 13 million residents of our state demanded it.
13 They should expect nothing less of these proceedings.

14 By the way, I just want you to know that
15 Representative Derrick Smith, before this committee and
16 also Special Investigative Committee before the House, has
17 more rights than what was afforded to Governor Rob
18 Blagojevich. I was hoping that Representative Smith would
19 join us at today's hearing as an opportunity for
20 Representative Smith in his own words to explain what
21 happened, but today he has refused to participate, and I
22 just want to say this: You cannot complain about process
23 unless you avail yourself to process. If he's listening
24 in, jump in a car, come down and join us.

1 I remind you again, this is not a criminal
2 trial or a civil trial, but an internal discipline
3 committee of the House, charged with holding Representative
4 Smith at fault or not at fault. Representative Smith has
5 responsibilities to you and everyone else who demands fair
6 and honest representation. The position of an Illinois
7 State Representative is an office of trust. No one owns
8 that office. The People do.

9 At the conclusion of our case, Representative
10 Lang, my Co-Manager, and I will ask that you find
11 Representative Smith at fault and recommend expulsion from
12 the chamber of the Illinois House of Representatives. A
13 vote for fault and expulsion is not entirely voting against
14 Derrick Smith, but rather a vote for honest representation
15 in the Illinois House of Representatives.

16 Thank you very much.

17 CHAIRPERSON CURRIE: Thank you, Mr. Durkin.

18 Mr. Henderson, are you prepared to make your
19 opening statement, again not to exceed 15 minutes.

20 Mr. Durkin, would you turn off the mic? Thank
21 you.

22 MR. HENDERSON: At this stage of my life, it's
23 important for me to tell you who I am, so you will put my
24 remarks in context. I stand before you as a black man, as

1 an American, as a lawyer, and as a Christian, and I'm going
2 to pull on all of those experiences to speak to you
3 candidly and forthrightly and possibly in a way that may
4 make some people uncomfortable, but as my partner said to
5 me, Mr. Sam Adam, Jr., it's never a bad time to tell the
6 truth.

7 This proceeding is much bigger than Derrick
8 Smith. This is about democracy. This is about how it
9 works. This is whether we, as Illinoisans, believe in
10 democracy and being above board and transparent and fair;
11 and in order to reach the right outcome, the process has to
12 be fair.

13 There have been all instances -- many
14 instances throughout the history of time, especially in
15 this country, where the people in power were only
16 interested in the outcome. I attended the University of
17 Pennsylvania, and the school model was "Laws without morals
18 are in vain". There have been plenty of times when people
19 in power misuse that power because they wanted a certain
20 outcome, and on the short end of the stick a lot of times
21 were women and black people and Japanese. It was legal in
22 this country to put black people at the end of the bus, but
23 it wasn't right, but it was legal. It was legal at one
24 point in time in this country for there to be slaves. It

1 wasn't right, but it was legal. A hundred years ago, there
2 wouldn't be any women sitting on this panel, because the
3 people in power didn't want women. So, the people in power
4 used the laws to keep women off them. You talk about the
5 process. There was a time in this country in the early
6 60's where black people were ostensibly given the right to
7 vote, but then there were poll taxes to keep them from
8 voting.

9 You can't say that Derrick Smith has a Fifth
10 Amendment Right to not incriminate himself and to remain
11 silent but then hold it against him. Either he has the
12 right or he doesn't.

13 At this point in time, all you have before you
14 is allegations. This country is built on a lot of great
15 rules, but if you don't enforce the rules, then they're
16 meaningless. One of the rules we all know is that you have
17 a right to face your accuser. When you talk about Derrick
18 Smith isn't here, where is the FBI agent? They could be
19 here if they wanted to. Where is the confidential
20 informant? Where is he? There are tapes in this case.

21 There have been multiple references made of
22 Rob Blagojevich, but there's differences between this
23 proceeding and what transpired with Rob Blagojevich. I
24 asked for additional time. I asked for at least 30 days to

1 put some additional evidence in front of this body. That
2 request was denied. On day one, we were told the process
3 was going to be fair, deliberate, and you were going to
4 hear the evidence. Well, 20 days to me is not deliberate,
5 and if I asked for an additional 30 days to put some
6 additional information in front of you, and the response is
7 no, that doesn't seem fair.

8 You don't have any evidence. We have nothing.
9 All you have at this point in time is a Complaint, which
10 was filed in the Federal District Courthouse by an FBI
11 agent who has admitted that he made material
12 misrepresentations of fact to the sitting Federal judge.
13 The FBI agent told the judge that the confidential
14 informant had almost no criminal history. Come to find
15 out, the confidential informant has been arrested at least
16 20 times, including for something called "theft by
17 deception". In other words, he's a con man. To me, a fair
18 process -- and, again, this is not a criminal proceeding.
19 I understand that. The rules are different. But the rules
20 do require some base level of fairness. I think the people
21 of Illinois would be best served to hear that yes, we heard
22 the evidence and then we decided, as opposed to we decided
23 because somebody is pressuring us to move forward and make
24 a decision prior to the election so he can take Derrick

1 Smith's seat.

2 What's the rush? There shouldn't be a rush.

3 We haven't heard any explanation about why this process has
4 to go as fast as it is. If, in fact, Derrick Smith did
5 something wrong, then it should be considered in the
6 context of all of the information, not 5 percent of the
7 information, not 15 percent of the information, not 65
8 percent of the information. If -- and that's a big "if".

9 I will say the same thing to the press that I
10 will say here. United States Government, U.S. attorneys,
11 prosecuted John Edwards, former presidential candidate.
12 Less than 60 days ago, exonerated, found not guilty. High
13 profile case, baseball future Hall of Famer, Roger Clemens,
14 accused of wrongdoing, found not guilty. Same prosecutors'
15 office alleged wrongdoing against Ted Stevens, Republican
16 from Alaska. What happens? Found out the prosecutor
17 engaged in misdeeds. These are all facts.

18 We are only asking for one thing and one thing
19 only: For you to allow the process to play itself out and
20 then decide. The representatives can go on record as
21 having asked the Government to release everything. If it's
22 such a cut and dry case, let it all come out. Let the
23 tapes come out, which you don't have. Let the witnesses
24 come before you, which you don't see. Get all of the

1 paperwork. We were in Federal Court just yesterday, asking
2 for permission to put information in front of you, and
3 those requests have been denied. This body asks the
4 Government for information. This very body asked the
5 Government for information, and the Federal Government said
6 no. Now what does that say? Presumably you asked for the
7 information because you thought it was relevant.
8 Presumably you would not ask for information if you thought
9 it was irrelevant. So, you asked for relevant information.
10 You were told that you couldn't get it, but yet the process
11 is going to move forward anyway. We're not saying don't
12 make a decision. What we're saying is, get the
13 information, get all of it, and then decide, because,
14 again, this is much bigger than Derrick Smith. That's --
15 it's Derrick Smith today. Next week it could be somebody
16 else, or next month.

17 This state has a long history of elected
18 officials, of public officials, who have been engaged in
19 wrongdoing. It happens every day, and some of them are
20 found guilty, and some of them are exonerated. But
21 irrespective of what you decide, I just ask you, I implore
22 you, I attempt to persuade you, what's the rush? Wait to
23 get the information or the majority of it, recognizing that
24 this is a different proceeding and a different threshold

1 and a different standard than what's going on in the
2 Federal Courthouse. We all get that. It's not the same
3 type of proceeding, but there is a base level where you
4 should get the information and then decide, not do it the
5 other way.

6 Thank you.

7 CHAIRPERSON CURRIE: Thank you, Mr. Henderson.

8 We're now going to the evidentiary phase of
9 our hearing, and we'll hear first from -- Mr. Henderson,
10 would you turn your microphone off?

11 REPRESENTATIVE DURKIN: Madam Chair, I would
12 ask that the following exhibits be introduced into
13 evidence.

14 CHAIRPERSON CURRIE: Let me tell Members, they
15 can ask questions during this part of the hearing, or you
16 may want to wait until the House Manager is finished and
17 then you may want to ask your questions. The same will
18 apply to what Mr. Henderson does as rebuttal.

19 REPRESENTATIVE DURKIN: I would ask to have
20 marked as House Manager's Exhibit No. 1 the Oath of Office
21 of Derrick Smith from March 24th, 2011, to establish the
22 obligations that Derrick Smith was aware of. This was
23 stipulated to by counsel.

24 CHAIRPERSON CURRIE: No objection from

1 Mr. Henderson, this will be introduced as Select Committee
2 Exhibit 3.

3 MR. HENDERSON: Yes, no objection.

4 REPRESENTATIVE DURKIN: I'm sorry. What's the
5 exhibit number?

6 CHAIRPERSON CURRIE: 3, because we had a
7 couple before at the initial hearing.

8 MR. HENDERSON: No objection to any of these
9 exhibits, except for 15, which we talked about.

10 REPRESENTATIVE DURKIN: Thank you, Madam
11 Chair.

12 Next I would seek to introduce into evidence
13 House Manager's Group Exhibit No. 4, which are the
14 transcripts from the special investigative hearing of March
15 27th, 2012, April 26th, 2012, and May 10th, 2012, to show
16 that Representative Derrick Smith was provided notice of
17 said public meetings and allowed to defend himself by
18 counsel. This was previously stipulated to by Counsel
19 Henderson.

20 CHAIRPERSON CURRIE: This will become Select
21 Committee Group Exhibit 4. Again no objection from
22 Mr. Henderson.

23 MR. HENDERSON: So stipulated. No objection.

24 CHAIRPERSON CURRIE: Thank you.

1 REPRESENTATIVE DURKIN: Now I would like to
2 present as House Manager Group Exhibit No. 5 -- these are
3 the certified Journal Attendance Records of the Illinois
4 House of Representatives for the following dates: February
5 21st, 2012, February 28th -- February 21st, 2012, February
6 28th, 2012, March 1st, 2012, March 6th, 2012, March 8th,
7 2012, and March 9th, 2012, to establish on those dates that
8 Representative Derrick Smith was present and reporting for
9 duty, and that was previously stipulated to by counsel.

10 CHAIRPERSON CURRIE: Thank you, and without
11 objection from Mr. Henderson, this will be introduced as
12 Committee Exhibit No. 5.

13 REPRESENTATIVE DURKIN: I would next seek to
14 move into evidence House Managers Exhibit No. 6, which is
15 certification of ethics training which Representative
16 Derrick Smith completed May 31st, 2012, a month and a half
17 after he was arrested. Previously stipulated to by
18 counsel.

19 CHAIRPERSON CURRIE: No objection,
20 Mr. Henderson?

21 MR. HENDERSON: No objection.

22 CHAIRPERSON CURRIE: That would be Select
23 Committee Exhibit No. 6.

24 REPRESENTATIVE DURKIN: I Would next seek to

1 introduce into evidence House Managers Exhibit No. 7, which
2 is the Complaint and Affidavit that was issued by the
3 Federal District Court Magistrate Nolan, and we would ask
4 that that be introduced into evidence, subject to the
5 limitations which the Chair stated in their opening
6 remarks.

7 CHAIRPERSON CURRIE: That was originally your
8 No. 15, your piece of evidence No. 15?

9 REPRESENTATIVE DURKIN: Right.

10 CHAIRPERSON CURRIE: It is now becoming No.
11 6 -- I'm sorry, No. 7, and, yes, with that stipulation that
12 we are accepting this exhibit subject to the ruling I
13 earlier made, which is to say that yes, this was a
14 certified copy of what was presented in court, but the
15 voracity of that document is not subject to our inclusion
16 of the evidence, except to the extent that some of that
17 material had already been presented to the Special
18 Investigative Committee. So that becomes Exhibit No. --
19 Select Committee Exhibit 7.

20 REPRESENTATIVE DURKIN: I Would next seek
21 to --

22 MR. HENDERSON: I'm sorry. We would ask to
23 maintain the objection we --

24 CHAIRPERSON CURRIE: Thank you, Mr. Henderson.

1 Even though you got half of your objection? I would say
2 more than half. I would say just about all of it, since
3 your concern was whether we were talking about that this is
4 a true document that was accurate.

5 Okay. Mr. Henderson objects, but we will
6 accept it.

7 REPRESENTATIVE DURKIN: I Just want to state
8 for the record that that issue was fully briefed by House
9 Managers and also by Counsel Henderson.

10 Next is House Managers Exhibit No. 8, which is
11 the letter from the United States Attorneys Office, Patrick
12 Fitzgerald, dated April 10th, 2012, addressed to the Chair
13 and the Minority Spokesman for the Special Investigative
14 Committee, stating that they would not be able to provide
15 witnesses and they are determined unavailable.

16 CHAIRPERSON CURRIE: Any objection from
17 Mr. Henderson?

18 MR. HENDERSON: I don't have an objection.

19 CHAIRPERSON CURRIE: So that's Exhibit 8.

20 REPRESENTATIVE DURKIN: Lastly I would ask to
21 admit House Managers Exhibit No. 9, which is the Protective
22 Order governing discovery that was issued by.

23 CHAIRPERSON CURRIE: You know what? I think
24 we did that at our first hearing, Select Committee Exhibit

1 2.

2 REPRESENTATIVE DURKIN: Okay. I'll withdraw
3 that.

4 If I could have just one moment.

5 CHAIRPERSON CURRIE: Yes.

6 (Pause)

7 REPRESENTATIVE DURKIN: May I proceed with my
8 case?

9 CHAIRPERSON CURRIE: Yes, you may.

10 REPRESENTATIVE DURKIN: Thank you.

11 I call to the stand Representative Derrick
12 Smith.

13 (Pause)

14 CHAIRPERSON CURRIE: Mr. Henderson, is
15 Mr. Smith going to appear here this morning?

16 MR. HENDERSON: He will not.

17 REPRESENTATIVE DURKIN: Madam Chair, I would
18 like to at least make for the record that -- ask it be made
19 part of the record that Representative Smith was provided
20 notice and was aware of today's proceedings.

21 CHAIRPERSON CURRIE: Okay. You may proceed
22 with your offer of proof.

23 REPRESENTATIVE DURKIN: Thank you.

24 Pursuant to Rule 11 of this committee, we are

1 allowed to propose questions, I would assume, due to
2 certain evidentiary rulings by the Chair and Mr. Smith's
3 failure to appear at this final hearing. I must admit, I
4 have not had -- I've tried a number of cases in my life. I
5 haven't tried a case where there's been an empty chair
6 that's for the party opponent. I think that speaks
7 volumes, and I think you should consider that in your
8 deliberations.

9 But if Representative Smith was present today,
10 the following questions I would ask of him. I would state,
11 "Representative Smith, you were not elected, but appointed
12 to the current seat, on March 24th, 2011, due to a
13 vacancy."

14 I would ask, "When you were appointed, you
15 swore to follow the Constitution of the State of Illinois
16 and the Constitution of the United States. Your signature
17 is attached to the Oath, and it was signed on March 24th,
18 2011."

19 During the course of these questions, I am
20 going to refer to an individual as a cooperating source, an
21 individual which Representative Derrick Smith has known for
22 some 6 years. During March of 2011, Representative Smith
23 discussed the idea of using State grants for payment of
24 campaign services to the cooperating source.

1 My next question to Representative Smith, if
2 he was here, "Did you tell the cooperating source that they
3 should apply for a grant as a contractor, and the funds
4 would be used to pay for past campaign work?"

5 I would next ask Representative Smith, "Did
6 you also tell the cooperating source that you would take a
7 fee for approving the grant?"

8 The next question -- more rhetorical -- I
9 would ask Representative Smith, "Can you tell us today if
10 the ink on your Oath of Office was still wet when you had
11 that conversation?"

12 Now moving forward about eight months to
13 December of 2011, I would ask the following:
14 "Representative Smith, didn't you and the cooperating
15 source discuss a daycare operator in your district that was
16 in need of a State grant and that you would help the
17 daycare operator on condition that you would receive a
18 campaign contribution for \$5,000? And \$7,000 if they were
19 legitimate?"

20 My next question is, "What does 'legitimate'
21 mean in this context?"

22 "On February 3rd, Representative Smith, you
23 called the cooperating source and discussed the grant, and
24 you made the comment, 'What she going to do?'" I would ask

1 what he means by that.

2 CHAIRPERSON CURRIE: Just a moment.

3 Mr. Henderson, is your mic on?

4 MR. HENDERSON: It is not.

5 CHAIRPERSON CURRIE: Okay.

6 REPRESENTATIVE DURKIN: I would also ask if
7 "on February 3rd, 2012, in that same conversation, you
8 didn't discuss -- didn't you discuss the daycare center
9 project with the cooperating source and again said, 'What
10 is she going to do?'"

11 On February 10th, 2012 the cooperating source
12 called Representative Smith, and, again, the conversation
13 came down to writing a letter of support for the grant.
14 "Representative Smith, did you say the following: 'I will
15 write the letter'? And, Representative Smith, you also
16 asked, 'What's she going to do?' You also said to the
17 cooperating source, 'You already said a number. Now I'm
18 trying to see if you remember what you said.' Cooperating
19 source responded, 'I know exactly what I said. Okay.
20 She's talking about \$7,000.' You, Representative Smith,
21 responded, 'All right.'"

22 Now, on February 21st, 2012 -- make note of
23 that. That was a session day, a day which Representative
24 Smith answered ready for work in the Legislature, in the

1 House of Representatives. "And on that day, you called the
2 cooperating source and said, 'Doing that thing on my end
3 and would it be kosher, but I can't do it personally.'"

4 My question at that time would be, "Where were
5 you at at that time, Representative Smith? Were you on the
6 floor of the House of Representatives? Were you in your
7 Legislative office in the Stratton Building? Or were you
8 in a committee chamber?"

9 On February 28th, 2012, another session day,
10 Representative Smith called the cooperating source, "And
11 you talked about the letter of support. You also said that
12 the owner should fax the language, and you also stated,
13 'I'll put on my letterhead and sign it.'"

14 Again, another session date of the House of
15 representatives, February 29th, 2012. "Again another
16 session date, you called the cooperating source and talked
17 again about when and how the letter would be prepared."
18 Never mind the fact that most of us were discussing at that
19 point how we were going to be able to resolve our pension
20 problems, our Medicaid problems, and also how we were going
21 to balance the budget.

22 "On March 1st, 2012, you called the
23 cooperating source. You had a conversation about signing
24 the letter and getting it to the daycare center, and you

1 said, 'Then we'll see what she's made of.'" I'd like to
2 know what he meant by that. I would like to know what
3 context that is.

4 "On March 2nd, 2012, a letter was signed by
5 you, Representative Smith, on your letterhead, and it
6 stated as follows: 'As a State Representative for the West
7 Humboldt Park neighborhood, I support the daycare owner's
8 application and their application for a \$50,000 Early
9 Childhood Construction Grant from the Illinois Capital
10 Development Board.'"

11 "Later in that same day, the cooperating
12 source called you about payment. Cooperating source asked
13 you if you wanted a cashier's check." Representative Smith
14 responded, "No. I want -- I don't want no trace of it,"
15 were his words. "And then you told the cooperating source
16 'cash'". Wanted no trace. Those were his words. Those
17 are Representative Smith's words.

18 On March 4th, 2012, Representative Smith
19 called the cooperating source. "You talked about payment.
20 You told the cooperating source that 'we agreed on cash and
21 did they agree to 7 stacks?'" I'd like to know what "7
22 stacks" means in the context of this proceeding and also
23 with respect to the approval of the grant. I wish he was
24 here to tell us, because this is his moment.

1 And also on that same day, March 4th, "Isn't
2 it true that the cooperating source told you that the money
3 would come from petty cash fund from the daycare center?
4 And you also told the cooperating source that payment would
5 be split \$50,000 to me, Derrick Smith -- 5,000 to Derrick
6 Smith and 2,000 to the cooperating source?"

7 Also on March 4th, did you also say to the
8 cooperating source that you'd be back from Springfield the
9 next day because, quote, unquote, "Shit, I can't let you
10 hold the money long. I may have to kill your ass,"
11 laughing.

12 March 6th, 2012, another session day. "You
13 called the cooperating source and talked about when you
14 would be back" and about when the cooperating source had
15 the money ready for him.

16 Let's go to March 8th, 2012, another session
17 day. "Representative Smith, you called the cooperating
18 source, talked about when you would be returning. Do you
19 remember the following statements to the cooperating
20 source? Said no, you wanted cash. Remember? The
21 cooperating -- also stating, 'I didn't want to touch
22 nothing until you got back.' Those are the words of the
23 cooperating source, and your response was, 'All right.
24 Just leave it in the envelope. I will be there to unseal

1 it for you.'" "

2 Representative Smith, if you're watching, text
3 your counsel and let us hear your responses.

4 March 10th, 2012, 3:00 p.m., "Representative
5 Smith, didn't you meet with the cooperating source, listen
6 to the cooperating source count out the money, 'One, two,
7 three, four, five -- damn, stuck together -- 6 and 7'? I
8 would like for you to explain what that means."

9 My next question to Representative Smith, "Did
10 you accept the cash? Did you also tell the cooperating
11 source that 'You don't want me to give you yours now,' and
12 also said to the cooperating source, 'I'm going to get your
13 (inaudible).'" "

14 "On March 11th, 2012, didn't you meet with the
15 cooperating source and you gave the cooperating source
16 \$1,000 and told him later he would receive a check for
17 \$1,000?" That's from Representative Smith to the
18 cooperating source.

19 I would next ask Representative Smith, "Did
20 you accept \$7,000 of United States currency from a
21 purported daycare center for your official assistance in
22 securing a grant?"

23 I would next ask Representative Smith, "Did
24 you ever reject the offers by the cooperating source? Did

1 you ever stop and say, 'This is wrong'? Did you ever
2 retreat?"

3 I would next ask him whether or not he
4 reported this bribe to any law enforcement official.

5 And, lastly, I would ask him, "Do you regret
6 the decisions that you made over this period of time?"

7 Nothing further.

8 CHAIRPERSON CURRIE: Thank you very much,
9 Mr. Durkin.

10 Mr. Henderson, do you have a defense to
11 present to us?

12 MR. HENDERSON: Often times cases are about
13 not just what you hear but what you don't hear, and as we
14 have said all along, it's critical for you to hear all of
15 the information, not just some of it.

16 Number two, the information, as salacious as
17 it may sound, which was read or just read by Representative
18 Durkin at this point of time are all allegations.

19 CHAIRPERSON CURRIE: Mr. Henderson, can I just
20 ask, are you planning to present some evidence to us? We
21 are not at the point of closing arguments.

22 MR. HENDERSON: Yes, two things. One -- and
23 this is already in the prior record, so I'd like to make
24 reference to something that has already been admitted.

1 There's a letter dated April 10, 2012, to Magistrate Nan
2 Nolan from Patrick Fitzgerald.

3 CHAIRPERSON CURRIE: Do you have copies of
4 that letter?

5 MR. HENDERSON: It was previously admitted
6 into the record --

7 CHAIRPERSON CURRIE: Before this committee?

8 MR. HENDERSON: Well, in one of the sessions
9 down in Springfield.

10 CHAIRPERSON CURRIE: Well, that would have
11 been another committee. That would have been the
12 Investigative Committee.

13 MR. HENDERSON: But that is part of the
14 record.

15 CHAIRPERSON CURRIE: Not specifically.

16 REPRESENTATIVE DURKIN: We had a firm deadline
17 a few weeks ago to submit whatever exhibits and witnesses
18 we intended or proposed to bring before this committee, and
19 this letter was not one which was mentioned or
20 memorialized.

21 CHAIRPERSON CURRIE: On the other hand, if it
22 was earlier presented, just as my ruling having to do with
23 the Affidavit, that we did sort of incorporate the material
24 that had been introduced before the Investigative

1 Committee, can we be --

2 REPRESENTATIVE DURKIN: Would counsel be able
3 to confirm whether or not that was placed in evidence
4 before the Special Investigative Committee.

5 ATTORNEY ELLIS: If the question is, did that
6 evidence appear in the record before the Special
7 Investigative Committee, the answer is yes.

8 CHAIRPERSON CURRIE: Mr. Durkin?

9 REPRESENTATIVE DURKIN: Withdraw my objection.

10 CHAIRPERSON CURRIE: Proceed, Mr. Henderson.

11 We're going to get copies of the letter, if
12 you could just hang on for a minute.

13 (Pause)

14 CHAIRPERSON CURRIE: We found it, and we're
15 going to make sure everybody gets copies, including the
16 House Managers, and once that happens, then, Mr. Henderson,
17 please proceed.

18 (Pause)

19 CHAIRPERSON CURRIE: Now, Mr. Henderson, are
20 you ready to proceed?

21 MR. HENDERSON: With respect to this letter
22 dated April 10, 2010 -- I'm sorry -- 2012, which has
23 previously been introduced and entered into the record,
24 it's a letter from the United State's Attorney Patrick

1 Fitzgerald to a Federal judge, the Honorable Nan R. Nolan,
2 and the letter says, for those of you who have not had the
3 benefit of seeing it or reading it before now, "Dear Judge
4 Nolan: This letter provides the Court with notice of two
5 inaccurate statements in the March 12, 2012 affidavit of
6 Special Agent Bryan Butler in the above referenced case
7 which the Government discovered on April 6 and April 9
8 respectively. On page 3, Footnote 1, the affidavit states
9 CS-1, or Confidential Informant 1, has one prior arrest for
10 domestic assault, but no convictions." That information is
11 also contained in the affidavit that was referred to by
12 Representative Durkin. Again it's on page 3 of the
13 affidavit, and I will read the affidavit and go back to the
14 letter.

15 The affidavit states, "CS-1 has one prior
16 arrest for domestic assault with no convictions. Over the
17 past three to four years, CS-1 has received approximately
18 \$1200 from the FBI for his/her assistance in other
19 investigations. In connection with this investigation, to
20 date the FBI has paid CS-1 \$1,400. The Government has also
21 provided CS-1 with financial assistance for purposes of
22 relocation during the period of CS-1's cooperation. At
23 least some of the time at the direction of Smith, CS-1 has
24 taken down campaign funds of Smith's challengers in the

1 Democratic primary (unintelligible).

2 And going back to the letter, on page 3,
3 Footnote 1, the affidavit states, "CS-1 has one prior
4 arrest for domestic assault, but no convictions. According
5 to NCIC, which is the National Crime Data base, CS-1
6 actually has two prior convictions: A 2004 drug conviction
7 for which CS-1 was sentenced to probation, and a 1978
8 burglary conviction for which CS-1 was sentenced to
9 probation, as well as approximately 20 prior arrests,
10 including, but not limited to, arrests for burglary, theft,
11 theft by deception, drug offenses, and a weapons charge."

12 On page 3, Footnote 1, the affidavit further
13 states, "Over the past three to four years, CS-1 has
14 received approximately \$1,200 from the FBI for his/her
15 assistance in other investigations. According to FBI
16 internal records, over the past three to four years, CS-1
17 received approximately \$2,100 from the FBI for his or her
18 assistance in other investigations."

19 And, finally, in the document, same document,
20 the affidavit that was referred to and read from by
21 Representative Durkin, I'd like to call your attention to
22 things that were not pointed out. For example, on Page 6,
23 they refer to -- and since these were things that were read
24 by the Representative or things not read, on January 26th,

1 2012, at approximately 9:15 a.m., CS-1 called Smith. That
2 was call number 7. Then on Page 7, we're up to call number
3 13. That's in Paragraph 20. Then in Paragraph 22 on page
4 8 --

5 REPRESENTATIVE LANG: Excuse me, Madam
6 Chairman.

7 CHAIRPERSON CURRIE: Representative Lang?

8 REPRESENTATIVE LANG: Is this closing argument
9 or evidence?

10 CHAIRPERSON CURRIE: Mr. Henderson?

11 MR. HENDERSON: I'm reading from the document,
12 the same document that Representative Durkin --

13 REPRESENTATIVE LANG: Mr. Durkin made an offer
14 of proof, posing questions that he would pose to Mr. Smith
15 if he was here. Mr. Henderson is simply reading from the
16 document, which is already in evidence. This is not
17 evidence. This is closing argument, and we would object to
18 the statements being made by Mr. Henderson.

19 MR. HENDERSON: I'll rephrase the question.
20 If I need to speak to a fictitious person who is not here,
21 I'll do it that way.

22 CHAIRPERSON CURRIE: Say it again?

23 MR. HENDERSON: If I need to replicate what
24 Representative Durkin did and speak to a fictitious person,

1 I'll do it that way.

2 CHAIRPERSON CURRIE: Who would that be, the --

3 MR. HENDERSON: CS-1. If that's the way the
4 Chair would like me to proceed, I can do it that way.

5 REPRESENTATIVE LANG: Madam Chairman, I would
6 object to that as well. Mr. Smith is the subject of this
7 hearing and has a right to be here. CS-1 has no right to
8 be here, since the Committee's rules prohibit him from
9 being here. Because of the ruling and the request not only
10 of the U.S. Attorney, but based on the Protective Order of
11 the Magistrate, we can't get this information and,
12 therefore, an offer of proof to a person who cannot even
13 testify would be irrelevant in this proceeding.

14 CHAIRPERSON CURRIE: I think your point is
15 well taken.

16 Mr. Henderson, I will give you some leeway
17 here, but I would appreciate it if you would try to make it
18 clear what you're offering is evidence, not a closing
19 argument.

20 MR. HENDERSON: Fine, and for the record, I
21 would like to state that the representation that CS-1
22 cannot be here is inaccurate. Again, he can voluntarily
23 appear. I believe that he could appear pursuant to a
24 subpoena served by this body, as I've indicated before.

1 CHAIRPERSON CURRIE: I think you made that
2 point earlier, and we do not have the subpoena power.

3 MR. HENDERSON: So the offer of proof would
4 include questions to CS-1. "Well, did you have a
5 conversation with the Representative" --

6 REPRESENTATIVE LANG: Madam Chairman, I'm
7 going to make the same objection.

8 CHAIRPERSON CURRIE: Representative Lang, I
9 think that's a legitimate objection.

10 Mr. Henderson, I give you leeway to present
11 proof, evidence, what have you, that is not a closing
12 argument, but if you would please do so without bringing in
13 CS-1 as someone who is supposed to be responding to your
14 questions.

15 MR. HENDERSON: Well, Madam Chairman, I think
16 Representative Durkin has already opened the door, because
17 all of the conversations he referred to was between the
18 Representative and CS-1.

19 REPRESENTATIVE DURKIN: Madam Chair, my
20 questions were directed toward Representative Smith as if
21 he was seated here and whether or not this was a
22 conversation that took place. I'm asking him, not CS-1,
23 whether or not the conversation took place. Big
24 distinction.

1 MR. HENDERSON: I would ask the same questions
2 to CS-1 if he were sitting here.

3 CHAIRPERSON CURRIE: Say it again?

4 MR. HENDERSON: I would ask the same questions
5 to CS-1 if he were sitting here.

6 CHAIRPERSON CURRIE: Except that he's not part
7 of these proceedings. If you want to identify certain
8 items that are in the evidence that you think need
9 particular highlighting, I'll let you do that, as long as
10 you don't turn it into the closing argument.

11 MR. HENDERSON: That's fine, and that's what I
12 was attempting to do.

13 REPRESENTATIVE DURKIN: We would just like to
14 state with regard to CS-1, there is a Protective Order, and
15 counsel on at least two separate occasions has made
16 attempts to get evidence or information unavailable to him.

17 CHAIRPERSON CURRIE: Good point. I think
18 Mr. Henderson has agreed that he's not going to be asking
19 questions that include CS-1.

20 MR. HENDERSON: The evidence that would be
21 highlighted would be a phone call placed on February 3rd,
22 2012, call number 31. The evidence that would be
23 highlighted is a call on February 10, 2012, call number 44.
24 The evidence that would be highlighted would include a call

1 on February 15, 2012, call number 72; another call on
2 February 25, 2012, call number 103; a call on March 2,
3 2012, call number 120; a call on March 3, 2012, call number
4 125; on page 19, March 4, call number 136; and last but not
5 least, March 10, 2012, call number 153.

6 That would be it, Madam Chairman.

7 CHAIRPERSON CURRIE: Could I just point out
8 that, had your client been here today, you could have also
9 asked him about those particular calls. So I'm sorry that
10 he was not able to be with us.

11 MR. HENDERSON: For the record, he did not
12 appear, upon advice of counsel. It wasn't that he didn't
13 want to appear. He was advised not to appear, and he
14 followed the advice of his attorneys.

15 CHAIRPERSON CURRIE: Thank you very much.

16 I think then we're ready for closing
17 arguments -- Mr. Harris?

18 REPRESENTATIVE HARRIS: Thank you, Madam
19 Chairman. Question, Mr. Henderson, just to clarify what we
20 just heard in that exchange, if you could come back
21 forward.

22 So, you reviewed -- what you're saying is,
23 you've reviewed the affidavits and you've brought to our
24 attention the letter between Patrick Fitzgerald and the

1 Magistrate, which you said included some inaccuracies that
2 were in that affidavit.

3 MR. HENDERSON: That's correct.

4 REPRESENTATIVE HARRIS: And also some
5 telephone calls which you believe were not included in the
6 affidavit, that were omitted?

7 MR. HENDERSON: No, they are in the affidavit.
8 So, the purpose of the letter was to highlight inaccuracies
9 in this affidavit, which was one of the reasons why it was
10 objected to, because there was a lack of foundation, and
11 then what we also did secondarily relating to the affidavit
12 was to highlight things in the document which has been
13 ostensibly omitted solely for the purpose of the public
14 record.

15 REPRESENTATIVE HARRIS: At no time did you
16 question or say those things which are in the affidavit,
17 which your client participated in and said were inaccurate,
18 wrong, or otherwise -- I mean, you agree that those are all
19 accurate representations of the conversation?

20 MR. HENDERSON: No, we're not agreeing that
21 they're accurate. What I was doing was calling to your
22 attention what's in the document. Whether it's true or
23 not, we do not know. We have not yet had an opportunity to
24 cross-examine Agent Butler, nor have we had an opportunity

1 to cross-examine the confidential informant.

2 REPRESENTATIVE HARRIS: But your client would
3 know if these are accurate representations of what he said
4 to this guy, this person.

5 MR. HENDERSON: At this point in time, we
6 don't know the answer to this. Discovery in the Federal
7 case is ongoing.

8 REPRESENTATIVE HARRIS: We're talking about
9 the purpose for this case.

10 MR. HENDERSON: For the purpose of this
11 proceeding, it's simply to highlight -- since the
12 Chairwoman has admitted this document into evidence for
13 limited purposes -- again, because the Chairwoman, over our
14 objection, admitted this document for the limited purposes,
15 we're working under the assumption that you will review the
16 document and so, therefore, what we want to do is to
17 highlight certain aspects of the document that are not
18 necessarily readily apparent to the reader, especially
19 someone who is not sophisticated in deciphering a Complaint
20 filed in Federal Court.

21 REPRESENTATIVE HARRIS: Which would include
22 us?

23 MR. HENDERSON: I assume some lawyers are in
24 this group and so, therefore, not knowing the background of

1 people, I wanted to highlight just to make sure that the
2 things we thought or think are germane were brought to your
3 attention.

4 REPRESENTATIVE HARRIS: So those are the two
5 areas you think are inaccurate, though?

6 MR. HENDERSON: I'm not going to characterize
7 them as accurate or inaccurate, with the exception of the
8 letter, which is from the Government, saying how they were
9 inaccurate. So, the Government represented one thing to
10 the Federal judge on March, I believe, 12th, and then
11 subsequently the Government went back to the judge and
12 said, "We didn't tell you the truth." So, that's the
13 purpose of the letter dated April 10. That's the
14 Government saying -- we don't have any idea of knowing why
15 the Government made a mistake, why it took them so long to
16 tell the judge. We don't know that yet. We're attempting
17 to get it, but we don't know. However, by their admission,
18 they indicated that they were misleading or giving false
19 information to the judge, as evidenced by their letter, and
20 then secondarily, as relates to the Criminal Complaint and
21 Affidavit, which has been admitted by the Chairwoman, we
22 wanted to highlight certain things that, when you consider
23 it for limited purposes, we wanted you to take a look at
24 and to consider.

1 REPRESENTATIVE HARRIS: Okay.

2 CHAIRPERSON CURRIE: Representative Mathias?

3 REPRESENTATIVE MATHIAS: Thank you, Madam
4 Chairman.

5 Again, Mr. Henderson, you've now highlighted a
6 number of items that you want us to refer to in this
7 Complaint. I believe the ruling of the Chair was that
8 actually the -- am I correct that the affidavit and the
9 items are really actually not taken as -- to the voracity
10 of those items?

11 CHAIRPERSON CURRIE: Exactly right. We've
12 accepted it as the fact that this had been introduced in
13 Federal Court but not whether all of the items in it are,
14 in fact, accurate.

15 REPRESENTATIVE MATHIAS: Although that is the
16 ruling, is there anything in the items that you highlighted
17 that you wanted us to take into consideration: Is there
18 anything, if we took the voracity of those items and if we
19 did take those -- which we're not going to, but if we were
20 to, was there anything in those items that would go to
21 determine the charges today against Representative Smith,
22 as far as that we should take into consideration in
23 determining whether or not there is sufficient evidence to
24 merit punishment to Mr. Smith and, if so, that would lessen

1 the punishment? Is there anything mitigating in those
2 items that we should read to -- for us to make that
3 determination?

4 MR. HENDERSON: Yes.

5 REPRESENTATIVE MATHIAS: Could you explain
6 that?

7 MR. HENDERSON: Yes. I think the Committee
8 has two primary issues before it: One, whether there
9 should be any punishment or recommendation for punishment.
10 That's a yes or a no. And then second question, which is,
11 I believe, much more complicated question, is if, in fact,
12 there should be some recommendation of punishment, what
13 should that be? And in order to answer the second
14 question -- although they are related, again, it's our
15 position that you cannot answer the second question because
16 you don't know everything. But based on the information
17 that's in front of you, which, again, you're supposed to
18 consider for a limited purpose, it appears by the
19 Government's allegations, whether they're true or not, that
20 there were a hundred-some-odd-fifty conversations in
21 connection with the alleged transaction that the
22 Representative refers to. And so when it comes time for
23 argument, then we will attempt to tie that together.

24 REPRESENTATIVE MATHIAS: At that time, you'll

1 tell us specifically that one or more of the items that you
2 highlighted would go to the -- our determination if there
3 should be punishment or whether that punishment should
4 be -- which of the avenues of punishment this committee
5 would vote for in deciding what to recommend as punishment?

6 MR. HENDERSON: Yes.

7 REPRESENTATIVE MATHIAS: And you'll try to tie
8 that into your closing argument?

9 MR. HENDERSON: Yes.

10 CHAIRPERSON CURRIE: Representative Kosel?

11 REPRESENTATIVE KOSEL: My question has been
12 answered. Thank you.

13 CHAIRPERSON CURRIE: Representative Riley?

14 REPRESENTATIVE RILEY: Thank you, Madam Chair.

15 Attorney Henderson, some of my issues have
16 been addressed in the last couple questions, but I just
17 want to ask you this: You mentioned a second ago to a
18 bunch of lawmakers about their ability or lack thereof to
19 interpret some of this information. When we talk about
20 questions of interpretation and context and those kinds of
21 things, you know, you said that we haven't heard all of the
22 tapes, correct?

23 MR. HENDERSON: Correct.

24 REPRESENTATIVE RILEY: But there are some

1 tapes that are out there. Matter of fact, one of the
2 transactions between one of the informants and
3 Representative Smith is really in the public domain, and
4 it's pretty clear in terms of context and even dialect what
5 went on between those two individuals, and I guess so
6 you're saying that there's something about hearing that
7 particular tape that hearing the rest of it will make more
8 clear?

9 MR. HENDERSON: Well, I'm going to disagree
10 with you first. I don't think any of the tapes were in the
11 public domain. You asked for them and you were told you
12 could not get them. The judge has refused to allow them to
13 be disseminated publicly, at least until now. So at this
14 point in time, I don't think anyone has heard the tapes,
15 other than the Government and -- I don't think anyone has
16 heard the tapes. However, taking it a step further, again,
17 our position would be that you need to hear all of the
18 evidence, and the tapes are just part of the evidence, and
19 if not all of the evidence, you clearly would want to
20 hear -- I guess there are two ways to characterize
21 evidence: Important evidence and unimportant evidence.
22 And where that line is drawn, I can't tell you. However,
23 it would be our position that you want to hear all of -- at
24 least hear all of the important evidence before you make a

1 decision, and that would include some or all of the tapes,
2 and that would include being able to see some or all of the
3 key witnesses.

4 MR. RILEY: Okay. So, again, parts of those
5 transcripts that are out there, I mean, if they were read,
6 would they then become more clear, if we hear all of the
7 rest of the tapes? Things might seem incriminating, you
8 know, but we might have a different tact, if we hear all of
9 the rest of the tapes.

10 MR. HENDERSON: Again, number one, just
11 because the Government puts this document together doesn't
12 mean it's accurate. That's why I have to hear from the
13 witnesses. Someone transcribed the tapes, just like we
14 have a transcriber here today. Transcribers make mistakes,
15 sometimes intentional and sometimes unintentional and so,
16 therefore, what they say to you in this document does not
17 make it true. That's A.

18 B, what happens in the proceeding is that the
19 fact finders need to hear the tapes themselves. You don't
20 have to take the word of an FBI agent who tells you what
21 the tape says. You get to hear it yourself. At this point
22 in time, all you have is what the FBI agent says they say.
23 These are not all of the tapes. Obviously, if an FBI agent
24 is going to put a case together, they want to pull out the

1 ones that don't help their case, and the ones that they
2 give you, you don't know if they're accurate until you hear
3 the tape yourself. So all you have right now is a
4 recitation of a select number of items that an FBI took,
5 put in a document, signed, and said they were true, and
6 then came back 30 days later and said, "Oh, by the way,
7 everything I told you is not accurate."

8 REPRESENTATIVE RILEY: I definitely don't want
9 to speak for Federal agents, but could it be that what was
10 out there they felt was the most relevant? You know, often
11 with these kinds of tapes and wiretaps being done, a lot of
12 the information is just -- is really nothing. So, couldn't
13 it be that what was released they felt was the most
14 substantive?

15 MR. HENDERSON: You're asking me to speculate
16 about the validity. But in response to your questions, I
17 would assume as a general rule that, of course, they take
18 what they think helps their case. Just because they put
19 information before you doesn't make it accurate, and it's
20 not complete.

21 MR. RILEY: Good point, but I think we're both
22 maybe asking each other to speculate on some things. But
23 thank you for your answers.

24 CHAIRPERSON CURRIE: I believe then we're

1 ready to go to closing arguments -- I'm sorry.

2 Representative Sosnowski.

3 REPRESENTATIVE SOSNOWSKI: Just a quick
4 question to kind of follow up on that, and you may be
5 addressing this in your closing comment, but the
6 transcripts that have been submitted as part of that, are
7 you going to discuss what parts of the transcripts are not
8 accurate?

9 MR. HENDERSON: We have not yet finished the
10 discovery process, so we don't know the answer to that. We
11 just received -- that was, again, another reason why we
12 asked for an extension, to be able to go through more of
13 the evidence. I don't expect the trial of this matter to
14 happen for some time. So, the case isn't happening in real
15 time. So, we don't know the answer to some of the
16 questions that you might pose because, one, the Government
17 has acknowledged that they still have evidence that they
18 haven't turned over to the Representative. We've asked for
19 it but haven't gotten it, and then what we do have, we're
20 not able to either put it in the public domain or not able
21 to discuss it, as defined by the Protective Order that you
22 have in front of you that was referred to, by the judge.
23 So, again the Representative's lawyers, we don't have
24 everything. The Government has everything. We don't have

1 everything, and then what we do have, we're not able to
2 discuss a large majority of, and we haven't reviewed
3 everything that we do have.

4 REPRESENTATIVE SOSNOWSKI: Just to be sure I
5 have everything accurate, you have the tapes. Some of
6 those tapes may contain the conversations that are in the
7 affidavit?

8 MR. HENDERSON: Yes.

9 REPRESENTATIVE SOSNOWSKI: But according to
10 you, you can't discuss that.

11 MR. HENDERSON: That's correct.

12 REPRESENTATIVE SOSNOWSKI: Okay. Thank you.

13 CHAIRPERSON CURRIE: Anything further?

14 If not, then we're ready for closing
15 arguments, if counsel is ready for closing arguments, and,
16 of course, we will hear from the House Managers. And
17 remember, Members of the Committee, you are able to ask
18 questions during this closing. You can also ask questions
19 at the end of the closing.

20 And, Representative Lang, I believe you have
21 an hour, and my expectation is that you will not take an
22 hour.

23 REPRESENTATIVE LANG: I hope not, Madam
24 Chairman.

1 For the record, Madam Chairman, ladies and
2 gentlemen of the Committee, I am Representative Lou Lang,
3 Representative of the 16th District.

4 Ladies and gentlemen, we have a responsibility
5 under the House Rules to proceed in this process, but more
6 importantly, we have a duty to the institution we were all
7 elected to to pursue this as well as we can and to the end.
8 By way of background, this proceeding started when
9 Representative Jim Sacia of the 89th District filed a
10 document with a charge. The charge says, "Representative
11 Smith provided official letter of support on his letterhead
12 for a daycare owner's application for a State grant from
13 the Illinois Capital Development Board in exchange for
14 personally accepting a \$7,000 bribe."

15 Do you hear the silence? Nowhere in
16 Mr. Henderson's comments, nowhere has anybody denied this
17 charge. There is no denial of this charge. Yes, there may
18 be a defense in a criminal courtroom, and that will come,
19 eventually. In his offer of proof, Mr. Durkin said that he
20 would have asked Mr. Smith, "Did you accept a \$7,000
21 bribe?" Take all of the other paperwork. Put it aside.
22 "Mr. Smith, did you accept a \$7,000 bribe?" Do you hear
23 the silence? This committee and the committee before it,
24 Chaired by Representative Nekritz, has given Mr. Smith and

1 his counsel -- Representative Smith, excuse me, and his
2 counsel ample opportunity to sit in a witness chair, to
3 step before a microphone, and putting aside all of the
4 other comments, allegations, affidavits, documents,
5 transcripts, just answer a simple question. "Did you
6 accept a \$7,000 bribe?" Yes, we'd like to ask if it came
7 in an envelope. Yes, we'd like to ask, "Do you want your
8 2,000 now or do you want it later?" Yes, those are
9 questions that Mr. Durkin proposed on his offer of proof,
10 and there was silence.

11 But the most single important question is,
12 "Representative Smith, did you accept a \$7,000 bribe for
13 putting your signature on a State letterhead to help the
14 daycare center get a grant?" And there has been no defense
15 here, no defense at the previous hearing, no defense at the
16 Nekritz committee, no defense in the newspapers, no defense
17 of any kind, and no denial of any kind.

18 Now, in a Federal courtroom there may be a
19 defense which they choose not to bring forward today, and
20 that's their privilege. One of those defenses might be
21 that the Federal Government entrapped Mr. Smith. Well, if
22 they entrapped Mr. Smith, he did the act, whether he was
23 entrapped or not. That may be a defense in a Federal
24 courtroom, but it's not a defense in a matter before the

1 Illinois House of Representatives to determine if a person
2 has the moral and ethical standard to serve among us and
3 whether they violated their Oath of Office.

4 "Mr. Smith, did you accept the \$7,000 bribe?"
5 Silence.

6 Ladies and gentlemen, this is not a criminal
7 trial, but it's a political and Legislative proceeding
8 under our House Rules. Mr. Smith, Representative Smith,
9 will not go to jail after today's hearing, no matter what
10 you decide, and won't go to jail even if you decide to
11 recommend expulsion and we go before the Illinois House
12 under a resolution and every single member of the House
13 votes to expel him from office. He won't go to jail. He
14 won't lose his life or his liberty. We don't have to prove
15 this case before us today, like Perry Mason cases, beyond a
16 reasonable doubt. In fact, the vast majority of the
17 literature and the case law -- and I won't bore you with
18 all of it, but Counsel will tell you that the case law is
19 clear that these proceedings while, yes, the accused is
20 entitled to a certain measure of due process, it does not
21 have to be decided by you that he's done some act beyond a
22 reasonable doubt. In fact, you don't even have to be
23 convinced he's done the act. All you to be convinced of is
24 this simple point: The gentleman is a colleague of ours.

1 He was not elected, he was appointed, but he's a colleague
2 of ours. He took his Oath of Office, and he refuses to
3 answer our questions about public allegations that have
4 been made about his conduct that could or could not lead to
5 a criminal conviction.

6 Are we entitled to those answers? Yes, we
7 are. Does Representative Smith have the right not to
8 appear and not self-incriminate himself? Of course. He
9 could choose not to be here, and he has. But his choice
10 not to be here is his own choice, and his choice not to be
11 here has to do with protecting the record for his criminal
12 case, and so he has made the choice, which he has the
13 perfect right to do, and maybe it's even a choice some of
14 us would have made under the same circumstances. But he
15 has not come to answer our questions. He did not come
16 before the Nekritz committee to answer our questions. He
17 didn't even so much send us a piece of paper.

18 Mr. Henderson and his comments at no time
19 denied anything that's of record, including the affidavit,
20 and, yes, the affidavit was not admitted for its truth.
21 Mr. Henderson didn't even bother to say the affidavit isn't
22 true.

23 Mr. Henderson is concerned about the
24 informant, the confidential informant. Well, the fact is,

1 ladies and gentlemen, that the credibility of the affidavit
2 is an important issue in the Federal case, but the
3 credibility of the affidavit isn't even all that important
4 here. Why? First, it's not admitted for its truth.
5 Second, no one has denied the paragraphs in the affidavit.
6 And third, and maybe most importantly, no one ever alleged
7 that a government informant who would sign such a document
8 is a choir boy. No one ever alleged that they're the most
9 upstanding, upright citizens in America. Some of the
10 informants that the Federal government deal with are
11 hardened criminals, very difficult people. But the fact
12 remains, an allegation was made and no response. No
13 denial, a simple denial.

14 Mr. Smith could have waltzed through the
15 courtroom, never even stepped to the microphone, and just
16 yelled, "I didn't do it, guys," and went back to his car
17 and went back home. At least that would have been
18 something. He could have texted any one of you during this
19 hearing. He hasn't done it. And so, what are we to
20 believe?

21 Mr. Henderson spent a good deal of time
22 talking about the due process that may or may not have been
23 given his client. Let me suggest to you that he received a
24 significant amount of due process, more than the law

1 requires, more than the House Rules require. He was
2 afforded the opportunity, by himself or through counsel, to
3 provide any evidence, to come before any of these committee
4 meetings, this committee or the Nekritz committee, to send
5 us a piece of paper, to send us a letter, to send us his
6 own affidavit, to file with us a document that in essence
7 would be an Answer, paragraph by paragraph, to the
8 affidavit filed in Federal Court or paragraph by paragraph
9 to the Complaint filed in Federal Court, and we've received
10 none of those things. We've received none of those things.

11 It would be great if the U.S. Attorney would
12 have given us the other information we wanted and, frankly,
13 some of the information that Mr. Henderson wanted. I'd
14 like to hear a tape. How about you? I'd like to have the
15 informant here. I'd like to have the FBI agent here. But
16 I'd also like to have Representative Smith here.

17 In his opening comments, Mr. Henderson said --
18 and maybe you remember exactly his quote. I'll read it to
19 you. "It's never a bad time to tell the truth." Well,
20 that goes two ways, Representative Smith. It goes two
21 ways, Mr. Henderson. It's never a bad time to tell the
22 truth. How about now? We'll wait. Let's reopen the case
23 and have Mr. Smith come in here and tell us the truth.
24 Unwilling to do that. He doesn't want to compromise his

1 criminal case. Don't blame him. But he's not here to tell
2 the truth. Never a bad time to tell the truth.
3 Representative Smith, did you take the \$7,000 bribe? This
4 would be a good time to tell the truth. He's not here to
5 tell the truth.

6 And then Mr. Henderson said -- he went through
7 a litany of problems in our legal system, and he said --
8 remember when he said, "These things may be legal, but
9 they're not right. These things may be legal, but they're
10 not right." Oppression of blacks and concentration camps
11 for Asians, all of the oppression for women. You heard
12 Mr. Henderson say those things. "They may be legal, but
13 they're not right." So, I would say to you, it may be
14 legal that Representative Smith refuses to be here today.
15 It may be legal for him to, in essence, plead the Fifth
16 Amendment. It may be legal for him to be silent. But it's
17 not right. He represents 110,000 people in his district
18 and 13 million people in the State of Illinois, because his
19 title is State Representative, and he is our colleague, and
20 he has a duty and a responsibility to stand before us and
21 tell us what's going on here. So, may be legal, but it's
22 not right.

23 There's been a question raised, at least
24 parenthetically, that this committee should be waiting for

1 the Federal criminal trial, that somehow some great truth
2 will come out in the criminal Federal trial that will
3 impact this proceeding. I would submit to you a couple of
4 things. First, it doesn't matter. At this point, it
5 doesn't matter a whit whether Mr. Smith is convicted or not
6 convicted in the criminal trial as it relates to this
7 proceeding, because the man has a responsibility to tell
8 his colleagues in the House and 13 million people in the
9 State of Illinois whether he's a felon. Tell us. Tell us
10 the truth. Never a bad time to tell the truth.

11 Second, when our Constitution was drafted, the
12 framers of that Constitution could have said in a case of
13 possible expulsion of a member of the Illinois House, "You
14 need to submit this to the Judiciary." But the framers of
15 our Constitution didn't do that. The framers of our
16 Constitution left it up to the Illinois House of
17 Representatives to determine the appropriate qualifications
18 of members, what disciplinary proceeding should take place,
19 how the disciplinary proceeding should take place, and the
20 result of those disciplinary proceedings, and if you'll
21 recall, if this committee were to decide that any
22 particular punishment should be meted out to Representative
23 Smith, it would go before the Illinois House of
24 Representatives in the form of a resolution and it would

1 not require 60 votes, it would not require 71 votes, which
2 we do for most things. It would require two-thirds of the
3 Illinois House. 79 members of the Illinois House would
4 have to agree. So, the notion that this is an
5 inappropriate forum or setting for this hearing is not
6 correct. In fact, much due process has been built into
7 this process. In fact, more due process has been put into
8 this proceeding than exists in the Illinois Constitution
9 for a governor that we just impeached. We have more due
10 process built into our rules in this proceeding than in the
11 Blagojevich proceeding.

12 Then some will say, when we ask you for your
13 ruling to expel Representative Smith from the Illinois
14 House, they'll say, "Well, what are the grounds? What
15 standard?" Well, the standard is left up to you. Just as
16 in the Blagojevich proceeding, the standards that we follow
17 are not criminal law standards. In fact, they're quite the
18 opposite of criminal law standards. Yes, our rules require
19 that the criminal rules of evidence be used, which we have,
20 and the Chair has made correct rulings relative to
21 proposals for evidence. But grounds for impeachment are --
22 or expulsion in this case, are simply left to the
23 discretion of House members to determine what appropriate
24 cause may be. Perhaps you believe the affidavit in its

1 entirety. That's cause. Perhaps you think that you're not
2 sure if you believe the affidavit, but since Representative
3 Smith is not here to deny it, you have no choice but to
4 believe the affidavit. Or perhaps you just think that his
5 flaunting this process and ignoring you twelve and ignoring
6 the questions that his colleagues need to ask him to
7 determine if he's a fit person to sit among us to represent
8 his district and to represent the people of the State of
9 Illinois, perhaps you think that's enough. Perhaps you
10 think that's enough. I do. I do. Whether you think he
11 did the act or not, I think his failure to appear, in and
12 of itself, is grounds, because any one of us accused of
13 such an act three months before an election -- almost all
14 of you are standing for reelection. Imagine, three months
15 before the November election and your name is on the ballot
16 and somebody accuses you of bribery, and you don't have
17 anything to say about it? Any one of you would stand up on
18 the Sears Tower with the loudest microphone you could find
19 and say, "I am not a felon. I didn't take a bribe. I
20 don't know what they're talking about. The whole case was
21 made up." Because not only would you want to protect your
22 own integrity and tell the truth, but you are running for
23 reelection. Who wouldn't deny it? Is there any sane,
24 rational, elected person or candidate for public office who

1 would ignore a public statement that "Hey, you're a felon.
2 Hey, you took a bribe. Hey, you're a crook. We've got you
3 on tape." Not one of you running for reelection would
4 ignore that. Not only would you stand with a microphone,
5 you'd spend thousands of dollars printing up all kinds of
6 great, glossy brochures to send to your constituents,
7 because you still want them to vote for you. You would
8 send out those brochures, and you'd say right on the front
9 page of the first one, "I know you heard that they're
10 calling me a crook. I'm not a crook." Who would not do
11 that? And so, that's grounds enough, it seems to me.

12 This inquiry is not a criminal proceeding, and
13 its purpose is not punitive. It's actually a remedial
14 proceeding to protect the public from an officer who has
15 abused his position of trust. Limiting this just to
16 criminal conduct would severely undermine that purpose.
17 So, you have the ability -- you twelve have the ability to
18 think this through, not only on the specifics of what
19 Mr. Smith was charged with and the specifics of
20 Mr. Durkin's offer of proof, but you can use any thought
21 that you have in this process and not be violating your
22 trust as a member of this committee. Neither the Illinois
23 Constitution or the House Rules place constraint on your
24 determination of whether cause exists to justify expulsion.

1 The burden of proof is not answered by the Constitution or
2 the Rules, but is left to your judgment as a member. So
3 the appropriate standard of proof is yours and yours alone.
4 When you go back to deliberate, Mr. Ellis is not going to
5 tell you, "Here's a box that it has to fit in." This is
6 not a criminal case. He's going to tell you, "Tell me what
7 you think." Chairwoman is going to ask you, "What do you
8 think?" And you should vote that way.

9 I want to spend a couple more minutes on
10 Representative Smith's refusal to testify before this
11 committee. I don't want to get too bogged down in the law,
12 but there are cases after cases. The most interesting was
13 the case of the effort to impeach Governor Mecham in
14 Arizona, and in that case, it was held that while the
15 Governor's silence could not be held against him in a
16 criminal case, the opposite would be true in a non-criminal
17 proceeding, such as an impeachment inquiry. The refusal to
18 testify in a non-criminal proceeding -- because no one goes
19 to jail if they are found to be at fault, the refusal to
20 testify in a non-criminal proceeding justifies an adverse
21 inference against the witness, meaning a House member may
22 consider, in the balancing of the evidence, the fact that
23 the Representative had the opportunity to appear before
24 this committee on two occasions, the Ethics Committee on

1 three occasions, and failed and refused to do so. You are
2 free to draw any inference or conclusion you wish to draw
3 from that.

4 And so, while Representative Smith has the
5 right to remain silent and has, and while in a criminal
6 case and the case sometime next year down the street, while
7 he -- that silence may be not be used against him. You can
8 fully feel free to use his silence against him in this
9 proceeding. Many of you are lawyers. I know you know
10 that. So I'm speaking to the non-lawyers among you. This
11 is different. This is different. His silence works
12 against him.

13 As you deliberate, it's important to not only
14 determine if you think any of the various grounds that I
15 specified are there, but I think it's also appropriate to
16 review whether Mr. Smith has lost the confidence of the
17 Members of the House, whether he's lost the ability to
18 perform his duties appropriately, whether he's still
19 qualified to work among us. The effect of the alleged
20 abuse of power by Representative Smith and his lack of
21 response to it is, therefore, critically important to our
22 inquiry.

23 In the face of all of this, Representative
24 Smith has remained silent. He's given no detailed

1 explanation for the allegations. Like any citizen, he's
2 certainly free to have his day in criminal court, but he's
3 no ordinary citizen. He's a State Representative in the
4 State of Illinois. He has the responsibility to us, his
5 community, and to his Oath of Office to make sure that we
6 all have the confidence that he can faithfully fulfill his
7 duties and serve the people and put their interests before
8 his.

9 It was my original plan to read some excerpts
10 from the May 10, 2012 hearing where Mr. Henderson answered
11 a series of questions proposed by Counsel Ellis. Since
12 it's part of the record, I will just spare the Committee me
13 reading those questions and those answers. But let me just
14 simply say this: Seven or eight times in those 80 or so
15 pages, either Mr. Ellis or members of the committee asked
16 Mr. Henderson -- because Representative Smith would not
17 appear, asked Mr. Henderson about specific allegations,
18 paragraph by paragraph by paragraph, in the affidavit and
19 in the Complaint, and at no time did Mr. Henderson deny a
20 single segment of the affidavit, and at no time did he deny
21 a single allegation in the Complaint. A couple of times he
22 said, as he sat here today, "We don't have the information.
23 We don't know." And that's fine, as -- if you keep it on
24 that level. But really? "Did your client take a \$7,000

1 bribe?" We don't know? "Is your client's voice on the
2 tapes?" We don't know? "Is anything about the
3 confidential informant's affidavit true, anything?" We
4 don't know? Ridiculous. They know. They don't have to
5 say, but they know. And so, ladies and gentlemen, as you
6 go back to deliberate, I would strongly suggest that you
7 look through this testimony on May 10th, 2012. The
8 transcript is of record in this matter. I'm sure counsel
9 will ably find those sections in the transcript for you to
10 read, but they're very telling.

11 Who among you would deny -- let me rephrase
12 that. Who among you would refuse to deny an allegation
13 that you were a felon if you were not a felon? This matter
14 goes to the very heart of the integrity of the Illinois
15 House of Representatives. This matter goes to the very
16 heart of what we're trying to put aside. Governors in
17 jail, elected officials all over the state going to jail,
18 elected officials in many portions of the state accused of
19 crimes, who will go to trial, and maybe some of them will
20 go to jail, and a citizenry who thinks we are all crooks.
21 You've heard it. You've campaigned. You've knocked on
22 doors. You've been in parades. The idea out in the
23 community is that, because they read on the front page of
24 the newspaper that we have crooks in public life, people

1 that abuse their trust, people that violate their Oath of
2 Office, people that don't care about the people that they
3 were elected to serve, or in this case appointed to serve,
4 and they think we don't care. They think the honest ones
5 among us don't care. I would rather see on the front of
6 the newspaper that the Illinois House of Representatives
7 did its job to make sure that within whatever abilities we
8 have, we ensure a House that has integrity, a House that
9 has ethics, and a House that is willing to do the tough
10 work to make sure that the public looks at us in a
11 different light.

12 Representative Smith's actions -- whether he
13 did these things or he did not do these things, the fact
14 that he fails to show to tell us is enough for me. It
15 ought to be enough for you.

16 Mr. Rose and I serve on the Legislative Ethics
17 Commission. We both do so, I think, with our heads held
18 high. We make some very tough choices, and we have to look
19 at some very difficult things, and we serve on that
20 commission because we believe that the right thing to do is
21 to protect the House, not just from those inside the House
22 that would do us harm, but to protect the House from the
23 public notion that people in government are on the take,
24 that people in government don't care, that people in

1 government are just feathering their own nests. The
2 actions we will ask you to take today are actions -- is an
3 action we must undertake in order to reestablish ethics
4 within our body and to reestablish a connection to 13
5 million people who live in the state of Illinois, that the
6 man can anticipate that we will do the right thing to root
7 out corruption wherever we can and use whatever tools we
8 have to make that happen.

9 Accordingly, ladies and gentlemen, speaking
10 for Mr. Durkin and I, we thank you for your attention, and
11 we most sincerely ask that -- it is our unfortunate duty to
12 ask that you recommend that Representative Smith be
13 expelled from the House of Representatives. Thank you very
14 much.

15 CHAIRPERSON CURRIE: Thank you very much,
16 Mr. Lang.

17 Are there questions of Mr. Lang before we move
18 to -- Representative Riley?

19 REPRESENTATIVE RILEY: Thank you.

20 Representative Lang, one of the things that
21 has happened has happened -- well, sort of in the press.
22 With us, there are always allusions made to Governor
23 Blagojevich, and that's kind of understandable. But
24 wouldn't you say that that might not be the best allusion

1 or characterization made, simply because impeachment of the
2 governor is prescribed in the Constitution, whereas the
3 removal of a member of the House, as you say, is sort of up
4 to our own judgments? There may be some things in the
5 rules, but the strict proscription is much different in
6 those two cases.

7 REPRESENTATIVE LANG: I would say you're not
8 entirely correct, Representative. While the discussion of
9 impeachment is in the Illinois Constitution, the Illinois
10 Constitution purposely left out discipline of members of
11 the General Assembly, and so we have taken that up by rule.
12 And so while it's not a constitutional provision, it's a
13 rule of the House. The analysis is virtually the same:
14 Violation of public trust, breaking of the law, the
15 silence. In the Blagojevich hearing, one of the things
16 that tripped him up, I think you'll recall, was he refused
17 to answer a lot of the allegations. He refused to tell us
18 what was true and was not true. The same holds here.

19 REPRESENTATIVE RILEY: And we are all members
20 and we all respect each other, and I respect your legal
21 prowess, but you're saying my characterization is
22 incorrect.

23 REPRESENTATIVE LANG: I'm saying that while
24 you're correct, that the Constitution talks about

1 impeachment and removal of a House member is not in the
2 Constitution, it is a House rule, a rule we all voted for.
3 It's a rule we uphold, and it is proscribed, just as the
4 rules regarding impeachment. I would also add that the
5 rules proscribed for the removal of a member or discipline
6 of a member in the Illinois House of Representatives are
7 actually a higher bar than the rules regarding impeachment,
8 because in the rules regarding impeachment, there was no
9 provision that the House Managers follow the rules of
10 evidence. In this proceeding, Mr. Durkin and I, and
11 Mr. Henderson for that matter, have to follow the rules of
12 evidence. It's stated right there in the rules. So, it's
13 actually a higher bar. We could not come in here with no
14 evidence. We could not come in here and just make an
15 argument. But we've done more than that. We have met the
16 bar that the rule sets for us.

17 REPRESENTATIVE RILEY: Thank you.

18 CHAIRPERSON CURRIE: Representative du Buclet?

19 REPRESENTATIVE DU BUCLET: Thank you, Madam
20 Chair.

21 Representative, two questions. Two of the
22 comments you just made to Representative Riley were
23 violation of public trust and breaking of the law. Those
24 are currently still just allegations, are they not?

1 REPRESENTATIVE LANG: They are allegations
2 that have not been denied by Representative Smith.

3 REPRESENTATIVE DU BUCLET: Allegations that
4 have not been denied?

5 REPRESENTATIVE LANG: I would add this. I
6 believe it's a violation of public trust to not come before
7 12 members of the Illinois House, when asked to to tell us
8 whether or not you're a felon, to tell us whether or not
9 you did a certain act, to tell us anything we want to know.
10 As I said before, nobody running for election, accused of
11 this crime, would just let it stay silent. They would at
12 least say, "I didn't do it," at least say, "I didn't do
13 it," and if Representative Smith come to this chamber today
14 and simply said that, it would have at least been a
15 defense. There's been no defense, and since there's been
16 no defense, it seems to me we have to take these
17 allegations as true.

18 REPRESENTATIVE DE BUCLET: Thank you,
19 Representative.

20 CHAIRPERSON CURRIE: Representative Rose?

21 REPRESENTATIVE ROSE: Thank you, Madam Chair.
22 Leader Lang, I think I know what you were
23 saying a second ago, but I want to make sure that the
24 record is clear that the State Constitution does provide

1 for expulsion of a member from the House, specifically
2 Section 6(d), the Legislative Article IV.

3 REPRESENTATIVE LANG: I was simply referring
4 to the rules in response to Mr. Riley's question. So,
5 certainly the Constitution allows for the expulsion of a
6 member, but it allows the House to set up the rules by
7 which that would happen, which is why we're here today.

8 REPRESENTATIVE ROSE: Thank you for the
9 clarification.

10 CHAIRPERSON CURRIE: Any further questions?
11 If not, I think -- Mr. Sosnowski?

12 REPRESENTATIVE SOSNOWSKI: A quick follow-up
13 of the question I asked Attorney Henderson regarding the
14 affidavit and the discussion that is allegedly in these
15 tapes. Do you agree with his assertion that he can't
16 discuss those tapes as they pertain to what is actually
17 submitted in the affidavit to us?

18 REPRESENTATIVE LANG: There's a Protective
19 Order in the United States District Court which forbids the
20 use of those tapes, forbids the Committee from getting
21 those tapes, forbids Mr. Henderson, if he's heard them,
22 from using those tapes in this proceeding. I would submit
23 that while it would be compelling and while there might be
24 a smoking gun in those tapes, I would submit that we don't

1 need those tapes to move along in this proceeding.

2 REPRESENTATIVE SOSNOWSKI: One last question.
3 What's contained on those tapes, which has been transcribed
4 and provided in that affidavit -- can you give us a
5 suggestion as to why you think the U.S. Attorney's office
6 wouldn't at least give us the audio tapes of what they have
7 given us in the transcript version?

8 REPRESENTATIVE LANG: I haven't talked to
9 them, but except to say that we had a brief conversation,
10 and I just simply think they made the same judgment they
11 made in the Blagojevich matter, which is that they think it
12 might prejudice their case in some way to bring those tapes
13 out in advance, to bring witnesses here in advance and let
14 them be cross-examined, et cetera. In the Blagojevich
15 matter, they eventually relented and gave us a tape, and
16 the reason they did that, I believe, is that it was a
17 sitting governor, and they felt it was very important that
18 the committee at that time have the opportunity to have at
19 least something, and maybe the U.S. Attorney doesn't think
20 the removal of a State Representative rises to that level.
21 But I think the twelve of you do, and I certainly do.

22 CHAIRPERSON CURRIE: Representative Kosel.

23 REPRESENTATIVE KOSEL: Thank you, Madam
24 Chairman.

1 Thank you, Representative. I just wanted to
2 clarify one point. In your argument, you said that we all
3 voted for the rules. There's many of us here who didn't
4 vote for those rules.

5 REPRESENTATIVE LANG: Well said,
6 Representative, but they are the rules of the House.

7 REPRESENTATIVE KOSEL: But they are the rules
8 of the House, and we are respectful of the rules of the
9 House and although we don't always agree sometimes, we do
10 all vote on them, and they were voted in by a majority of
11 the members of the House, and so, that respect is something
12 that needs to be noted.

13 REPRESENTATIVE LANG: Thank you.

14 CHAIRPERSON CURRIE: Anything further.

15 If not, then we're ready -- thank you very
16 much, Mr. Lang, and we're ready now for closing argument
17 from Mr. Henderson.

18 MR. HENDERSON: I'm going to say the same
19 thing to you now that I said earlier or alluded to earlier.
20 This is something that is much bigger than Derrick Smith.
21 To me, this is really about democracy and democracy in
22 action, and either we believe in democracy or we don't, and
23 you can't say that you believe in democracy when it's
24 inconvenient for you -- or when it's convenient for you but

1 you don't believe in democracy when it's inconvenient for
2 you. Either we believe in democracy or we don't. We got
3 to choose.

4 Do you believe in democracy or do you not?
5 And if you believe in democracy, that means the rules are
6 rules are rules, no matter what the outcome is. That's
7 somebody who really believes in democracy. And somebody
8 who doesn't believe in democracy is going to go, "Well, you
9 know what? I don't really care what the rules are. I'm
10 just focusing on this outcome. This is what I want,
11 because it's inconvenient for me to stand by my principles,
12 because I say that I believe in democracy, but so when it's
13 inconvenient, I'm just going to throw them off to the
14 side."

15 There's a book that was written some years
16 ago, and I may not get the exact title right, but it's
17 called "Everything I Need to Learn in Life I Learned in
18 Kindergarten". So, the question before you today to me is
19 a pretty simple one. Do you want all of the important
20 information about this matter or do you not? What's the
21 rule? Let's take Representative Smith off the table. It's
22 Representative Jones. It's Representative
23 (unintelligible). It's Representative Lang. It doesn't
24 matter who it is. It's Representative Mr. Republican.

1 It's Representative Mr. Democrat. Doesn't matter who it
2 is. When you're going to have proceedings in this House,
3 do you want all of the important information? Yes or no.

4 Now, clearly there's information about this
5 proceeding that's important, and then there is information
6 that is unimportant, and where everybody draws the line is
7 different. But the question I pose to you is, do you want
8 all of the important information before you make a
9 decision? Yes or no? Just answer that question. And if
10 your answer is, "No, I don't need all of the important
11 information to make a decision," then God bless all of
12 us -- or God help all of us, I should say. But if you say
13 to yourself that "Yes, I do want all of the important
14 decision -- all of the information before I make a
15 decision," then what I submit to you is that you don't have
16 all of the important information. As a matter of fact,
17 what I would tell you is, right now you have no information
18 other than allegations by an FBI agent and a confidential
19 informant, whose criminal record is as long as the day.

20 Does it matter to you that there's a
21 confidential informant? Do you want to know anything about
22 his background? Do you want to know about the charges of
23 theft of deception, meaning he's a con man? Does it matter
24 to you that there's a con man involved in the alleged

1 transaction? Does it matter to you that the FBI agent
2 didn't tell a Federal judge the truth.

3 There's a lawyer I trained under by the name
4 of Michael J. Howlett. Some of you may remember his
5 father, Michael Howlett, who was the Secretary of State.
6 Wonderful man. And Michael Howlett said to me one time,
7 "Virtue untested is no virtue at all." And again I'll
8 repeat. "Virtue untested is no virtue at all." This
9 proceeding is about protecting the integrity of the House.

10 I was staff counsel in Washington, DC for the
11 United States House of Representatives under Julian Dixon.
12 I had the opportunity to serve as an Ethics Officer for the
13 Chicago Housing Authority. And if you really are going to
14 stand by your principles, then people are going to push you
15 and test you. Representative Lang said Representative
16 Smith has not been in front of you. He appeared a couple
17 times down in Springfield. Representative Lang said that
18 Representative Smith has not told the truth, and what
19 Representative Smith has said is he wants the whole truth
20 out, not just bits and pieces of it, all of it.

21 Representative Smith has been over to the U.S.
22 Attorney's office, asking for all of the information to be
23 released. The truth is what it is. So let's get all of
24 the tapes out. Let's get the witnesses to come, and then

1 make a decision. Representative Smith is not afraid of the
2 truth. He can handle the truth. He can stand on the
3 truth. He has no choice but to deal with the truth. The
4 truth is what it is. But what I submit to you is, you
5 don't know the truth. Truth is somebody comes in here and
6 defends what they say. Where is the informant? You asked
7 about Representative Smith. Where is the FBI agent?

8 I believe, without trying to usurp the
9 authority of Mr. Ellis, that this body is best served by
10 telling the people of Illinois, "You know what? We take
11 very seriously allegations of wrongdoing by our members,
12 but the rule is, we're going to get all of the important
13 information before we decide." The skeptical view is that
14 the Republicans want to make hay of a Democrat doing wrong
15 and the Democrats are too afraid to stand up to the
16 Republicans. That's the skeptical view on the street.
17 Well, it takes courage to do the right thing. Everybody
18 lauds and applauds and celebrates holidays for Martin
19 Luther King. Remember, that was a guy who challenged the
20 system, who spent a lot of time in jail, challenging the
21 system, because the system wasn't right, and the system
22 wasn't fair. We forget that. And challenging the system
23 was very painful, to be separated from your family, to be
24 thrown in the jail cell, to have dogs chase after you.

1 There are a hundred-and-some-odd men sitting down in
2 prisons across the state who say that the system has not
3 been fair to them, that they were accused of crimes that
4 they did not commit because there was a police command gone
5 wrong, in this state where people are telling you that the
6 system has not worked properly. A governor who sits in
7 jail put a moratorium on the death penalty. Why? Because
8 the system wasn't working properly.

9 It might be nice or easy to think that
10 Representative Smith did something wrong, but doing the
11 right thing often takes more courage than doing the wrong
12 thing. Doing the wrong thing is often the easy way out.
13 As I said at the beginning, it's not about the
14 Representative. It's about the system. So, is the system
15 going to be -- what's the rule going to be? Lawyers always
16 want to know what the rule is. So, is the rule going to be
17 in ten years, somebody alleges that you hit your wife up
18 the side of the head or somebody alleged you stole a
19 tricycle, so, therefore, out of the House you go? Is that
20 the rule? What's the rule? Is the rule that -- there's an
21 allegation that you didn't pay your taxes. Never mind the
22 fact that it's not true. Is that the rule? An allegation
23 by the Federal government means you're out? Tell us what
24 the rule is. What's the rule? Is the rule you want all of

1 the important information or do you not? What's the rule?

2 I don't think the rule is some nebulous, vague standard

3 that you get to do what you want to do just because you

4 want to do it, because it feels good. I don't believe

5 that.

6 I believe that the people of this state are

7 looking for leadership. They're looking for the people to

8 stand up, tell us the truth. I'm going to make an allusion

9 to a story, and then I'm going to bring it home. I lost my

10 mother to cancer, and I didn't want to hear the truth. My

11 cousin made me sit with the doctor, who was telling me that

12 my mother had stage 4 cancer. I wanted to put my head in

13 the sand. I didn't want to deal with the truth, because I

14 didn't want to think that my mother was not going to be

15 here. I didn't want to deal with the truth, so I wanted to

16 put my head in the sand.

17 Taxes need to go up in this state. Services

18 need to be cut. Why? Because common sense says you don't

19 spend more money than you have. That's the truth. But

20 nobody wants to tell the truth. Why? Because people don't

21 want to hear it. So, it's easier to do the wrong thing

22 than it is to do the right thing. The right thing is to

23 raise taxes and to cut services so we're not spending

24 ourselves into oblivion. But it takes courage to do the

1 right thing, and I submit to all of you right now that the
2 courageous thing to do, that the right thing to do --
3 nobody is saying don't judge Derrick Smith. That's not the
4 argument. Nobody is saying Derrick Smith's day of
5 reckoning is not going to come, and no one is saying delay
6 until the Federal trial is over. Derrick Smith has already
7 tried to get all of the information out. That's on record.
8 He wants it all out, because if we're going to tell the
9 truth, let's tell the whole truth, not just portions of the
10 truth, not just be selective about telling the truth, not
11 just tell those things that help our case but not tell
12 those things that hurt our case. If we're going to tell
13 the truth, let's tell the truth, nothing but the truth.

14 So, what I'm asking you to do is to have a
15 rule and stick by it for the future, not just for Derrick
16 Smith for the future, for everybody. If you were sitting
17 in the chair -- or not sitting in the chair -- do you want
18 people to hear all of the important information or not?
19 What would you tell your kids at home? Many of you have
20 children. Do you let one of your kids come up to you and
21 tell you, "Janie hit me in the head," without listening to
22 Sally? That's not what we do. You let Janie tell you and
23 then you listen to Sally, and then you decide. You listen
24 to both of your kids. You sit and assess the evidence.

1 You listen to what they have to say, and then you make a
2 decision, and maybe your kids may not like the decision,
3 but at least they both know they had a chance to be heard.
4 That's first grade stuff.

5 I'm not telling you that there may not come a
6 time to punish Derrick Smith. Maybe there will, maybe
7 there won't. Representative Lang asked the question,
8 "Where is Derrick Smith?" I'm going to ask the same
9 question. What's the rush? What's the rush? Is the rush
10 political, or is the rush practical? Is the rush real, or
11 is the rush imagined? This is bigger than Derrick Smith.
12 This is about whether you are going to stand up for the
13 people in this state and as a group say, "You know what?
14 We don't have enough information yet, so we're not going to
15 make a decision. But we will make it when we get it." I
16 think that response would satisfy anyone in this room and
17 the people in your district. We have some grave concerns
18 about the allegations. They trouble us. We don't like the
19 fact that somebody may have taken some money. We don't
20 like somebody even being accused of taking some money, but
21 you know what? We don't have all of the evidence, and in
22 America, what we're going to do is give you a chance to put
23 the information out there and then decide, and that's our
24 rule. That's what we do here in America. That's what we

1 do in Illinois, as opposed to what people do in Russia or
2 China. It's real convenient to look across the ocean and
3 tell them that their systems are wrong, that they gave in
4 to human rights abuses. But when it gets a little closer
5 to home, all the sudden everybody is silent.

6 I'm just asking for you to do the right thing
7 on behalf of the Representative, which is to hear all of
8 the evidence and decide, and I would submit at this point
9 in time, other than some allegations by an FBI agent, you
10 have none.

11 Thank you.

12 CHAIRPERSON CURRIE: Thank you, Mr. Henderson.

13 Questions from the panel? Representative
14 Mathias?

15 REPRESENTATIVE MATHIAS: Mr. Henderson, I know
16 you've asked for delays and, of course, the ruling is the
17 ruling. But let me ask you this question. And I am not
18 sure there is a trial date actually scheduled next year or
19 if there -- is there a set date for the trial at this
20 point?

21 MR. HENDERSON: There is no trial date set.
22 However, I would anticipate that the case will go to trial
23 next year.

24 REPRESENTATIVE MATHIAS: So let me ask you

1 this: If we delayed this for 30 days, if we delayed this
2 for 60 days, if we delayed this for 6 months, if we delayed
3 this for any time from now, and the trial starts, would
4 Representative Smith be here to answer the allegations?

5 MR. HENDERSON: I have two responses. One is,
6 I can't tell you, but the reason we asked for the delay --
7 the delay is not tied to the trial. The trial and this
8 proceeding are separate. What's overlapping is, the
9 evidence that supports Representative Smith is also tied up
10 in the Federal Court, and so what we have done repeatedly,
11 and as recently as yesterday, is asked the Government and
12 the judge to release information, and our position is and
13 has been all along, if the case is so clearcut, let the
14 information out. If everything is cut and dry, let's put
15 it on the table. Let's let the people here in the House
16 have it and then decide.

17 REPRESENTATIVE MATHIAS: But, on the other
18 hand, the informant, the FBI agent, none of them -- they're
19 all very important, obviously, in a criminal proceeding.
20 The person -- in the sense -- if you talk about the Best
21 Evidence Rule, isn't the best evidence Mr. Smith being
22 here, saying, "I didn't do this. Ask me whatever questions
23 you want. I'm going to tell you the truth." And, quite
24 frankly, if he sat here today and said those things and I

1 believed him based on his demeanor and other things that
2 attorneys understand, that I'm sure would be explained -- I
3 mean, everybody would understand on this committee, maybe
4 we wouldn't be hard pressed to mete out a punishment, if we
5 felt he was telling the truth. But he isn't here, and I
6 think there is a point to be said that this is not a
7 criminal trial. We're not here to judge whether the
8 informant is truthful or not, because the informant, even
9 if he was here, I may not believe him, and I may not
10 believe the FBI agent. I'm here to determine whether I
11 believe Representative Smith. I think that's part of our
12 duty.

13 I mean, when you say, "You are only hearing
14 half the truth," isn't the fact that we're only hearing
15 half the evidence or any evidence is because Representative
16 Smith is not here to tell us what actually happened?
17 Because he -- yes, there were only certain people in that
18 situation that know, but he's the best one that knows, and
19 he -- and, obviously, if this was a criminal trial, I
20 wouldn't be saying these things, because there's certain
21 standards in a criminal trial. This is not a standard.
22 People make choices. People make choices to say, "Well,
23 what's more important in my life? Is it my seat or my
24 voracity or whatever, or me being found guilty in a

1 criminal trial?" And we have to make those choices, and I
2 appreciate those choices, and maybe if I was in that
3 situation, I might say, "Hey, going to jail is very
4 important to me. So, therefore, I'm not going to say
5 anything, because my attorney rightfully tells me not to."
6 But we're not judging all of these other people. We're
7 only judging Representative Smith, and don't you think --
8 do we have that right to say, well, you know, the fact that
9 he's not here, we can draw that inference, because he does
10 have the truth and could tell us that? Do you think we do
11 have the right to determine punishment based on the fact
12 that he's not here?

13 MR. HENDERSON: And my response to that is,
14 just because you have the right to do it doesn't make it
15 the right thing to do.

16 REPRESENTATIVE MATHIAS: I understand what
17 you're saying, but another thing, like I said, is if he
18 came here and said, "I didn't do it," then maybe I would
19 say to the -- to our Managers, "Well, okay. Now you better
20 produce some more. Now it's just your word against his
21 word, and why should I believe your allegations more than
22 what he says?" But, obviously, without hearing his
23 statements, how can I draw any other conclusion than what
24 the Managers say are true?

1 MR. HENDERSON: And my response to you is
2 two-fold. Number one, there are men sitting in prison in
3 downstate Illinois who told you they didn't do it and
4 people didn't believe them, and it turned out it wasn't
5 true. There is no guarantee that if Representative Smith
6 sat here and said, "I'm not guilty, I did not do what was
7 alleged" that you would necessarily believe him. And so,
8 yes, that is a decision that he's made.

9 The other thing is that it is important to
10 note, again, he has a criminal charge leveled against the
11 Representative, and he has denied the core allegations of
12 the criminal charge and pled not guilty, and so it is --
13 again, I made reference earlier to giving -- I go back in
14 the 1960's. You give people a right to vote and then you
15 take it away from them, and so it's not a real vote.
16 Either he has a right that is afforded us in the United
17 States Constitution to remain silent when you're being
18 faced with a criminal trial, or you don't, and what I would
19 say is -- everyone would respond differently, but I think
20 that given -- and certainly are able to draw an adverse
21 inference from his failure to appear today, although he has
22 been here on prior times, but his failure to appear,
23 combined with everything else -- which is nothing. It's
24 his failure to appear plus allegations. That falls

1 markedly short of asking that someone be expelled from the
2 House. I don't even think that -- it would be our position
3 that you don't have enough information to determine whether
4 you should discipline him, much less what discipline should
5 be meted out. You don't have enough information, and I
6 would also say in the context of the rules, when you have
7 someone like the Representative, who has tried to get the
8 information -- so maybe the rule is, if we have someone who
9 is accused of wrongdoing and they try to get the
10 information and we know that they have made a good faith
11 effort to bring the information, to put it in front of us,
12 we'll slow down on that one. But when someone hasn't made
13 the effort to get the information, then we're going to
14 speed up.

15 And so what you know in this case is the
16 Representative has been fighting tooth and nail to get all
17 of the information out. We don't try to get the
18 information out if they're afraid of it. People who are
19 afraid of the information wouldn't try to get it out. He
20 has tried to get it out.

21 REPRESENTATIV MATHIAS: I understand your
22 point, but we heard for a long time from Rod Blagojevich
23 that when the tapes are released -- anyway, I'm digressing.

24 I think we do have the right on this

1 committee, and that's what we're going to deliberate over,
2 is what we've heard and what we feel is sufficient and
3 whether if we feel it's sufficient to mete out punishment
4 and what that punishment would be, and I still believe that
5 the best evidence is the person that's the member, because
6 it's really the member that -- it's his conduct that
7 we're -- that's come into question here, not the conduct of
8 the FBI agent, the conduct of the informant. It's the
9 conduct of the member and his ability to defend his own
10 conduct. I have no further questions.

11 MR. HENDERSON: I would respond, if I may,
12 that it should be conduct in the context of the
13 circumstances. You can't strip out and separate -- at
14 least we argue that you can't strip out the conduct without
15 the -- putting in the context. That's like taking Mona
16 Lisa without no background. That's connected. They're one
17 and the same, and what we're saying is, the context is the
18 facts, and you need the facts. We have to put everything
19 in context, and you don't have that.

20 CHAIRPERSON CURRIE: Representative Connelly?

21 REPRESENTATIVE CONNELLY: Thank you, Madam
22 Chair, and thank you, Counsel, regarding the Mona Lisa. I
23 saw it in college, and it's really small, so it's not
24 really that much to write home about.

1 I have a couple of questions. We've heard
2 tapes mentioned often. I take it you've heard the tapes
3 that are mentioned in the affidavit.

4 MR. HENDERSON: We have been given access to
5 the tapes. We don't have all of the tapes. We heard some
6 of the tapes that have been given to us. We haven't heard
7 all of them, because there's a lot of information that we
8 have been given, we just got a few weeks ago. So we have
9 not been through all of it, and there is still information
10 that we have not received.

11 REPRESENTATIVE CONNELLY: But have you
12 listened to the tapes that make up the probable cause
13 affidavit?

14 MR. HENDERSON: We have not had an opportunity
15 to listen to all of the tapes. I'm not sure. I have not
16 personally listened to them. We have people listening to
17 them.

18 REPRESENTATIVE CONNELLY: A number of the
19 tapes -- or the transcript indicates your client making
20 comments on these tapes. Do you dispute that your client
21 is on these tapes?

22 MR. HENDERSON: What I'm going to tell you
23 right now is that we're not in a position to admit or deny,
24 because we haven't gotten that far in the proceeding. We

1 would sit with him and go over each and every one and say,
2 "Hey, is this you? Is this you? Did you say this?" Some
3 tapes are inaudible. "No, I didn't say that". What you
4 have is a summary of what is supposedly on some tapes, not
5 all tapes, by an FBI agent. That is not something that was
6 prepared by the Representative.

7 REPRESENTATIVE CONNELLY: Okay. Here's the
8 problem we have, along the lines that Representative
9 Mathias brought up. Call 123, it indicates, "I don't want
10 no trace of it." This is allegedly Representative Smith.
11 "Yeah, I don't want no trace of it." As a member of the
12 Illinois House of Representatives who just had to file the
13 (unintelligible) for all of our activities, I want to know
14 what it means by "I don't want a trace of it," because we
15 live in a very transparent world. So he would be the one
16 who would have to answer that for us.

17 Secondly -- and I'm not asking you to
18 comment. I'm just trying to explain. Five, two and seven
19 stacks? I have trouble -- I'm having a very difficult
20 time. I'd like to hear Derrick Smith tell us what he
21 refers to as seven stacks and five, two. And I'll leave it
22 with that. I don't want to ask you to stipulate to
23 anything.

24 MR. HENDERSON: Our response to that is, that

1 is why we objected to that document being used for any
2 purpose, because once it's admitted, the concern is that
3 people will start reading it and taking the things in there
4 as being true as opposed to being allegations. So, we
5 objected, object all the way through for that document to
6 being entered or considered, for the very reason that I
7 think is becoming apparent, is that people read it and say
8 "Oh, well, this is what happened," when, in fact, they're
9 just allegations.

10 REPRESENTATIVE CONNELLY: Now I want to shift
11 the focus to CS-1. Tell us who CS-1 is.

12 MR. HENDERSON: I've not met him. I'm looking
13 forward to it. And that's about all I can tell you. We
14 have his criminal history. We have some of it. We don't
15 have all of it. What we know is, it's somebody that has
16 been on the FBI payroll, going after other public
17 officials, based on the information that he's put there.
18 For all we know, many of you may have met him. We just
19 don't know.

20 REPRESENTATIVE CONNELLY: You would agree,
21 from what is submitted, he's not a good guy.

22 MR. HENDERSON: That's the Government saying
23 that.

24 REPRESENTATIVE CONNELLY: Well, you

1 actually -- with all due respect, I think you've done a
2 pretty good job of casting a pall on this man or woman,
3 depending on who this person is. Here's my trouble: I've
4 got an affidavit showing 150 phone calls over a short
5 period of time between Derrick Smith and CS-1. So, for
6 every time you talk about how rotten a guy this is and he's
7 a con man, I'm troubled by the fact that he's having 150
8 phone calls, including on session days in the Illinois
9 House of Representatives.

10 And, third, I want to make this abundantly
11 clear. I really am offended by your comment about how --
12 why Republicans are here. I am a Republican. This is not
13 a partisan issue at all. If you read John Kass today in
14 the Tribune, he makes it perfectly clear that it's a
15 bipartisan matter in the state of Illinois. I don't want
16 to be here. I can almost assure you no one in this room
17 wants to be here. This isn't an enjoyable experience.
18 I've had a wonderful time representing the 48th District in
19 DuPage County. This is not an enjoyable experience. So, I
20 really hope you don't repeat that, because it's not --
21 Republicans aren't up here because they want to be here.
22 We have been asked to be here by our leader and by the
23 Speaker of the House. So, I just want to let you know that
24 I didn't really take kindly to that.

1 MR. HENDERSON: Representative, with all due
2 respect -- and I do mean this with all due respect -- I
3 would be naive and also not forthright in representing
4 Representative if we did not acknowledge publicly that
5 there is the impression that there is some element of
6 partisan politics involved in it. The Representative does
7 not have the ability to look into anyone's heart and get
8 into anyone's mind. However, there have been multiple
9 people who have approached us. We've read it and so,
10 therefore, the truth is not always something that anyone
11 reacts to in the same way. So, it's not meant with any
12 malice, other than it's an observation that has been made
13 by many people and so, therefore, in this context, it was
14 said.

15 REPRESENTATIVE CONNELLY: I appreciate your
16 comments. That's all I have.

17 CHAIRPERSON CURRIE: Representative Rose?

18 REPRESENTATIVE ROSE: Counsel, previously you
19 had referenced a series of call numbers, starting with, I
20 believe, 31 and ending at 153. There has been no
21 indication as to why you sought so vigorously to introduce
22 those. Those are call numbers. It reminds me a little bit
23 about a (inaudible) at a trial on TV once, and nothing was
24 ever said again, other than leaving this big doubt about

1 it.

2 MR. HENDERSON: Let me respond to it now, and
3 before I respond, I would like to reiterate that it's
4 difficult for us, as lawyers for the Representative, to
5 walk a line between trying to be as forthright and as open
6 and candid as we can here, while simultaneously we don't
7 compromise the representation that we have on behalf of the
8 Representative in another setting up the street in the
9 Federal Courthouse, and, thirdly, making sure we don't run
10 afoul of the order entered by a Federal judge, the
11 Protective Order, which limits what we can and cannot say.
12 So that's not an easy line to walk.

13 However, what I would say to you -- and,
14 again, with some trepidation, but I think it bears the risk
15 of saying -- when we say that you want all of the
16 information and not just some of it, I would disagree with
17 the Representative's characterization that 153 phone calls
18 took place over a short period of time. Rather, what I
19 would say is that if someone calls you over and over and
20 over and over and over again -- again, none of us are
21 sitting free. None of us are perfect. What I would say to
22 you, that people who are inclined to do something wrong
23 don't need any help. People who are going to do something
24 wrong are going to do so on their own volition and don't

1 need to be pushed or prodded or persuaded. So, when I
2 indicate to you that it's important to know the entire
3 story, I think there's a difference between having a nun
4 say that someone did something wrong versus a con man. We
5 think there's a difference. We think there's a difference
6 between something -- that if something happened wrong on a
7 day versus if something happened over 30 days or 60 days or
8 90 days or 120 days, maybe it makes a difference to some
9 people. To others it may not.

10 But whether it makes a difference to you or
11 not, the point is that there is a whole lot of information.
12 If I had to guess, you have probably one percent of the
13 information and the other 99 percent you don't have. And
14 so, in response to your question, it was just to highlight,
15 even by the Government's version, the length of time and
16 the number of contacts that there were in something that
17 appears to be -- in the context I was trying -- again, I
18 speak to the Mona Lisa. You have to have the background,
19 the context, a whole lot of phone calls.

20 CHAIRPERSON CURRIE: Representative Nybo --
21 I'm sorry. Representative Rose?

22 REPRESENTATIVE ROSE: Just one last question.
23 I think you pretty well answered it before, but you would
24 agree with counsel that this is not -- we're not bound by

1 any beyond-reasonable-doubt standard or anything like that
2 in a criminal courtroom at this hearing. I mean, the State
3 Constitution is pretty clear, this is our proceeding.

4 MR. HENDERSON: Well, I agree and I disagree.
5 I disagree in the sense that counsel made reference to it.
6 The Rules of Evidence are come into play, which makes sure
7 that whatever is entered is entered within the confines of
8 criminal Rules of Evidence of the State. So, in that
9 context, there is a base level or threshold that needs to
10 be reached. So it may not be as high as what's required in
11 Federal Court, but I would also argue that it's not down on
12 the ground, like walking over a skip rope that's just down
13 on the ground and all you have to do is go over it a
14 quarter of a inch and say, "Okay, we've met our burden."
15 Where exactly that burden is, again, I think it's open to
16 interpretation, but I would think that that burden,
17 whatever it is, includes, again, hearing what you consider
18 to be the important evidence before you decide, as opposed
19 to deciding before you hear the important evidence. So, I
20 would think that would be included in the standard that you
21 have to meet before you make any decision.

22 REPRESENTATIVE ROSE: Thank you, Counsel.

23 CHAIRPERSON CURRIE: Representative Nybo?

24 REPRESENTATIVE NYBO: Thank you, Madam

1 Chairman.

2 Mr. Henderson, there are, as Representative
3 Lang pointed out, several groups of people who are
4 (inaudible), the people of the state of Illinois, the
5 constituents of Mr. Smith's, and we're balancing and
6 weighing and making our decisions on their behalf, and I
7 understand -- I don't agree, but I understand your argument
8 to us, what's the rush as to the timing. But because
9 partially it relates to the decision making and the
10 deliberation that we're going to undertake, I would like to
11 ask you -- I understand what you're saying to us, but what
12 would you say to the constituents of the 10th District who
13 have to make a decision of a different type in November's
14 election and perhaps have to do so at a time also when not
15 all of the information has been publicly disclosed? What
16 would you say to them with respect to timing, how they
17 should evaluate the decision they have to make?

18 MR. HENDERSON: I would say the same thing to
19 them, that we all should live by the same rules. And I
20 alluded to children. I think it's a first grade rule, as a
21 general rule, and there may be some exceptions, but as a
22 general rule, hear what people have to say and hear all of
23 the important information. Again, that's what I separated,
24 important versus unimportant. Too often we're ready to

1 hear that there's an allegation. Everybody is ready to put
2 John Edwards in prison or jail. Everybody is ready to put
3 Roger Clemens in jail. They put Nelson Mandela in jail.
4 They put Martin Luther King in jail. People do things that
5 are not always right. I'm speaking to a standard. No
6 matter -- there's a constant and there's a variable, and I
7 believe in this sincerely, this is not just smoke. I
8 believe sincerely that the rules should be, irrespective of
9 the outcome, that we're going to hear what's important
10 first and then decide, and I think that's just a basic
11 American principle. Sometimes that rule is going to be
12 inconvenient because it doesn't allow us to manipulate or
13 orchestrate an outcome that we want, because it means that
14 we're being paced, but I think the House does better by
15 telling everybody, "We heard about what was important and
16 then decided." Other than that, what's the rule here?
17 There's an allegation and therefore we decide?

18 CHAIRPERSON CURRIE: Representative Kosel.

19 REPRESENTATIVE KOSEL: Thank you, Madam
20 Chairman.

21 Thank you again for your comments, but I
22 cannot let the comment of Republican versus Democrat go. I
23 thoroughly believe that all 13 million people in the state
24 of Illinois deserve a House of Representatives that has

1 integrity and respect among -- from its members and has the
2 highest ethical standard. This is not about Republican and
3 Democrat. This is not about suburbs or city or downstate
4 versus anyone else. This is about the respect and
5 integrity of the House of Representatives, and it is
6 something that the people of Illinois absolutely,
7 positively deserve.

8 CHAIRPERSON CURRIE: Representative Lilly?

9 MR. HENDERSON: May I respond?

10 CHAIRPERSON CURRIE: I'm sorry.

11 Mr. Henderson.

12 MR. HENDERSON: Again, I say the same thing
13 with all due respect. I think given the magnitude of the
14 decision and the magnitude of the proceedings, we have two
15 choices. We can either be honest and be above board, or
16 put our heads in the sand, and, clearly, the question has
17 been raised that the proceedings being rushed, in part have
18 an impact on what's going to transpire in November. That
19 question is out there, and so I have the obligation to
20 either be candid or say it or not, and I think while it
21 takes more courage and fortitude to address the unspoken, I
22 do believe that there are members who are forthright and
23 upright and have good hearts and clear minds on both sides
24 of the aisle, and I would also say that I think there are

1 those who do not on both sides of the aisle.

2 CHAIRPERSON CURRIE: Representative Lilly.

3 REPRESENTATIVE LILLY: Thank you, Madam Chair
4 and Leader Currie.

5 As has been said over and over again, these
6 are not criminal proceedings, and I'm listening. I've also
7 heard you say -- and correct me if I'm wrong -- that
8 Representative Smith indicated he was not guilty.

9 MR. HENDERSON: That's correct.

10 REPRESENTATIVE LILLY: What would you say "not
11 guilty" means in these proceedings?

12 MR. HENDERSON: In these proceedings? Well,
13 since these proceedings come out of and are -- arise out or
14 are connected to the proceedings in Federal Court, I don't
15 know that you can necessarily separate them. I think one
16 grows out of the other, and so, therefore, he has a charge
17 in Federal Court. He has pled not guilty and, again, I
18 think that as I've said earlier, there's a lot of
19 information that you have yet to see that I think will have
20 a bearing on any decision that you will make. I think the
21 information that you don't know will have an impact on how
22 you see these proceedings.

23 REPRESENTATIVE LILLY: Could "not guilty" be
24 perceived as denial in these proceedings?

1 MR. HENDERSON: That would be something that
2 the Representative would have to answer. I wouldn't want
3 to answer that on his behalf.

4 REPRESENTATIVE LILLY: Do you believe that
5 Representative Smith is not guilty?

6 MR. HENDERSON: I do, and I also believe that
7 he will be exonerated.

8 REPRESENTATIVE LILLY: Thank you.

9 CHAIRPERSON CURRIE: Representative du Buclet?

10 REPRESENTATIVE DU BUCLET: Thank you, Madam
11 Chairperson.

12 Counselor, I'm going back to Representative
13 Mathias's question early on. If we had additional time,
14 six weeks, six months, whatever, would you allow
15 Representative Smith to come in and testify? I don't
16 believe you answered the question.

17 MR. HENDERSON: Most certainly. We would
18 certainly be much more -- you're asking me to speculate.
19 However, we would be much more inclined if all of the
20 information is out, because if all of the information is
21 out, it's what it is, and at that time, if he would choose
22 not to come, then I think you could draw a negative
23 inference, because you have the material and the
24 information before you. You don't have that. So it's less

1 about him appearing, although that's a part of it, and it's
2 more about getting the important information that has not
3 been released, that we tried to get released, and at that
4 point in time, when it's out, you decide what you decide.

5 CHAIRPERSON CURRIE: Representative Rose?

6 REPRESENTATIVE ROSE: Mr. Henderson, I
7 appreciate that you've been extremely forthright in the way
8 you have conducted yourself in what I know is tough
9 conditions. Your discussion a minute ago about how you're
10 under this order and that order, you're trying to walk that
11 line, I understand that, being a practitioner myself. So,
12 I appreciate your conduct in this. I want to -- a minute
13 ago you said you believed he's not guilty, and I understand
14 you believe that, and I believe you believe that, but I
15 also want to make a distinction, and I think you'll agree
16 with me, there's a difference between being not guilty
17 under the law and being innocent of an action. Would you
18 agree with that statement?

19 MR. HENDERSON: I would agree with that.

20 REPRESENTATIVE ROSE: Again, I appreciate your
21 forthrightness here today. Thank you.

22 CHAIRPERSON CURRIE: And now we have a
23 question from counsel, Mr. Ellis.

24 ATTORNEY ELLIS: Mr. Henderson, talking a lot

1 about the speed with which this has moved and you'd like
2 more time and a hundred percent of the evidence hasn't come
3 out. And I don't have a vote here, but it seems to me that
4 in some ways, your client has been handed a tremendous
5 opportunity today, because because so much evidence has
6 been withheld by the U.S. Attorney, if your client took the
7 stand and said, "I didn't take a bribe," or if he said,
8 "That's not my voice on the tape," or if he said, "That's
9 my voice on the tape; maybe I said that, but what you don't
10 know is that there were other things said before that. I
11 was tricked," whatever he might say. If he took the stand
12 and said that, Mr. Durkin and Mr. Lang would have virtually
13 no ability to impeach his testimony, because they don't
14 have any evidence to impeach it. His word would stand
15 almost uncontroverted. In many ways, it would be very much
16 to his advantage to testify because of the lack of any
17 evidence to show that it's not true, whether it would be
18 true or not. So it seems to me that strategically, if he's
19 innocent, if he didn't take a bribe, it would be inherently
20 to his advantage to come here and say that under oath, with
21 virtually no ability of anybody to contradict him.

22 MR. HENDERSON: I would respectfully disagree.
23 I think it's similar to -- you know, the SAT has a math
24 portion and a reading portion. I certainly wouldn't tell

1 anybody not to take the test without having studied both
2 portions. I wouldn't do that. So, there's information,
3 there's evidence, there's important evidence that
4 Representative Smith and I do not have access to, and as I
5 responded to the Representative earlier, I would not advise
6 anyone to come before they have had access to see all of
7 the important information, because I'm working under the
8 assumption that there is important information that would
9 exonerate him that has been withheld by the Government that
10 he doesn't have access to. And so to put him in the
11 position where he has to answer questions without knowing
12 all of the information would be similar to asking somebody
13 to sit for an SAT test and they didn't study for the
14 reading portion or didn't even know there was going to be a
15 reading portion. That's not what we would advise.

16 Now, again, reasonable minds differ, but that
17 is -- that is our perspective.

18 ATTORNEY ELLIS: How much information does he
19 need to see from the Federal Government to be able to
20 answer the question "Did you accept a \$7,000 bribe?" How
21 much evidence would basically need to be turned over from
22 Patrick Fitzgerald's office or Gary Shapiro's office before
23 he could answer that question yes or no?

24 MR. HENDERSON: Again, the answer is in the

1 context of you meting out the punishment. So, this body is
2 charged with not only determining guilt, yes or no, and
3 then sentencing and what sentence should be imposed, and so
4 the analogy is, a Federal judge, or any judge, hears all of
5 the evidence and -- everyone, for example, who is accused
6 of running a red light doesn't get convicted. One person
7 ran a red light because they were drinking. Another person
8 ran a red light because they didn't see it. Another person
9 ran a red light because they were on the way to the
10 hospital to take their wife who was about to have a baby.
11 So, all three people have engaged in the same violation,
12 but the punishment for all three is different. There may
13 be no punishment for the person who runs the red light on
14 the way to the hospital taking a baby, but right now all
15 you know is an allegation, which is, "Hey, he ran a red
16 light." You don't know everything else. So, what we're
17 encouraging you to do is to find out the facts and
18 circumstances and not, "He ran the red light. He's going
19 to jail." But that's not how the system works, and that's
20 not how they system should work. "Why did you run the red
21 light?" "I was taking my wife to the hospital because she
22 was having a baby." "My brother was in the car and he was
23 having an epileptic seizure."

24 ATTORNEY ELLIS: Mr. Henderson, we're not

1 talking about going to jail here. We're not talking about
2 saying, "There's allegations against you; therefore, you're
3 out." We're saying, "There's allegations against you; what
4 do you say to this, Representative?" And his answer is, "I
5 have nothing to say."

6 MR. HENDERSON: What you are doing is talking
7 about meting out discipline.

8 ATTORNEY ELLIS: That's the second question.
9 The first question is as to fault.

10 MR. HENDERSON: Well, the first question is
11 should he be disciplined, and the second question is, if
12 so, what? The House Managers have recommended not only
13 discipline but the most severe form of discipline, which is
14 expulsion. You don't know what transpired, so you've got
15 two threshold questions here. They're recommending
16 discipline and the most severe of it, and you don't have
17 the information that would support the most severe of it,
18 and I also argue or contend that you don't have information
19 to support any form, not right now.

20 CHAIRPERSON CURRIE: Representative Mathias?

21 REPRESENTATIVE MATHIAS: Again, to follow up
22 what I said earlier and Representative (sic) Ellis said,
23 who is still the best person to tell us that information?
24 If Representative Smith came here today and said, "You

1 know, you heard the tapes. Yeah, I said those things, but
2 did you know that this other guy was in the back seat with
3 a gun to my head and said 'Here's the script, you read
4 it'?" Or he said, you know, it was -- "I did it. I had
5 a -- I mean, my mother was in the hospital, dying, and I
6 wasn't paying attention to what I was saying. I have all
7 these things on my mind. Please give me some leniency. It
8 will never happen again." I don't know what he would have
9 said. None of us will know what happened, except for
10 Representative Smith, what he was feeling, what caused --
11 to not deny the allegations by not being here, I don't
12 know. I would love to hear him say, "Hey, I need -- you
13 know, I made a mistake. Please forgive me." "I didn't
14 make a mistake. My hand was tied behind my back and I was
15 forced to do it." And, again, just like some of the
16 allegations were said -- if he said, you know, "I was never
17 inclined to do this, the guy called me 50 times. Finally
18 just to get him off my back, I said okay, okay, I'll do
19 it." But he could tell us that, and he hasn't and, again,
20 as I said, it's his choice. His choice is the saying "I'm
21 better off in the long run to take my attorney's advice,
22 because it will help me in the criminal case, than to say
23 these things and be subject to cross-examination in this
24 room," which could be used against him, and I have no

1 problem with that as far as the criminal trial. But his
2 choice was to say, "Well, my criminal trial is more
3 important than the House of Representatives," and maybe it
4 should be. But on the other hand, we have a responsibility
5 to look at the evidence as presented and look at the
6 denials as presented and look at the lack of denials as
7 presented and take that all into consideration and, again,
8 he's the best person to tell us. Like I said, if the other
9 witnesses say things, they're not as important as what
10 Representative Smith can tell us. He's the only one that
11 could tell us the whole truth and nothing but the truth
12 and, he's decided not to do that. For whatever reason, it
13 still is an affront to me and to this House of
14 Representatives, and that's just my own opinion.

15 CHAIRPERSON CURRIE: Representative Riley?

16 MR. HENDERSON: May I respond?

17 CHAIRPERSON CURRIE: I don't think it was a
18 question. You may, if you have a very brief response. I
19 think it was a comment.

20 MR. HENDERSON: Sometime -- I would put it in
21 context and use the word "choice", and since I have to
22 respond quickly, the best example that comes to mind, if
23 somebody gives you a choice between being shot or hanging,
24 yeah, I guess that's the choice. Sometimes you don't have

1 two choices. So, his choices under the rules are to come
2 and speak to you and jeopardize his Fifth Amendment Rights,
3 or not come and then run the risk of people drawing
4 negative inferences and, again, he (unintelligible) he
5 wanted to be here and has indicated multiple times that he
6 wanted to be here and has actually appeared in Springfield
7 on two occasions. So, based on what he said down in
8 Springfield on whatever times he was there for now will
9 suffice.

10 CHAIRPERSON CURRIE: Representative Riley?

11 MR. RILEY: Thank you. You know, we --
12 because it is difficult -- we've been going back and forth,
13 all of us, between things that are germane to our
14 responsibilities to discipline a member, which don't rise
15 to a criminal trial, and behavior at criminal trials. I
16 think one thing it shows is it's a very difficult
17 proceeding. But because we do have that special right and
18 we're not bound by the same things we're bound by in a
19 criminal trial, what would you, Attorney Henderson -- first
20 of all, what is your characterization of bringing this
21 favor to the body, to the House.

22 MR. HENDERSON: I'm sorry. I don't understand
23 the question. Bringing this favor.

24 REPRESENTATIVE RILEY: Bringing this favor to

1 the House based on one's actions. Would you say -- how
2 would you characterize what bringing this favor would
3 constitute?

4 MR. HENDERSON: What favor? I'm sorry.

5 MR. RILEY: Bringing this favor, bringing --
6 embarrassing one's self, you know, those kinds of things in
7 terms of one's behavior, to the House of Representative?
8 What would constitute that in your mind?

9 MR. HENDERSON: I can only bring my experience
10 as being counsel to the House of Representatives. There's
11 an entire gambit that of things that members might do.
12 Representative Rangel was accused of not paying taxes,
13 (unintelligible) with the caucus, I think. Dan
14 Rostenkowski had some issues. (Unintelligible) There's a
15 whole array of things that people are accused of, but I
16 think what I would encourage you to pay attention
17 (unintelligible) are dealing with ethical issues. I do
18 think that there may be some members from the Congressional
19 delegation from the State of Illinois who currently have
20 issues before the United States House of Representatives,
21 and it has not happened with the speed, and what I would
22 say, if anything, is the ethical process in Washington
23 appears to be deliberate and fair, meaning that it takes a
24 certain amount of time. I would encourage this body to

1 take a page from what's happening in Washington, at least
2 in those respects.

3 REPRESENTATIVE RILEY: They're two different
4 bodies. I'm just saying in terms -- here's what I'm trying
5 to say. I'm trying to get from you what you would perceive
6 to be those things that would arise towards eliciting some
7 sort of punishment or sanction against a member. You have
8 read the rules and, of course, you know the Constitution.
9 So, because you've talked about we don't have any
10 particular standards -- I might even agree with you on
11 that. But there are levels of punishment that could have
12 been meted out to the Representative. Expulsion is just
13 one, censorship or being censored, and reprimand. So, I'm
14 seeking an idea of some characterizations from your part
15 about those things that could rise to meting out those kind
16 of punishment.

17 MR. HENDERSON: I think almost anything that's
18 done to bring disrepute to the House could rise to the
19 disciplinary levels. I think the gambit of things is
20 unlimited. However, what I would say to that is before you
21 mete out punishment, you have to know what the crime is,
22 before there is going to be punishment, and right now,
23 there has been no determination that a crime has been
24 committed, and you don't have the evidence, and you don't

1 have the information. So my question, again, is how do you
2 mete out punishment when you don't know what the crime is
3 that has been committed and you don't have the information
4 in the context of this House?

5 REPRESENTATIVE RILEY: Thank you.

6 CHAIRPERSON CURRIE: Thank you, Mr. Henderson.

7 The House Manager has indicated interest in
8 doing a rebuttal briefly. So, the Chair will permit that
9 to happen.

10 REPRESENTATIVE LANG: Thank you. It will be
11 very brief.

12 Mr. Henderson spent a significant amount of
13 time on the affidavit, and he spent most of his time on the
14 person who signed the affidavit, but at no time did he deny
15 the allegations in that affidavit. So it doesn't matter to
16 me who signed the affidavit. No one is denying the
17 allegations in the affidavit.

18 And, finally, I would say this out of
19 Mr. Henderson's own mouth. There is never a bad time to
20 tell the truth. Representative Smith, did you accept the
21 \$7,000 bribe? Listen to the silence.

22 CHAIRPERSON CURRIE: Are there any questions
23 of the House Managers.

24 If not, then I think that the committee is

1 prepared to enter the deliberative phase of our program, so
2 we will recess the Committee and ask the members to retire
3 into deliberative mode. We will reconvene later this
4 afternoon. When we have reached a decision, we will then
5 go forward with that decision. If not, we will recess to
6 the call of the Chair, and we will meet again, possibly as
7 soon as tomorrow. It would be helpful if the Managers and
8 counsel for Mr. Smith would make sure that David Ellis has
9 your contact information. We don't want to do anything
10 without you being here. And as for the rest of the people
11 who are around, I'm sure there will be an easy way for them
12 to find out what's happening and when. So --

13 REPRESENTATIVE LANG: Madam Chair, so we'll
14 all get a call from somebody to return?

15 CHAIRPERSON CURRIE: As long as you'll give
16 your telephone number to the relevant person, and we're
17 going to try to give as much notice as we can, not only to
18 you three, but obviously to the press and the public. So
19 the Committee will recess to the call of the Chair.

20 (Recess to deliberate)

21 CHAIRPERSON CURRIE: The Committee will come
22 back to order, and I note the presence of the House
23 Managers and Mr. Henderson.

24 The Committee is prepared to vote on the

1 Charge and Specification. We'll first vote on the
2 Specifications of the Charge. Is there leave of the
3 Committee to vote on the two together?

4 Leave is granted. And so the question is, as
5 to the Charge and Specifications against the Respondent, do
6 you find the Respondent at fault?

7 Clerk, please call the roll.

8 CLERK: Currie?

9 REPRESENTATIVE CURRIE: Aye.

10 CLERK: Rose?

11 REPRESENTATIVE ROSE: Yes.

12 CLERK: Acevedo?

13 REPRESENTATIVE ACEVEDO: Yes.

14 CLERK: Connelly?

15 REPRESENTATIVE CONNELLY: Yes.

16 CLERK: du Blucet?

17 REPRESENTATIVE du BLUCET: Yes.

18 CLERK: Harris?

19 REPRESENTATIVE HARRIS: Yes.

20 CLERK: Kosel?

21 REPRESENTATIVE KOSEL: Yes.

22 CLERK: Lilly?

23 REPRESENTATIVE LILLY: Aye.

24 CLERK: Mathias?

1 REPRESENTATIVE MATHIAS: Yes.

2 CLERK: Nybo?

3 REPRESENTATIVE NYBO: Yes.

4 CLERK: Riley?

5 REPRESENTATIVE RILEY: Yes.

6 CLERK: Sosnowski?

7 REPRESENTATIVE SOSNOWSKI: Yes.

8 CHAIRPERSON CURRIE: Twelve voted yes. The
9 majority of the members have found the Respondent to be at
10 fault.

11 We now will proceed to consider a penalty.
12 Representative Harris.

13 MR. HARRIS: Thank you, Madam Chairman. I
14 have a motion.

15 CHAIRPERSON CURRIE: State your motion.

16 MR. HARRIS: I move for the penalty of
17 expulsion.

18 CHAIRPERSON CURRIE: And is there any
19 discussion?

20 If not, on that motion, will the Clerk please
21 call the roll?

22 CLERK: Currie?

23 REPRESENTATIVE CURRIE: Aye.

24 CLERK: Rose?

1 REPRESENTATIVE ROSE: Yes.

2 CLERK: Acevedo?

3 REPRESENTATIVE ACEVEDO: Aye.

4 CLERK: Connelly?

5 REPRESENTATIVE CONNELLY: Yes.

6 CLERK: du Blucet?

7 REPRESENTATIVE du BLUCET: Yes.

8 CLERK: Harris?

9 REPRESENTATIVE HARRIS: Yes.

10 CLERK: Kosel?

11 REPRESENTATIVE KOSEL: Yes.

12 CLERK: Lilly?

13 REPRESENTATIVE LILLY: Aye.

14 CLERK: Mathias?

15 REPRESENTATIVE MATHIAS: Yes.

16 CLERK: Nybo?

17 REPRESENTATIVE NYBO: Yes.

18 CLERK: Riley?

19 REPRESENTATIVE RILEY: Nay.

20 CLERK: Sosnowski?

21 REPRESENTATIVE SOSNOWSKI: Yes.

22 CHAIRPERSON CURRIE: Thank you. On the motion

23 recommending expulsion as the penalty, the votes are eleven

24 "yes" and one "no". So, the majority of the members have

1 concurred in the penalty recommended by the House Managers,
2 the recommendation of expulsion.

3 As everybody in the room knows, this is not
4 the final word. There will be a meeting of the full House
5 of Representatives, and it will require a two-thirds vote
6 among the members for the penalty to apply.

7 I would just like to say for the record that
8 it's with a heavy heart that we take this action today. I
9 think I speak for each and every one of us when I say that
10 it is a sad day for us and a very sad day for the Illinois
11 House of Representatives. Not one of us takes any joy in
12 sitting in judgment of our colleagues.

13 We also say that we appreciate the work of the
14 House Managers and of Mr. Smith's counsel, Victor
15 Henderson. Appreciate, too, the fine legal help we had
16 from Andrew and from the Committee Counsel, David Ellis,
17 and, of course, I especially appreciate the hard work and
18 the difficult decisions that each of the members of this
19 committee has had to sit in today.

20 So, at this point, our business for the day is
21 finished. We will produce a final report. You will have a
22 chance to -- for everybody to look at that report, that
23 embodies the findings and the resolution that the House
24 will consider.

1 So, the Chair is prepared to adjourn, if any
2 members have anything to add. Mr. Rose.

3 REPRESENTATIVE ROSE: Thank you. I want to
4 echo your comments. There was, I think, a very vibrant
5 discussion based upon the arguments presented by both
6 sides, and we appreciate the hard work that was put in by
7 Counsel Henderson, as well as the House, Managers and I
8 want to personally echo the comments with respect to our
9 internal staffs, who spent literally night and day on this
10 for some time now. Our job is not done with respect to the
11 forthcoming draft opinion, but, again, as the Chairwoman
12 stated, we are not the final arbitrator. It will be
13 presented to the full House to come.

14 CHAIRPERSON CURRIE: No further business to
15 come before the Committee, the Committee stands adjourned.

16

17 END TIME: 3:52

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CERTIFICATE OF REPORTER

I, KAREN K. KEIM, RPR, CRR, a Certified Court Reporter, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was 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 this deposition was 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.

KAREN K. KEIM
CRR, RPR, CSR-IL, CRR-MO

A	39:6 105:15 absolutely 105:6 abundantly 7:9 98:10 abuse 69:20 72:1 abused 9:17 10:3 67:15 abuses 88:4 accept 27:6 35:10,20 57:20 57:22 58:6,12 59:4 110:20 118:20 accepted 9:20 14:12 49:12 accepting 11:1 26:12 57:14 access 95:4 110:4,6,10 according 40:4 40:15 56:9 Accordingly 73:9 accurate 6:3 27:4 46:19,21 47:3 48:7 49:14 53:12 54:2,7,19 55:8 56:5 accused 21:14 59:19 66:12 71:18 76:10 84:3 87:20 93:9 111:5 116:12,15 accuser 19:17 accuses 66:16 Acevedo 2:3 3:10,11 120:12 120:13 122:2,3 acknowledge 99:4 acknowledged 55:17 across 84:2 88:2 act 9:19 11:2 12:13 58:22 59:21,23 66:11	66:13 76:9 action 11:6 73:3 79:22 108:17 123:8 125:11 125:14 actions 9:11,14 11:14 72:12 73:2,2 116:1 activities 96:13 acts 10:5 13:2 actually 9:1 40:6 49:8,9 67:13 75:7,13 77:16 88:18 90:16 98:1 115:6 Adam 18:5 add 8:2 75:4 76:5 124:2 addition 6:8 7:3 additional 19:24 20:1,5,6 107:13 address 105:21 addressed 27:12 51:16 addressing 55:5 adhere 16:9 adjourn 124:1 adjourned 124:15 admission 48:17 admit 27:21 29:3 95:23 admitted 20:11 36:24 37:5 47:12,14 48:21 60:20 61:4 97:2 adopted 4:21 advance 78:13 78:13 advantage 109:16,20 adverse 68:20 92:20 advice 45:12,14 113:21	advise 110:5,15 advised 45:13 advocate 15:1 affected 6:7 affidavit 5:14 6:4 26:2 37:23 39:5,8,11,13 39:13,15 40:3 40:12,20 46:2 46:6,7,9,11,16 48:21 49:8 56:7 60:19,20 60:21 61:1,3,5 62:6,8 65:24 66:2,4 70:18 70:20 71:3 77:14,17 78:4 95:3,13 98:4 118:13,14,15 118:16,17 affidavits 45:23 58:4 affirm 13:7 afforded 16:17 62:2 92:16 affront 114:13 afoul 100:10 afraid 83:1,15 93:18,19 after 4:13 14:12 25:17 59:9 68:12 83:24 97:16 afternoon 119:4 again 7:18 17:1 17:19 20:18 22:14 24:21 31:9,12 32:14 32:15,17 39:12 41:22 42:22 44:3 47:13 49:5 50:14,17 52:16 53:4,10 55:11,23 82:7 92:10,13 99:24 100:14,20,20 101:17 102:15 102:17 103:23	104:21 105:12 106:5,17 108:20 110:16 110:24 112:21 113:8,15,19 114:7 115:4 118:1 119:6 124:11 against 17:13 19:11 21:15 49:21 68:15,21 69:7,8,12 91:20 92:10 112:2,3 113:24 117:7 120:5 agent 5:14 6:9 8:4,10,19 19:18 20:11,13 39:6 46:24 53:20,22,23 62:15 81:18 82:1 83:7 88:9 89:18 90:10 94:8 96:5 agents 54:9 ago 13:5 14:15 19:1 21:12 37:17 51:17 76:23 80:16 95:8 108:9,13 agree 5:19 33:21 46:18 65:4 77:15 79:9 97:20 101:24 102:4 103:7 108:15,18,19 117:10 agreed 10:13 33:20 44:18 agreeing 46:20 agreement 6:2 ahead 15:2 aisle 105:24 106:1 Al 2:7 Alaska 21:16 allegation 61:12 70:21 71:12
----------	--	--	--	--

<p>84:21,22 104:1 104:17 111:15 allegations 5:24 19:14 36:18 50:19 58:4 60:3 70:1,17 74:17 75:24 76:1,3,17 81:18 83:11 87:18 88:9 89:4 91:21 92:11,24 97:4 97:9 112:2,3 113:11,16 118:15,17 alleged 12:21 13:2 21:15 50:21 61:6,8 69:19 81:24 84:18 92:7 allegedly 77:14 96:10 alleges 84:17 allow 16:5 21:19 52:12 104:12 107:14 allowed 12:2 13:22,24 24:17 29:1 allows 77:5,6 alluded 79:19 103:20 allusion 73:24 85:8 allusions 73:22 almost 20:14 66:13 98:16 109:15 117:17 alone 68:3 along 9:8 36:14 78:1 89:13 96:8 already 26:17 31:17 36:23,24 41:16 43:16 86:6 although 8:3 49:15 50:14</p>	<p>79:9 92:21 108:1 always 73:22 79:9 84:15 99:10 104:5 Amendment 12:4,7 14:1 19:10 63:16 115:2 America 61:9 87:22,24 American 18:1 104:11 among 59:2 66:7 69:10,19 71:11 71:12 72:5 105:1 123:6 amount 61:24 116:24 118:12 ample 58:2 analogy 111:4 analysis 74:13 Andrew 123:16 another 32:9,14 32:15 34:12,16 37:11 45:1 55:11 91:17 100:8 111:7,8 answer 38:7 47:6 50:13,15 55:10,15 58:5 60:3,15,16 62:7 74:17 81:9,10 89:4 96:16 107:2,3 110:11,20,23 110:24 112:4 answered 31:24 51:12 68:1 70:10 101:23 107:16 answers 12:7 54:23 60:6 70:13 anticipate 73:6 88:22 anybody 8:7 57:16 109:21</p>	<p>110:1 anyone 52:14,15 87:16 99:10 105:4 110:6 anyone's 99:7,8 anything 4:18 8:21 49:16,18 49:20 50:1 56:13 60:19 66:17 71:2,3 76:9 79:14 81:21 91:5 96:23 102:1 116:22 117:17 119:9 124:2 anyway 22:11 93:23 apparent 47:18 97:7 appear 8:4,15 12:3 14:2 28:15 29:3 38:6 42:23,23 45:12,13,13 60:8 66:11 68:23 70:17 92:21,22,24 appeared 82:16 115:6 appearing 108:1 appears 7:14 50:18 101:17 116:23 125:6 applauds 83:18 application 33:8 33:8 57:12 apply 16:8 23:18 30:3 123:6 appointed 15:5 29:11,14 60:1 72:3 appreciate 42:17 91:2 99:15 108:7,12 108:20 123:13 123:15,17 124:6</p>	<p>approached 99:9 appropriate 64:17 65:23 68:3 69:15 appropriately 69:18 approval 33:23 approving 30:7 approximately 39:17 40:9,14 40:17 41:1 April 24:15 27:12 37:1 38:22 39:7,7 48:13 arbitrator 124:12 areas 48:5 argue 94:14 102:11 112:18 argument 41:8 41:17 42:19 43:12 44:10 50:23 51:8 75:15 79:2,16 86:4 103:7 arguments 4:9 36:21 45:17 55:1 56:15,15 124:5 arise 106:13 117:6 Arizona 68:14 around 119:11 array 116:15 arrest 39:9,16 40:4 arrested 9:21 20:15 25:17 arrests 40:9,10 Article 77:2 Asians 63:11 aside 57:21 58:3 71:16 asked 14:5 19:24 19:24 20:5 21:21 22:4,6,9</p>	<p>31:16 33:12 45:9 52:11 55:12,18 57:20 70:15,17 76:7 77:13 83:6 87:7 88:16 89:6,11 98:22 asking 5:6 6:17 12:11 21:18 22:1 43:22 44:18 54:15,22 82:22 86:14 88:6 93:1 96:17 107:18 110:12 asks 22:3 aspects 47:17 ass 34:10 assault 39:10,16 40:4 Assembly 1:3 13:11 74:11 asserted 5:20 assertion 77:15 assess 86:24 assistance 35:21 39:18,21 40:15 40:18 assume 29:1 47:23 54:17 assumption 47:15 110:8 assure 98:16 attached 29:17 attempt 8:1 22:22 50:23 attempting 11:2 44:12 48:16 attempts 44:16 Attendance 25:3 attended 18:16 attention 40:21 45:24 46:22 48:3 73:10 113:6 116:16 attorney 2:10,14 6:23 7:6,7,20 38:5,24 42:10</p>
---	---	---	--	---

<p>51:15 62:11 77:13 78:19 91:5 108:24 109:6 110:18 111:24 112:8 115:19 125:12 attorneys 21:10 27:11 45:14 90:2 attorney's 11:10 78:5 82:22 113:21 audio 78:6 authority 8:18 82:13 83:9 avail 16:23 avenues 51:4 awarding 9:20 aware 23:22 28:20 away 92:15 Aye 120:9,23 121:23 122:3 122:13 a.m 1:13 3:1 41:1</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>B 7:18 53:18 baby 111:10,14 111:22 back 16:10 34:8 34:14,22 39:13 40:2 45:20 48:11 54:6 61:16,17 68:4 71:6 92:13 107:12 113:2 113:14,18 115:12 119:22 background 47:24 57:8 81:22 94:16 101:18 bad 18:5 62:19 62:21 63:2 64:10 118:19 balance 15:12</p>	<p>32:21 balancing 68:22 103:5 ballot 66:15 bar 75:7,13,16 Barbara 2:2 base 20:20 23:3 40:5 102:9 baseball 21:13 based 7:14 42:10 50:16 90:1 91:11 97:17 115:7 116:1 124:5 basic 104:10 basically 110:21 battery 12:19 bearing 106:20 bears 100:14 become 4:21 24:20 53:6 becomes 26:18 becoming 26:10 97:7 before 1:1 4:8 6:13 11:19 13:18 14:3 15:18 16:2,3 16:15,16 17:24 19:13 21:24 24:7 37:7,18 37:24 38:4,6 39:3 42:24 50:8 52:24 54:19 57:23 58:3,24 59:11 59:15 60:16 62:3 63:20 64:23 66:13,15 68:10,23 70:7 73:17 76:6,10 80:18 81:8,14 83:13 100:3 101:23 102:18 102:19,21 107:24 109:10 110:6,22 116:20 117:20</p>	<p>117:22 124:15 125:4 begin 1:13 beginning 10:11 84:13 behalf 5:1 7:18 88:7 100:7 103:6 107:3 behavior 6:1 115:15 116:7 behind 113:14 being 18:10 41:18 42:9 53:2 54:11 87:20 89:21 90:24 92:17 97:1,4,4,6 104:14 105:17 108:11,16,17 113:11 114:23 116:10 117:13 119:10 believe 5:9 18:9 42:23 46:5 48:10 49:7 50:11 54:24 56:20 61:20 65:24 66:2,4 72:20 76:6 78:16 79:22,23 80:1,2,4,5,8,12 83:8 85:4,6 90:9,10,11 91:21 92:4,7 94:4 99:20 104:7,8,23 105:22 107:4,6 107:16 108:14 108:14,14 believed 90:1 108:13 believes 80:7 benefit 9:19 10:4 10:10 39:3 best 10:9 11:5 13:13 15:1 20:21 73:24 83:9 89:20,21</p>	<p>90:18 94:5 112:23 114:8 114:22 125:8 better 6:24 91:19 104:14 113:21 between 14:7 19:22 43:17 45:24 52:2,5 98:5 100:5 101:3,6 108:16 114:23 115:13 beyond 5:8 59:15,21 beyond-reaso... 102:1 big 21:8 43:23 99:24 bigger 18:7 22:14 79:20 87:11 Bilandic 1:14 billed 4:8 bipartisan 98:15 bit 99:22 bits 82:20 black 17:24 18:21,22 19:6 blacks 63:10 Blagojevich 12:10 13:1 16:11,18 19:22 19:23 65:11,16 73:23 74:15 78:11,14 93:22 blame 63:1 bless 81:11 Blucet 3:14,15 120:16,17 122:6,7 board 10:16,21 18:10 33:10 57:13 105:15 bodies 117:4 body 8:9 20:1 22:3,4 42:24 73:4 83:9 111:1 115:21</p>	<p>116:24 bogged 68:11 book 80:15 bore 59:17 both 5:2 54:21 72:17 86:24 87:3 105:23 106:1 110:1 124:5 bother 60:21 bound 101:24 115:18,18 box 68:5 boy 61:8 breach 9:15 11:3 breaking 74:14 75:23 bribe 9:20 10:13 10:23 11:1 15:15 36:4 57:14,21,22 58:6,12 59:4 63:3 66:19 67:2 71:1 109:7,19 110:20 118:21 bribery 13:2 66:16 brief 78:9 114:18 118:11 briefed 27:8 briefly 118:8 bring 37:18 58:19 78:12,13 85:9 93:11 116:9 117:18 bringing 43:12 115:20,23,24 116:2,5,5 brochures 67:6 67:8 brother 111:22 brought 7:4 12:10 45:23 48:2 96:9 Bryan 5:14 6:10 7:10 39:6</p>
--	---	---	---	---

<p>Buclet 2:4 75:18 75:19 76:3,18 107:9,10</p> <p>budget 15:12 32:21</p> <p>Building 1:14 32:7</p> <p>built 19:14 65:6 65:10</p> <p>bunch 51:18</p> <p>burden 68:1 102:14,15,16</p> <p>Bureau 11:11</p> <p>burglary 40:8 40:10</p> <p>bus 18:22</p> <p>business 123:20 124:14</p> <p>Butler 5:14 6:10 7:10 8:4,11 39:6 46:24</p> <hr/> <p style="text-align: center;">C</p> <p>call 4:16 28:11 40:21 41:2,2 44:21,22,23,23 44:24 45:1,1,2 45:2,3,3,3,4,5 96:9 99:19,22 119:6,14,19 120:7 121:21</p> <p>called 16:4 20:16 30:23 31:12 32:1,10 32:16,22 33:12 33:19 34:13,17 41:1 80:17 113:17</p> <p>calling 46:21 67:10</p> <p>calls 45:9 46:5 98:4,8 100:17 100:19 101:19</p> <p>came 31:13 54:6 58:6 91:18 112:24</p> <p>Camille 2:5</p> <p>campaign 29:24</p>	<p>30:4,18 39:24</p> <p>campaigned 71:21</p> <p>camps 63:10</p> <p>cancer 85:10,12</p> <p>candid 100:6 105:20</p> <p>candidate 21:11 66:24</p> <p>candidly 18:3</p> <p>capacity 10:7,19 11:15</p> <p>Capital 10:15,21 33:9 57:13</p> <p>Capitol 15:21</p> <p>car 16:24 61:16 111:22</p> <p>care 72:2,4,5,24 80:9</p> <p>case 7:8 9:8 17:9 19:20 21:13,22 28:8 29:5 39:6 47:7,9 53:24 54:1,18 55:14 59:15,17,18 60:12 61:2 62:22 63:1 64:12 65:22 66:20 68:6,13 68:14,16 69:6 69:6 72:3 78:12 86:11,12 88:22 89:13 93:15 113:22</p> <p>cases 29:4 36:12 59:15 68:12,12 74:6</p> <p>cash 9:20 10:13 10:23 11:1 14:11 33:16,20 34:3,20 35:10</p> <p>cashier's 33:13</p> <p>casting 98:2</p> <p>caucus 116:13</p> <p>cause 65:24 66:1 67:24 95:12</p> <p>caused 113:10</p>	<p>caveat 14:10</p> <p>celebrates 83:18</p> <p>cell 83:24</p> <p>censored 117:13</p> <p>ensorship 117:13</p> <p>center 14:8 31:8 32:24 34:3 35:21 58:14</p> <p>certain 7:1 18:19 29:2 44:7 47:17 48:22 59:20 76:9 90:17,20 116:24</p> <p>certainly 70:2 77:5 78:21 92:20 107:17 107:18 109:24</p> <p>CERTIFICATE 125:1</p> <p>certification 25:15</p> <p>certified 5:13 25:3 26:14 125:3</p> <p>certify 125:5</p> <p>cetera 78:14</p> <p>chair 4:16,23 5:1 9:5 11:18 23:11 24:11 26:5 27:12 28:17 29:2,5 42:4 43:19 49:7 51:14 58:2 65:20 75:20 76:21 86:17,17 94:22 106:3 118:8 119:6,13,19 124:1</p> <p>Chaired 57:24</p> <p>Chairman 41:6 42:5 43:6,15 45:6,19 49:4 56:24 57:1 78:24 103:1 104:20 121:13</p>	<p>Chairperson 2:2 3:3,7 4:6 6:20 8:16 17:17 23:7,14,24 24:6,20,24 25:10,19,22 26:7,10,24 27:16,19,23 28:5,9,14,21 31:2,5 36:8,19 37:3,7,10,15 37:21 38:8,10 38:14,19 41:7 41:10,22 42:2 42:14 43:1,8 44:3,6,17 45:7 45:15 49:2,11 51:10,13 54:24 56:13 73:15 75:18 76:20 77:10 78:22 79:14 88:12 94:20 99:17 101:20 102:23 104:18 105:8 105:10 106:2 107:9,11 108:5 108:22 112:20 114:15,17 115:10 118:6 118:22 119:15 119:21 121:8 121:15,18 122:22 124:14</p> <p>Chairwoman 47:12,13 48:21 68:7 124:11</p> <p>challenge 13:17</p> <p>challenged 83:19</p> <p>challengers 39:24</p> <p>challenging 83:20,22</p> <p>chamber 13:3,3 14:17 15:21 17:12 32:8 76:13</p>	<p>chance 87:3,22 123:22</p> <p>Chapin 2:2</p> <p>characterizati... 74:1,21 100:17 115:20</p> <p>characterizati... 117:14</p> <p>characterize 48:6 52:20 116:2</p> <p>charge 10:2,6 40:11 57:10,10 57:17,17 92:10 92:12 106:16 120:1,2,5</p> <p>charged 9:17,22 17:3 67:19 111:2</p> <p>charges 4:12 49:21 81:22</p> <p>chase 83:24</p> <p>check 33:13 35:16</p> <p>Chicago 1:15 82:13</p> <p>Childhood 10:15 33:9</p> <p>children 86:20 103:20</p> <p>China 88:2</p> <p>choice 60:9,10 60:10,12,13 66:3 83:3 113:20,20 114:2,21,23,24</p> <p>choices 72:18 90:22,22 91:1 91:2 105:15 115:1,1</p> <p>choir 61:8</p> <p>choose 58:19 60:9 80:3 107:21</p> <p>Chris 2:6</p> <p>Christian 18:1</p> <p>circumstances 60:14 94:13</p>
---	---	---	---	---

<p>111:18 cite 6:17 citizen 70:1,3 citizenry 71:20 citizens 61:9 city 105:3 civil 11:20 17:2 clarification 77:9 clarify 45:19 79:2 clause 16:7 clear 7:9 11:8 42:18 52:4,8 53:6 59:19 76:24 98:11,14 102:3 105:23 clearcut 89:13 clearly 52:19 81:4 105:16 Clemens 21:13 104:3 Clerk 3:4,6,8,10 3:12,14,16,18 3:20,22,24 4:2 4:4 120:7,8,10 120:12,14,16 120:18,20,22 120:24 121:2,4 121:6,20,22,24 122:2,4,6,8,10 122:12,14,16 122:18,20 client 45:8 46:17 47:2 61:23 70:24 95:19,20 109:4,6 client's 71:1 closer 88:4 closing 36:21 41:8,17 42:18 43:11 44:10 45:16 51:8 55:1,5 56:14 56:15,18,19 79:16 colleague 59:24 60:1 63:19</p>	<p>colleagues 9:9 12:17 13:20 64:8 66:6 123:12 college 94:23 combined 92:23 come 3:4 4:12 4:15 16:24 20:14 21:22,23 21:24 34:3 45:20 57:18 60:15,15 62:3 62:23 64:2 75:13,14 76:6 76:13 82:24 86:5,20 87:5 94:7 102:6 106:13 107:15 107:22 109:2 109:20 110:6 115:1,3 119:21 124:13,15 comes 50:22 83:5 114:22 command 84:4 comment 30:24 55:5 96:18 98:11 104:22 114:19 comments 57:16 58:4 60:18 62:17 75:22 95:20 99:16 104:21 124:4,8 commission 72:17,20 commit 84:4 committed 117:24 118:3 committee 1:4 2:1,10 3:4 4:8 4:10,18 5:5,21 6:6,9,17,19 7:2 7:12,15,22 8:13 9:3,10,13 9:13,16 14:3 14:23 15:19 16:3,15,16</p>	<p>17:3 24:1,21 25:12,23 26:18 26:19 27:14,24 28:24 32:8 37:7,11,12,18 38:1,4,7 50:7 51:4 56:17 57:2,23,23 58:16 60:16 62:3,4,4 63:24 64:21 67:22 68:11,24,24 70:12,15 77:20 78:18 90:3 94:1 118:24 119:2,19,21,24 120:3 123:16 123:19 124:15 124:15 committees 7:1 7:17 Committee's 42:8 common 85:18 community 70:5 71:23 compel 8:19 compelling 77:23 complain 16:22 Complaint 5:13 5:23 20:9 26:2 47:19 48:20 49:7 62:9 70:19,21 complement 4:7 complete 54:20 completed 25:16 completion 7:13 complicated 50:11 compromise 62:24 100:7 con 20:17 81:23 81:24 98:7 101:4 concentration 63:10</p>	<p>concern 27:3 97:2 concerned 5:11 60:23 concerns 87:17 conclusion 4:13 4:15 17:9 69:2 91:23 concurred 123:1 condition 30:17 conditions 108:9 conduct 60:4 67:16 94:6,7,8 94:9,10,12,14 108:12 conducted 108:8 confidence 69:16 70:6 confident 7:11 confidential 8:5 8:6,7,14 19:19 20:13,15 39:9 47:1 60:24 71:3 81:18,21 confines 102:7 confirm 38:3 Congressional 116:18 connected 94:16 106:14 connection 39:19 50:21 73:4 Connelly 2:3 3:12,13 94:20 94:21 95:11,18 96:7 97:10,20 97:24 99:15 120:14,15 122:4,5 conscious 11:14 consider 6:13 29:7 48:22,24 50:18 68:22 102:17 121:11 123:24 consideration 49:17,22 114:7</p>	<p>considered 5:20 6:1 12:13 21:5 97:6 considering 13:15 constant 104:6 constituency 15:1 constituents 13:20 67:6 103:5,12 constitute 116:3 116:8 constitutes 9:15 11:3 Constitution 13:8,9 29:15 29:16 64:11,12 64:15,16 65:8 67:23 68:1 74:2,9,10,24 75:2 76:24 77:5 92:17 102:3 117:8 constitutional 74:12 constraint 67:23 Construction 10:15 33:9 contact 119:9 contacts 101:16 contain 56:6 contained 6:4 39:11 78:3 contains 5:24 6:3 contend 112:18 context 17:24 21:6 30:21 33:3,22 51:20 52:4 93:6 94:12,15,17,19 99:13 101:17 101:19 102:9 111:1 114:21 118:4 continuance 5:6</p>
--	---	---	---	---

<p>continue 7:21 contractor 30:3 contradict 109:21 contribution 30:18 control 8:5 convened 9:11 convenient 79:24 88:2 conversation 30:11 31:7,12 32:23 43:5,22 43:23 46:19 78:9 conversations 43:17 50:20 56:6 convicted 64:5,6 111:6 conviction 40:6 40:8 60:5 convictions 39:10,16 40:4 40:6 convinced 59:23 59:23 cooperating 6:10 7:10 8:20 14:7 15:8 29:20,24 30:2 30:6,14,23 31:9,11,17,18 32:2,10,16,23 33:11,12,15,19 33:20 34:2,4,6 34:8,13,14,17 34:19,21,23 35:5,6,10,12 35:15,15,18,24 cooperation 39:22 copies 37:3 38:11,15 copy 5:13 26:14 core 12:22 92:11 correct 46:3 49:8 51:22,23</p>	<p>56:11 65:6,20 74:8,24 106:7 106:9 corruption 13:2 73:7 counsel 2:10,15 15:23 23:23 24:18,18 25:9 25:18 27:9 35:3 38:2 44:15 45:12 56:15 58:1,2 59:18 62:2 70:11 71:8 82:10 94:22 99:18 101:24 102:5,22 108:23 116:10 119:8 123:14 123:16 124:7 125:9,12 Counselor 107:12 count 35:6 country 18:15 18:22,24 19:5 19:14 County 98:19 couple 24:7 51:16 64:3 68:9 70:21 82:16 95:1 courage 83:17 84:11 85:24 105:21 courageous 86:2 course 11:18 29:19 54:17 56:16 60:8 88:16 117:8 123:17 court 5:16 7:8 22:1 26:3,14 39:4 47:20 49:13 62:8,9 70:2 77:19 89:10 102:11 106:14,17</p>	<p>125:3 Courthouse 20:10 23:2 100:9 courtroom 57:18 58:18,24 61:15 102:2 courts 12:11 cousin 85:11 Co-Manager 9:7 12:14 17:10 credibility 61:1 61:3 crime 12:20 40:5 76:11 117:21 117:23 118:2 crimes 71:19 84:3 criminal 5:13,23 11:20 16:8 17:1 20:14,18 48:20 57:18 59:6 60:5,11 63:1 64:1,2,6 65:17,18,19 67:12,16 68:6 68:16 69:5 70:2 81:19 89:19 90:7,19 90:21 91:1 92:10,12,18 97:14 102:2,8 106:6 113:22 114:1,2 115:15 115:15,19 criminals 61:11 critical 36:14 critically 69:21 crook 67:2,10,10 crooks 71:20,24 cross-examina... 113:23 cross-examine 46:24 47:1 cross-examined 78:14 CRR 2:20 125:3 125:18</p>	<p>CRR-MO 2:20 125:18 CSR-IL 2:20 125:18 CS-1 6:11 39:9 39:15,17,20,21 39:23 40:3,5,7 40:8,13,16 41:1 42:3,7,21 43:4,13,18,22 44:2,5,14,19 97:11,11 98:5 CS-1's 39:22 currency 35:20 current 29:12 currently 7:16 75:24 116:19 Currie 2:2 3:3,6 3:7 4:6 6:20 8:16 17:17 23:7,14,24 24:6,20,24 25:10,19,22 26:7,10,24 27:16,19,23 28:5,9,14,21 31:2,5 36:8,19 37:3,7,10,15 37:21 38:8,10 38:14,19 41:7 41:10,22 42:2 42:14 43:1,8 44:3,6,17 45:7 45:15 49:2,11 51:10,13 54:24 56:13 73:15 75:18 76:20 77:10 78:22 79:14 88:12 94:20 99:17 101:20 102:23 104:18 105:8 105:10 106:2,4 107:9 108:5,22 112:20 114:15 114:17 115:10 118:6,22 119:15,21</p>	<p>120:8,9 121:8 121:15,18,22 121:23 122:22 124:14 cut 21:22 85:18 85:23 89:14 C-600 1:14</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>damn 35:7 Dan 116:13 Data 40:5 date 5:6,7 32:14 32:16 39:20 88:18,19,21 dated 27:12 37:1 38:22 48:13 dates 15:7,7 25:4,7 Dave 2:10 David 119:8 123:16 day 1:12 12:24 15:16 20:2 22:19 31:23,23 32:1,9 33:11 34:1,9,12,17 70:2 81:19 86:4 101:7 123:10,10,20 124:9 daycare 14:8 30:15,17 31:8 32:24 33:7 34:3 35:21 57:12 58:14 daycare's 10:14 days 5:8 14:16 14:20 15:11 19:24 20:4,5 21:12 54:6 89:1,2 98:8 101:7,7,8,8 DC 82:10 DE 76:18 deadline 37:16 deal 61:10,21 83:3 85:13,15</p>
---	--	---	---	---

<p>dealing 116:17 Dear 39:3 death 84:7 December 10:12 30:13 deception 20:17 40:11 81:23 decide 21:20 22:13,21 23:4 59:10,10 64:21 83:13 86:23 87:23 88:8 89:16 102:18 104:10,17 108:4,4 decided 14:9 20:22,22 59:21 104:16 114:12 deciding 51:5 102:19 deciphering 47:19 decision 20:24 22:12 53:1 81:9,11,14,15 83:1 87:2,2,15 92:8 102:21 103:9,13,17 105:14 106:20 119:4,5 decisions 11:14 36:6 103:6 123:18 decisively 16:11 declines 14:1 deer 14:22 defend 24:17 94:9 defends 83:6 defense 36:10 57:18 58:14,15 58:15,16,16,19 58:23,24 76:15 76:15,16 defenses 58:20 defined 55:21 definitely 54:8</p>	<p>delay 86:5 89:6 89:7 delayed 89:1,1,2 89:2 delays 88:16 delegation 116:19 deliberate 4:11 20:3,4 68:4 69:13 71:6 94:1 116:23 119:20 deliberation 103:10 deliberations 4:14 29:8 deliberative 119:1,3 demanded 16:12 demands 17:5 demeanor 90:1 democracy 18:8 18:10 79:21,21 79:22,23 80:1 80:2,4,5,7,8,12 Democrat 81:1 83:14 104:22 105:3 Democratic 40:1 Democrats 83:15 demonstrate 9:14 denial 57:17 58:17 61:13,13 106:24 denials 114:6,6 denied 5:8,19 7:12 8:18 15:23 20:2 22:3 57:16 60:19 61:5 76:2,4 92:11 deny 8:8 66:3,23 70:19,20 71:11 71:12 95:23 113:11 118:14</p>	<p>denying 118:16 depending 98:3 deposition 125:4 125:6,11 Derrick 5:15 9:14 10:3 11:15 12:1 13:4,7 16:15 17:14 18:7 19:9,17 20:24 21:4 22:14,15 23:21,22 24:16 25:8,16 28:11 29:21 34:5,5 79:20 86:3,4,6 86:15 87:6,8 87:11 96:20 98:5 described 12:13 deserve 104:24 105:7 detailed 69:24 determination 50:3 51:2 67:24 117:23 determine 49:21 59:1 64:17 65:23 66:7 69:14 90:10 91:11 93:3 determined 27:15 determining 49:23 111:2 Development 10:16,21 33:10 57:13 dialect 52:4 dialogue 14:7 differ 110:16 difference 101:3 101:5,5,8,10 108:16 differences 19:22 different 20:19 22:24,24 23:1 53:8 69:11,11</p>	<p>72:11 74:5 81:7 103:13 111:12 117:3 differently 92:19 difficult 61:11 72:19 96:19 100:4 115:12 115:16 123:18 digressing 93:23 directed 43:20 direction 39:23 125:9 disagree 52:9 100:16 102:4,5 109:22 discharge 10:9 11:4 13:10 disciplinary 11:6,21 64:18 64:19,20 117:19 discipline 1:4 3:4 7:2 9:10 17:2 74:10 75:5 93:4,4 112:7,13,13,16 115:14 disciplined 112:11 disclosed 5:11 103:15 disclosure 5:10 discovered 39:7 discovery 27:22 47:6 55:10 discretion 65:23 discuss 12:15 30:15 31:8,8 55:7,21 56:2 56:10 77:16 discussed 29:23 30:23 discussing 32:18 discussion 74:8 77:14 108:9 121:19 124:5</p>	<p>dispute 95:20 disrepute 117:18 disseminated 52:13 dissimilar 8:9 distinction 43:24 108:15 district 5:16,16 9:7 11:16 13:12 20:10 26:3 30:15 57:3,9 63:17 66:8 77:19 87:17 98:18 103:12 Dixon 82:11 doctor 85:11 document 26:15 27:4 40:19,19 41:11,12,16 46:12,22 47:12 47:14,16,17 53:11,16 54:5 57:10 61:7 62:6 97:1,5 documents 58:4 dogs 83:24 doing 32:2 46:21 83:14 84:10,11 84:12 112:6 118:8 dollars 67:5 domain 52:3,11 55:20 domestic 39:10 39:16 40:4 done 15:2 54:11 59:21,23 61:19 75:15 89:10 98:1 117:18 124:10 door 43:16 doors 71:22 doubt 59:16,22 99:24 down 16:24 31:13 37:9</p>
---	--	--	---	--

<p>39:24 68:11 69:6 82:17 84:1 93:12 102:11,12 115:7 downstate 92:3 105:3 draft 124:11 drafted 64:11 draw 12:2 69:2 69:2 91:9,23 92:20 107:22 drawing 115:3 drawn 52:22 draws 81:6 drinking 111:7 drug 40:6,11 dry 21:22 89:14 du 2:4 3:14,15 75:18,19 76:3 107:9,10 120:16,17 122:6,7 due 9:11 15:23 16:7 29:1,12 59:20 61:22,24 65:6,7,9 98:1 99:1,2 105:13 DUI 12:19 duly 125:6 DuPage 98:19 during 10:11 11:18 12:15 15:6 23:15 29:19,22 39:22 56:18 61:18 Durkin 2:13 5:2 9:5,6 17:17,20 23:11,19 24:4 24:10 25:1,13 25:24 26:9,20 27:7,20 28:2,7 28:10,17,23 31:6 36:9,18 37:16 38:2,8,9 39:12 40:21 41:12,13,24 43:16,19 44:13</p>	<p>57:19 58:9 73:10 75:10 109:12 Durkin's 67:20 duties 9:15 10:9 11:4 13:10 69:18 70:7 duty 25:9 57:6 63:20 73:11 90:12 dying 113:5</p> <hr/> <p style="text-align: center;">E</p> <p>each 54:22 74:20 96:1 123:9,18 earlier 26:13 37:22 43:2 79:19,19 92:13 106:18 110:5 112:22 early 4:17 10:14 14:20 19:5 33:8 107:13 easier 85:21 easy 84:9,12 100:12 119:11 echo 124:4,8 Edward 2:3 Edwards 21:11 104:2 effect 69:19 effort 68:13 93:11,13 eight 30:12 70:14 either 8:19 19:11 55:20 70:15 79:22 80:2 92:16 105:15,20 elected 22:17 29:11 57:7 60:1 66:24 71:17,18 72:3 election 20:24 66:13,15 76:10 103:14 element 99:5</p>	<p>eleven 122:23 eliciting 117:6 Ellis 2:10 6:23 38:5 68:4 70:11,15 83:9 108:23,24 110:18 111:24 112:8,22 119:8 123:16 embarrassing 116:6 embodies 123:23 employed 125:10,13 employee 125:12 empty 11:18 29:5 encourage 116:16,24 encouraging 111:17 end 18:20,22 32:2 56:19 57:7 124:17 ending 99:20 enforce 19:15 enforcement 36:4 engaged 21:17 22:18 111:11 enjoyable 98:17 98:19 enough 66:9,10 67:11 72:14,15 87:14 93:3,5 ensure 72:8 enter 119:1 entered 5:9 9:24 38:23 97:6 100:10 102:7,7 entire 101:2 116:11 entirely 17:13 74:8 entirety 66:1</p>	<p>entitled 59:20 60:6 entrapped 58:21 58:22,23 envelope 34:24 58:7 epileptic 111:23 equivalent 5:21 especially 18:14 47:18 123:17 essence 62:6 63:15 establish 23:21 25:7 establishes 6:18 et 78:14 ethical 59:2 105:2 116:17 116:22 ethics 25:15 68:24 72:9,16 73:3 82:12 evaluate 103:17 even 7:11,16 11:2 14:21 15:6 27:1 42:12 52:4 59:10,22 60:13 60:17,21 61:3 61:15 87:20 90:8 93:2 101:15 110:14 117:10 eventually 57:19 78:15 ever 13:15 35:24 36:1,1 61:6,8 99:24 every 22:19 59:12 96:1 98:6 123:9 everybody 38:15 81:6 83:17 86:16 88:5 90:3 104:1,2 104:15 123:3 123:22</p>	<p>everyone 17:5 92:19 111:5 everything 7:7 21:21 50:16 54:7 55:24,24 56:1,3,5 80:17 89:14 92:23 94:18 111:16 evidence 4:9 5:10 6:6 7:5 12:13 16:4,6,7 16:8 20:1,4,8 20:22 23:13 24:12 25:14 26:1,4,8,16 36:20 38:3,6 41:9,16,17 42:18 43:11 44:8,16,20,22 44:24 47:12 49:23 52:18,18 52:19,21,21,21 52:24 55:13,17 62:3 65:19,21 68:22 75:10,12 75:14 86:24 87:21 88:8 89:9,21,21 90:15,15 94:5 102:6,8,18,19 109:2,5,14,17 110:3,3,21 111:5 114:5 117:24 evidenced 48:19 evidentiary 23:8 29:2 exact 80:16 exactly 7:3 31:19 49:11 62:18 102:15 example 40:22 111:5 114:22 exceed 17:19 except 24:9 26:16 44:6 78:9 113:9</p>
--	--	--	---	---

<p>exception 48:7 exceptions 103:21 excerpts 70:9 exchange 9:19 10:5,13,24 11:1 45:20 57:13 excuse 41:5 58:1 exercise 8:18 exhibit 5:12,19 6:1,11 13:23 23:20 24:2,5 24:13,21 25:2 25:12,14,23 26:1,12,18,19 27:10,19,21,24 exhibits 5:11 23:12 24:9 37:17 existence 12:22 exists 65:8 67:24 exonerate 110:9 exonerated 21:12 22:20 107:7 expect 16:13 55:13 expectation 56:21 expel 59:13 65:13 expelled 73:13 93:1 experience 98:17,19 116:9 experiences 18:2 explain 16:20 35:8 50:5 96:18 explained 90:2 explanation 21:3 70:1 expulsion 17:11 17:13 59:11 64:13 65:22 67:24 77:1,5 112:14 117:12</p>	<p>121:17 122:23 123:2 extension 55:12 extent 26:16 extremely 108:7</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>face 14:22 19:17 69:23 faced 92:18 fact 5:23 10:18 10:23 20:12 21:4 32:18 49:12,14 50:11 52:1 53:19 59:16,22 60:24 61:11 65:6,7 65:17 68:22 72:13 81:16 84:22 87:19 90:14 91:8,11 97:8 98:7 facts 21:17 94:18,18 111:17 failed 69:1 fails 72:14 failure 12:3 29:3 66:11 92:21,22 92:24 fair 7:6 17:5 18:10,12 20:3 20:7,17 83:22 84:3 116:23 fairness 8:11 20:20 faith 93:10 faithfully 10:8 11:4 13:10 70:6 falls 92:24 false 48:18 Famer 21:13 family 83:23 far 5:10 49:22 95:24 114:1 fast 15:24 21:4 father 82:5</p>	<p>fault 17:4,4,11 17:13 68:19 112:9 120:6 121:10 favor 115:21,23 115:24 116:2,4 116:5 fax 32:12 FBI 19:18 20:10 20:13 39:18,20 40:14,15,17 53:20,22,23 54:4 62:15 81:18 82:1 83:7 88:9 89:18 90:10 94:8 96:5 97:16 feathering 73:1 February 25:4,5 25:5,5 30:22 31:7,11,22 32:9,15 44:21 44:23 45:1,2 Federal 7:8 9:22 11:11 20:10,12 22:1,5 23:2 26:3 39:1 47:6 47:20 48:10 49:13 54:9 58:18,21,23 61:2,10 62:8,9 64:1,2 82:2 84:23 86:6 89:10 100:9,10 102:11 106:14 106:17 110:19 111:4 fee 30:7 feel 69:8 94:2,3 feeling 113:10 feels 85:4 felon 64:9 66:19 67:1 71:13,13 76:8 felt 54:10,13 78:17 90:5</p>	<p>few 13:17 14:20 16:10 37:17 95:8 fictitious 41:20 41:24 Fifth 12:3,7,12 13:24 19:9 63:15 115:2 fighting 93:16 figure 15:4,12 file 62:6 96:12 filed 5:5,15,23 20:10 47:20 57:9 62:8,9 filled 14:18,18 final 4:8,19,21 14:3 29:3 123:4,21 124:12 finally 40:19 113:17 118:18 financial 39:21 financially 125:13 find 15:10 17:10 20:14 66:18 71:9 111:17 119:12 120:6 finders 53:19 findings 123:23 fine 42:20 44:11 70:23 123:15 finished 23:16 55:9 123:21 firm 37:16 first 14:16,20,21 14:21 23:9 27:24 52:10 61:4 64:4 67:9 87:4 103:20 104:10 112:9 112:10 115:19 120:1 fit 66:7 68:5 Fitzgerald 27:12 37:2 39:1 45:24</p>	<p>Fitzgerald's 110:22 five 35:7 96:18 96:21 flaunting 66:5 floor 32:6 focus 11:24 97:11 focusing 80:10 follow 29:15 55:4 65:16 75:9,11 112:21 followed 45:14 following 10:6 15:9 23:12 25:4 29:10 30:13 31:14 34:19 follows 13:6 33:6 follow-up 77:12 Footnote 39:8 40:3,12 forbids 77:19,20 77:21 force 15:5 forced 113:15 foregoing 125:4 125:6 forget 83:22 forgive 113:13 form 64:24 112:13,19 former 21:11 forth 115:12 forthcoming 124:11 forthright 99:3 100:5 105:22 108:7 forthrightly 18:3 forthrightness 108:21 fortitude 105:21 forum 65:5 forward 20:23 22:11 30:12</p>
--	--	---	---	--

<p>45:21 58:19 97:13 119:5 found 9:13 21:12,14,16 22:20 38:14 68:19 90:24 121:9 foundation 46:10 four 35:7 39:17 40:13,16 framers 64:12 64:14,15 frankly 62:12 89:24 free 69:2,8 70:2 100:21 freshman 14:20 from 4:9,10 7:6 7:24 9:7 13:1 17:11 19:7 21:16 23:9,21 23:24 24:14,21 25:11 27:11,16 33:9 34:3,3,8 35:17,20 37:2 38:24 39:18 40:14,17,20 41:11,15 42:8 48:8 53:12 56:16 57:12 59:13 65:13 67:14 69:3 70:10 72:21,22 73:13 77:1,20 77:22 79:17 83:23 88:13 89:3 92:15,21 93:1,22 97:21 105:1 108:23 110:19,21 116:18,19 117:1,5,14 119:14 123:16 123:16 front 20:1,6 22:2 50:17 55:22 67:8 71:23</p>	<p>72:5 82:16 93:11 fulfill 70:6 full 4:7,19 15:5 123:4 124:13 fully 27:8 69:8 function 11:22 fund 34:3 funds 30:3 39:24 further 36:7 40:12 52:16 56:13 77:10 79:14 94:10 124:14 125:11 future 4:17 5:7 7:21 21:13 86:15,16</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>gambit 116:11 117:19 Gary 110:22 gave 35:15 78:15 88:3 general 1:3 13:11 54:17 74:11 103:21 103:22 gentleman 59:24 gentlemen 15:16 57:2,4 59:6 61:1 71:5 73:9 germane 48:2 115:13 gets 38:15 88:4 getting 32:24 77:20 108:2 give 6:24 7:2 16:2 35:11 42:16 43:10 54:2 78:4,6 87:22 92:14 113:7 119:15 119:17 given 7:17 15:16 16:1 19:6 57:24 61:23 62:12 69:24</p>	<p>78:7 92:20 95:4,6,8 105:13 gives 114:23 giving 48:18 92:13 Glad 12:6 glossy 67:6 go 21:4,20 34:16 39:13 49:20 51:2 55:1,12 59:9,10,11,13 64:23 68:4 71:6,19,20 80:8 84:19 85:17 88:22 92:13 96:1 102:13 104:22 119:5 God 81:11,12 goes 9:2 12:22 62:20,20 68:18 71:14,15 going 14:2 18:1 20:3,3 22:11 23:1,8 28:15 29:20 30:24 31:10,16 32:19 32:20 35:12 38:11,15 40:2 43:7 44:18 48:6 49:19 52:9 53:24 55:7 63:21 68:4,6,7 71:17 79:18 80:8,13 81:2 82:13,14 83:12 84:15,15 84:16 85:8,9 85:14 86:5,8 86:12 87:8,12 87:14,22 89:23 91:3,4 93:13 94:1 95:22 97:16 100:23 100:24 103:10 104:9,11 105:18 107:12</p>	<p>110:14 111:18 112:1 115:12 117:22 119:17 gone 13:16 84:4 good 9:1,9 15:2 15:17 44:17 54:21 61:21 63:4 85:4 93:10 97:21 98:2 105:23 gotten 55:19 95:24 governing 27:22 government 8:3 8:4,10 21:10 21:21 22:4,5,5 39:7,20 48:8,9 48:11,14,15 52:15 53:11 55:16,24 58:21 61:7,10 72:23 72:24 73:1 84:23 89:11 97:22 110:9,19 Government's 50:19 101:15 governor 12:10 16:11,17 65:9 68:13 73:22 74:2 78:17 84:6 Governors 71:16 Governor's 68:15 grade 87:4 103:20 Grand 9:22 grant 9:21 10:15 14:9 30:3,7,16 30:23 31:13 33:9,23 35:22 57:12 58:14 granted 120:4 grants 29:23 grave 87:17 great 14:18 19:14 62:11</p>	<p>64:1 67:6 Greg 2:4 gross 9:15 ground 102:12 102:13 grounds 65:14 65:21 66:12 67:11 69:14 group 24:13,21 25:2 47:24 87:13 groups 103:3 grows 106:16 guarantee 92:5 guess 5:22 52:5 52:20 101:12 114:24 guilt 111:2 guilty 21:12,14 22:20 90:24 92:6,12 106:8 106:11,17,23 107:5 108:13 108:16 gun 77:24 113:3 guy 47:4 83:19 97:21 98:6 113:2,17 guys 61:16</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>half 25:16 27:1,2 90:14,15 Hall 21:13 hand 15:14 37:21 89:18 113:14 114:4 handed 109:4 handle 83:2 hang 38:12 hanging 114:23 happen 14:2 55:14 73:8 77:7 113:8 118:9 happened 5:4 7:7 16:21 73:21,21 90:16</p>
--	---	---	---	--

<p>97:8 101:6,7 113:9 116:21 happening 55:14 117:1 119:12 happens 21:16 22:19 38:16 53:18 hard 90:4 123:17 124:6 hardened 61:11 harm 72:22 Harris 2:4 3:16 3:17 45:17,18 46:4,15 47:2,8 47:21 48:4 49:1 120:18,19 121:12,13,16 122:8,9 having 21:21 37:22 96:19 98:7 101:3 110:1 111:22 111:23 hay 83:14 head 84:18 85:12,16 86:21 113:3 headlights 14:22 heads 72:17 105:16 hear 4:9 8:22 14:6,9,12 20:4 20:21 23:9 35:3 36:13,13 36:14 52:17,20 52:23,24 53:6 53:8,12,19,21 54:2 56:16 57:15,22 62:14 85:10,21 86:18 88:7 96:20 102:19 103:22 103:22 104:1,9 113:12 heard 12:8 20:21 21:3 45:20 51:21</p>	<p>52:14,16 63:11 67:9 71:21 77:21 87:3 93:22 94:2 95:1,2,5,6 104:15 106:7 113:1 hearing 1:12 4:8 5:5,6,12 6:6 10:1 11:21,24 14:3 15:19 16:19 23:9,15 24:7,14 27:24 29:3 42:7 52:6 52:7 58:15 59:9 61:19 65:5 70:10 74:15 90:13,14 91:22 102:2,17 hears 111:4 heart 71:14,16 99:7 123:8 hearts 105:23 heavy 123:8 held 1:12 68:14 68:15 72:17 help 14:10 30:16 54:1 58:13 81:12 86:11 100:23 113:22 123:15 helpful 119:7 helps 54:18 Henderson 2:14 4:24 5:5,12 6:8 6:15,16,23 7:13 17:18,22 23:7,9,18 24:1 24:3,8,19,22 24:23 25:11,20 25:21 26:22,24 27:5,9,17,18 28:14,16 31:3 31:4 36:10,12 36:19,22 37:5 37:8,13 38:10 38:16,19,21 41:10,11,15,18</p>	<p>41:19,23 42:3 42:16,20 43:3 43:10,15 44:1 44:4,11,18,20 45:11,19 46:3 46:7,20 47:5 47:10,23 48:6 49:5 50:4,7 51:6,9,15,23 52:9 53:10 54:15 55:9 56:8,11 60:18 60:21,23 61:21 62:13,17,21 63:6,12 70:10 70:16,17,19 75:11 77:13,21 79:17,18 88:12 88:15,21 89:5 91:13 92:1 94:11 95:4,14 95:22 96:24 97:12,22 99:1 100:2 102:4 103:2,18 105:9 105:11,12 106:9,12 107:1 107:6,17 108:6 108:19,24 109:22 110:24 111:24 112:6 112:10 114:16 114:20 115:19 115:22 116:4,9 117:17 118:6 118:12 119:23 123:15 124:7 Henderson's 5:18 57:16 118:19 her 40:17 Hey 67:1,2,2 91:3 96:2 111:15 113:12 high 21:12 72:18 102:10 higher 75:7,13</p>	<p>highest 105:2 highlight 46:8 46:12 47:11,17 48:1,22 101:14 highlighted 44:21,23,24 49:5,16 51:2 highlighting 44:9 him 12:4 19:11 29:10 34:15 35:16 36:3,5 42:8 43:22 44:16 45:9 59:13 63:1,15 63:16 66:6 68:15 69:7,8 69:12 74:16 90:1,9 92:7 93:4 96:1 97:12,18 108:1 109:21 110:9 110:10 113:12 113:18,24 himself 19:10 24:17 60:8 62:2 history 14:18 18:14 20:14 22:17 97:14 his/her 39:18 40:14 hit 84:17 86:21 hold 19:11 34:10 holding 17:3 holds 74:18 holidays 83:18 home 61:17 85:9 86:19 88:5 94:24 honest 17:6,14 72:4 105:15 Honorable 39:1 hope 12:5 56:23 98:20 hoping 16:18 hospital 111:10 111:14,21</p>	<p>113:5 hour 56:21,22 House 1:2 2:12 2:13 3:3 4:9,19 5:1,11 6:14,20 6:24 8:22 9:10 9:12 11:6,12 11:13,22 12:17 13:21 14:14,17 15:18,21 16:7 16:16 17:3,12 17:15 23:16,20 24:13 25:2,4 25:14 26:1 27:8,10,21 32:1,6,14 38:16 56:16 57:5 59:1,8,11 59:12 62:1 64:8,13,16,23 65:3,3,14,23 67:23 68:21 69:17 71:15 72:6,8,8,9,21 72:21,22 73:13 74:3,13 75:1,2 75:6,9 76:7 77:1,6 79:6,8,9 79:11 81:2 82:9,11 84:19 89:15 93:2 96:12 98:9,23 104:14,24 105:5 112:12 114:3,13 115:21 116:1,7 116:10,20 117:18 118:4,7 118:23 119:22 123:1,4,11,14 123:23 124:7 124:13 Housing 82:13 Howlett 82:4,5,6 human 88:4 Humboldt 33:7 hundred 19:1 109:2</p>
--	--	--	--	---

<p>hundred-and-... 84:1</p> <p>hundred-some... 50:20</p> <p>hurt 86:12</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>idea 9:2 29:23 48:14 71:22 117:14</p> <p>identified 6:11</p> <p>identify 44:7</p> <p>ignore 67:1,4</p> <p>ignoring 66:5,5</p> <p>Illinois 1:2,15 5:16 9:10,12 10:10,15,21 11:5,13,16,22 13:9,12 14:17 17:6,12,15 20:21 25:3 29:15 33:9 57:13 59:1,11 63:18 64:9,13 64:16,23 65:3 65:3,8,13 66:9 67:22 70:4 71:14 72:6 73:5 74:9,9 75:6 76:7 83:10 88:1 92:3 96:12 98:8,15 103:4 104:24 105:6 116:19 123:10</p> <p>Illinoisans 18:9</p> <p>Imagine 66:14</p> <p>imagined 87:11</p> <p>impact 64:3 105:18 106:21</p> <p>impeach 68:13 109:13,14</p> <p>impeached 65:9</p> <p>impeachment 12:9 65:21 68:17 74:1,9 75:1,4,7,8</p> <p>implore 22:21</p>	<p>important 7:24 11:21 17:23</p> <p>52:21,24 58:11 61:2,3 69:13 69:21 78:17 80:19 81:3,5,8 81:10,13,16 83:12 85:1 86:18 89:19 90:23 91:4 92:9 101:2 102:18,19 103:23,24 104:9,15 108:2 110:3,7,8 114:3,9</p> <p>importantly 57:6 61:6</p> <p>imposed 111:3</p> <p>impression 99:5</p> <p>improper 5:24</p> <p>impugn 13:2</p> <p>inaccuracies 46:1,8</p> <p>inaccurate 39:5 42:22 46:17 48:5,7,9</p> <p>inappropriate 65:5</p> <p>inaudible 35:13 96:3 99:23 103:4</p> <p>inch 102:14</p> <p>inclined 100:22 107:19 113:17</p> <p>include 43:4 44:19,24 47:21 53:1,2</p> <p>included 46:1,5 102:20</p> <p>includes 102:17</p> <p>including 20:16 38:15 40:10 60:19 98:8</p> <p>inclusion 26:15</p> <p>inconvenient 79:24 80:1,11 80:13 104:12</p>	<p>incorporate 37:23</p> <p>incorrect 74:22</p> <p>incriminate 19:10</p> <p>incriminating 53:7</p> <p>indicate 101:2</p> <p>indicated 42:24 48:18 106:8 115:5 118:7</p> <p>indicates 95:19 96:9</p> <p>indication 99:21</p> <p>indicted 9:22</p> <p>individual 29:20 29:21</p> <p>individuals 52:5</p> <p>inference 12:2,9 68:21 69:2 91:9 92:21 107:23</p> <p>inferences 115:4</p> <p>influence 9:20</p> <p>informant 8:5,6 8:7,14 19:20 20:14,15 39:9 47:1 60:24,24 61:7 62:15 81:19,21 83:6 89:18 90:8,8 94:8</p> <p>informants 52:2 61:10</p> <p>informant's 71:3</p> <p>information 20:6 21:6,7,7,8 22:2,4,5,7,8,9 22:13,23 23:4 36:15,16 39:10 42:11 44:16 48:19 50:16 51:19 54:12,19 62:12,13 70:22 80:20 81:3,4,5 81:8,11,14,16 81:17 82:22</p>	<p>83:13 85:1 86:7,18 87:14 87:23 89:12,14 93:3,5,8,10,11 93:13,17,18,19 95:7,9 97:17 100:16 101:11 101:13 103:15 103:23 106:19 106:21 107:20 107:20,24 108:2 110:2,7 110:8,12,18 112:17,18,23 118:1,3 119:9</p> <p>informed 6:8</p> <p>inherently 109:19</p> <p>initial 24:7</p> <p>ink 30:10</p> <p>innocent 108:17 109:19</p> <p>inquiry 67:12 68:17 69:22</p> <p>inside 72:21</p> <p>instances 18:13 18:14</p> <p>institution 15:21 57:6</p> <p>integrity 13:3 66:22 71:14 72:8 82:9 105:1,5</p> <p>intended 10:20 37:18</p> <p>intentional 53:15</p> <p>interchange 14:24</p> <p>interest 8:11 118:7</p> <p>interested 18:16 125:14</p> <p>interesting 68:12</p> <p>interests 10:9 11:5 70:7</p>	<p>internal 11:22 17:2 40:16 124:9</p> <p>interpret 51:19</p> <p>interpretation 51:20 102:16</p> <p>introduce 24:12 26:1 99:21</p> <p>introduced 16:4 23:12 24:1 25:11 26:4 37:24 38:23 49:12</p> <p>Investigating 6:5 16:3</p> <p>investigation 11:11 39:19</p> <p>investigations 39:19 40:15,18</p> <p>investigative 9:12,16 16:16 24:14 26:18 27:13 37:12,24 38:4,7</p> <p>invocation 12:3 12:7,12</p> <p>invokes 13:24</p> <p>involved 81:24 99:6</p> <p>irrelevant 22:9 42:13</p> <p>irrespective 8:2 22:21 104:8</p> <p>issue 27:8 61:2 98:13</p> <p>issued 26:2 27:22</p> <p>issues 50:8 51:15 116:14,17,20</p> <p>items 44:8 49:6 49:9,10,13,16 49:18,20 50:2 51:1 54:4</p> <p>IV 77:2</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>J 82:4</p> <p>jail 59:9,10,13</p>
---	--	---	--	--

<p>68:19 71:17,17 71:20 83:20,24 84:7 91:3 104:2,3,3,4 111:19 112:1 James 9:6 Janie 86:21,22 January 40:24 Japanese 18:21 jeopardize 115:2 Jim 2:13 57:9 job 15:4 72:7 98:2 124:10 Joe 2:7 John 21:11 98:13 104:2 join 16:19,24 joins 12:5 Jones 80:22 Journal 25:3 joy 123:11 Jr 18:5 judge 20:12,13 39:1,3 48:10 48:11,16,19 52:12 55:22 82:2 86:3 89:12 90:7 100:10 111:4,4 judging 91:6,7 judgment 68:2 78:10 123:12 judgments 74:4 judicial 5:22 Judiciary 64:14 Julian 82:11 July 1:13 5:9 12:24 jump 16:24 June 9:13 Jury 9:22 just 6:7 8:16 9:4 16:14,22 22:1 22:21 27:2,7 28:4 31:2 34:24 36:13,15 36:17,19 37:22</p>	<p>38:12 44:13 45:7,19,20 48:1 51:16 52:18 53:10,13 54:12,18 55:3 55:11 56:4 58:5 61:15 65:9,15 66:4 67:15 70:12,13 72:21 73:1 75:3,14,22,24 76:11 78:10 79:1 80:10,13 81:9 82:20 85:3 86:9,10 86:11,15 88:6 91:14,20 95:8 96:12,18 97:9 97:18 98:23 100:16 101:14 101:22 102:12 104:7,10 113:15,18 114:14 117:4 117:12 123:7 justifies 68:20 justify 67:24</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>K 2:20 125:3,17 Karen 2:20 125:3,17 Kass 98:13 keep 19:4,7 70:23 Keim 2:20 125:3 125:17 key 53:3 kids 86:19,20,24 87:2 kill 34:10 Kimberly 2:4 kind 14:21 55:4 58:17,17 73:23 117:15 Kindergarten 80:18 kindly 98:24</p>	<p>kinds 51:20 54:11 67:5 116:6 King 83:19 104:4 knocked 71:21 know 11:20 16:14 19:16 27:23 31:19 33:2,2,21 46:23 47:3,6 48:16,17 50:16 51:21 53:8 54:2,10 55:10 55:15 66:20 67:9 69:9,9 70:23 71:1,2,4 71:4,5 76:9,22 80:9 81:21,22 83:5,10 84:16 87:3,13,21 88:15 90:18 91:8 93:10,15 96:13 97:15,18 97:19 98:23 101:2 106:15 106:21 108:8 109:10,23 110:14 111:15 111:16 112:14 113:1,2,4,8,9 113:12,13,16 115:11 116:6 117:8,21 118:2 knowing 47:24 48:14 110:11 known 29:21 knows 90:18 123:3 Kosel 2:5 3:18 3:19 51:10,11 78:22,23 79:7 104:18,19 120:20,21 122:10,11 kosher 32:3</p> <hr/> <p style="text-align: center;">L</p> <hr/>	<p>lack 6:24 46:10 51:18 69:20 109:16 114:6 ladies 15:16 57:1 57:4 59:6 61:1 71:5 73:9 Lang 2:11 5:2 9:8 12:15 16:5 17:10 41:5,7,8 41:13 42:5 43:6,8 56:20 56:23 57:2 73:16,17,20 74:7,23 76:1,5 76:22 77:3,18 78:8 79:5,13 79:16 80:23 82:15,17 87:7 103:3 109:12 118:10 119:13 language 32:12 large 56:2 LaSalle 1:14 last 5:4 9:24 13:16 45:4 51:16 78:2 101:22 lastly 27:20 36:5 later 33:11 35:16 54:6 58:8 119:3 lauds 83:18 laughing 34:11 law 36:4 59:17 59:18 61:24 65:17,18 68:11 74:14 75:23 108:17 lawmakers 51:18 laws 18:17 19:4 lawyer 4:24 18:1 82:3 lawyers 47:23 55:23 69:9 84:15 100:4 lead 60:4</p>	<p>leader 9:8 11:13 76:22 98:22 106:4 leadership 85:7 learn 14:23,24 14:24 80:17 learned 13:1 80:17 least 5:8 7:14 19:24 20:15 28:18 39:23 44:15 45:5 52:13,24 61:17 63:23 76:12,12 76:14 78:6,19 87:3 94:14 117:1 leave 34:24 96:21 120:2,4 leaving 99:24 leeway 42:16 43:10 left 64:16 65:15 65:22 68:2 74:10 legal 18:21,23 18:23 19:1 63:7,8,9,12,14 63:15,16,21 74:20 123:15 Legislative 15:19 32:7 59:7 72:16 77:2 Legislature 31:24 legitimate 30:19 30:20 43:9 length 101:15 leniency 113:7 less 11:23 16:13 21:12 93:4 107:24 lessen 49:24 let 21:22,22,23 23:14 34:9 35:3 44:9 61:23 70:13</p>
---	---	--	--	--

<p>71:11 76:11 78:13 86:20,22 88:17,24 89:13 89:15 98:23 100:2 104:22 letter 10:14,18 10:20,24 14:12 27:11 31:13,15 32:11,17,24 33:4 37:1,4,19 38:11,21,24 39:2,4,14 40:2 45:24 46:8 48:8,13,19 57:11 62:5 letterhead 32:13 33:5 57:11 58:13 let's 11:8 34:16 62:22 80:21 82:23,24 86:9 86:13 89:14,15 level 20:20 23:3 70:24 78:20 102:9 leveled 92:10 levels 117:11,19 liberty 59:14 life 17:22 29:4 59:14 71:24 80:17 90:23 light 72:11 111:6 111:7,8,9,13 111:16,18,21 like 5:3 8:6 9:23 14:22 25:1 28:18 33:1,2 33:21 35:8 36:23 40:21 42:4,21 44:13 53:13 58:6,7 59:15 62:14,14 62:15,16 70:1 87:2,18,20 91:17 93:7 94:15 96:20 100:3 102:1,12 103:10 109:1</p>	<p>113:15 114:8 123:7 Lilly 2:5 3:20,21 105:8 106:2,3 106:10,23 107:4,8 120:22 120:23 122:12 122:13 limitations 26:5 limited 6:2 40:10 47:13,14 48:23 50:18 Limiting 67:15 limits 100:11 line 15:4 52:22 81:6 100:5,12 108:11 lines 96:8 Lisa 94:16,22 101:18 listen 35:5 86:23 86:23 87:1 95:15 118:21 listened 95:12 95:16 listening 16:23 86:21 95:16 106:6 litany 63:7 literally 124:9 literature 59:17 litigation 2:21 5:4 little 14:15 88:4 99:22 live 73:5 96:15 103:19 long 13:5 22:17 34:10 44:9 48:15 81:19 93:22 113:21 119:15 longer 8:23 look 11:17 14:22 48:23 71:7 72:18 88:2 99:7 114:5,5,6 123:22</p>	<p>looking 85:7,7 97:12 looks 72:10 lose 59:14 lost 14:22 69:16 69:17 85:9 lot 18:20 19:14 54:11 74:17 83:20 95:7 101:11,19 106:18 108:24 Lou 9:8 57:2 loudest 66:18 Louis 2:11,21 love 113:12 Luther 83:19 104:4</p> <hr/> <p style="text-align: center;">M</p> <p>Madam 9:5 23:11 24:10 28:17 41:5 42:5 43:6,15 43:19 45:6,18 49:3 51:14 56:23 57:1 75:19 76:21 78:23 94:21 102:24 104:19 106:3 107:10 119:13 121:13 made 6:7 7:8 11:14 19:21 20:11 26:13 28:18 30:24 33:1 36:6 41:13,18 43:1 44:15 48:15 60:4,12,14 61:12 65:20 66:21 73:22 74:1 75:22 78:10,11 85:11 92:8,13 93:10 93:12 99:12 102:5 113:13 Magistrate 26:3 37:1 42:11</p>	<p>46:1 magnitude 105:13,14 maintain 26:23 majority 22:23 56:2 59:16 79:10 121:9 122:24 make 8:1 13:22 14:4 17:18 18:4 20:23 22:12 28:18 31:22 36:23 38:15 42:17 43:7 48:1 50:2 52:7,24 53:14 53:17 54:19 70:5 72:7,10 72:18 73:8 75:14 76:23 81:8,11,14 83:1,14 85:8 87:1,15,15 90:22,22 91:1 91:14 95:12 98:10 102:21 103:13,17 106:20 108:15 113:14 119:8 makes 98:14 101:8,10 102:6 making 95:19 100:9 103:6,9 malice 99:12 man 17:24 20:17 64:7 73:6 81:23,24 82:6 98:2,7 101:4 Manager 2:12 2:13 23:16 25:2 118:7 Managers 4:9 5:2,11 6:14 8:23 9:3 14:3 25:14 26:1 27:9,10,21 38:16 56:16 75:9 91:19,24</p>	<p>112:12 118:23 119:7,23 123:1 123:14 124:7 Manager's 23:20 24:13 Mandela 104:3 manipulate 104:12 many 15:10 18:13 69:9 71:18 79:3 86:19 97:18 99:13 109:15 March 5:17 9:21 10:12,17,22 13:5 14:15 23:21 24:14 25:6,6,6,7 29:12,17,22 32:22 33:4,18 34:1,7,12,16 35:4,14 39:5 45:2,3,4,5 48:10 marked 23:20 markedly 93:1 Martin 83:18 104:4 Mason 59:15 material 20:11 26:17 37:23 107:23 math 109:23 Mathias 2:6 3:22,23 49:2,3 49:15 50:5,24 51:7 88:14,15 88:24 89:17 91:16 93:21 96:9 112:20,21 120:24 121:1 122:14,15 Mathias's 107:13 matter 5:3,14 6:17 8:24 12:18,20 52:1 55:13 58:24</p>
---	--	--	--	---

<p>59:9 64:4,5 71:8,13,15 75:11 78:11,15 80:6,20,24 81:1,16,20,23 82:1 98:15 104:6 118:15 matters 5:20 6:12 may 6:5 8:21 12:8,10,13 14:3 18:3 23:16,17 24:15 25:16 28:7,9 28:21 34:10 36:17 55:4 56:6 57:17 58:18,23 61:22 61:22 63:8,9 63:12,13,15,16 63:21 65:24 68:21 69:7 70:10 71:7 74:4 80:16 82:4 87:2,5,19 90:9,9 94:11 97:18 101:9 102:10 103:21 105:9 111:12 114:16,18 116:18 maybe 54:22 60:13 61:6 62:18 71:19 78:19 87:2,6,6 90:3 91:2,18 93:8 101:8 109:9 114:3 mean 12:11 13:15 30:21 46:18 53:5,12 90:3,13 99:2 102:2 113:5 meaning 68:21 81:23 116:23 meaningless 19:16</p>	<p>means 31:1 33:22 35:8 80:5 84:23 96:14 104:13 106:11 meant 33:2 99:11 measure 59:20 Mecham 68:13 Medicaid 15:13 32:20 meet 35:5,14 102:21 119:6 meeting 123:4 meetings 24:17 62:4 member 8:6 59:12 64:13 67:22 68:2,21 74:3 75:1,5,6 77:1,6 94:5,6,9 96:11 115:14 117:7 members 2:1 4:7 4:11,22 9:2 12:17 23:14 56:17 64:18 65:3,23 69:17 70:15 74:10,19 76:7 79:11 83:11 105:1,22 116:11,18 119:2 121:9 122:24 123:6 123:18 124:2 memorialized 37:20 men 84:1 92:2 mention 15:7 mentioned 37:19 51:17 95:2,3 merit 49:24 met 75:15 97:12 97:18 102:14 mete 90:4 94:3 117:21 118:2</p>	<p>meted 64:22 93:5 117:12 meting 111:1 112:7 117:15 mic 17:20 31:3 Michael 1:13 2:3 82:4,5,6 microphone 9:2 23:10 58:3 61:15 66:18 67:4 Midwest 2:21 might 53:7,8 55:16 58:20 73:24 77:23 78:12 84:9 91:3 109:11 116:11 117:10 million 16:12 63:18 64:8 73:5 104:23 mind 32:18 84:21 99:8 113:7 114:22 116:8 minds 105:23 110:16 Minority 11:13 27:13 minute 38:12 108:9,12 minutes 8:23 17:19 68:9 misconduct 9:16 misdeeds 21:17 misleading 48:18 misrepresenta... 20:12 mistake 48:15 113:13,14 mistakes 53:14 misuse 18:19 mitigating 50:1 MO 2:21 mode 119:3 model 18:17</p>	<p>moment 28:4 31:2 33:24 Mona 94:15,22 101:18 money 34:2,10 34:15 35:6 85:19 87:19,20 month 22:16 25:16 months 14:20 15:3 30:12 66:13,14 89:2 107:14 moral 59:2 morals 18:17 moratorium 84:7 more 11:23 12:15 13:15 15:6 16:17 27:2 30:8 50:11 51:1 52:7 53:6 55:12 57:5 61:24 62:1 65:7,9 68:9 75:15 84:11 85:19 90:23 91:20,21 105:21 107:18 107:19 108:2 109:2 114:2 morning 9:9 11:8 28:15 most 7:24 15:17 32:18 54:10,13 58:11 61:6,8 65:2 68:12 73:11 107:17 112:13,16,17 118:13 mother 85:10,12 85:14 113:5 motion 5:5,8 121:14,15,20 122:22 mouth 118:19</p>	<p>move 16:10 20:23 22:11 25:14 73:17 78:1 121:16 moved 109:1 moving 12:18 15:24 30:12 much 9:6 16:6 17:16 18:7 22:14 36:8 45:15 50:11 60:17 65:6 73:14,15 74:5 79:16,20 93:4 94:24 107:18 107:19 109:5 109:15 110:18 110:21 119:17 multiple 19:21 99:8 115:5 must 29:3 73:3 myself 108:11</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>nail 93:16 naive 99:3 name 9:6 13:5 66:15 82:3 Nan 37:1 39:1 National 40:5 nature 8:21 Nay 122:19 NCIC 40:5 near 4:17 nebulous 85:2 necessarily 47:18 92:7 106:15 need 6:13 14:8 15:20 30:16 41:20,23 44:8 52:17 53:19 64:14 66:6 78:1 80:17 81:10 85:17,18 94:18 100:23 101:1 110:19 110:21 113:12</p>
--	--	--	---	--

<p>needs 79:12 102:9 negative 12:8 107:22 115:4 neighborhood 33:7 neither 67:22 125:9 Nekritz 57:24 58:16 60:16 62:4 Nelson 104:3 nests 73:1 never 18:5 32:18 61:15 62:19,21 63:2 64:10 84:21 113:8,16 118:19 newspaper 71:24 72:6 newspapers 58:16 next 22:15,16 24:12 25:13,24 26:20 27:10 30:1,5,8,20 34:9 35:9,19 35:23 36:3 69:6 88:18,23 nice 84:9 night 124:9 nine 15:3 nobody 76:10 85:20 86:3,4 Nolan 26:3 37:2 39:1,4 none 62:10,10 88:10 89:18 100:20,21 113:9 non-criminal 68:16,18,20 non-lawyers 69:10 North 1:14 Northern 5:16 note 6:4 7:3 31:22 92:10</p>	<p>119:22 noted 79:12 notes 4:23 5:1 nothing 11:22 11:23 13:19 16:13 20:8 34:22 36:7 54:12 86:13 92:23 99:23 112:5 114:11 notice 1:12 5:22 5:22 24:16 28:20 39:4 119:17 notion 65:4 72:23 November 66:15 105:18 November's 103:13 nowhere 57:15 57:16 number 24:5 29:4 31:17 36:16 41:2,2 44:22,23 45:1 45:2,3,3,4,5 49:6 53:10 54:4 92:2 95:18 101:16 119:16 numbers 99:19 99:22 nun 101:3 Nybo 2:6 3:24 4:1 101:20 102:23,24 121:2,3 122:16 122:17</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>oath 13:4,6,14 23:20 29:17 30:10 59:3 60:2 70:5 72:1 109:20 object 7:9 41:17 42:6 97:5</p>	<p>objected 5:12 46:10 97:1,5 objection 5:18 7:5 23:24 24:3 24:8,21,23 25:11,19,21 26:23 27:1,16 27:18 38:9 43:7,9 47:14 objects 27:5 obligation 10:8 105:19 obligations 11:3 23:22 oblivion 85:24 observation 99:12 obtain 7:23 9:18 10:4 obviously 53:23 89:19 90:19 91:22 119:18 occasions 44:15 68:24 69:1 115:7 ocean 88:2 off 9:2,4 17:20 19:4 23:10 80:13,21 113:18,21 offended 98:11 offenses 40:11 offer 13:22 14:4 14:6 15:6 28:22 41:13 42:12 43:3 57:19 58:9 67:20 offering 42:18 offers 35:24 office 9:18 10:3 11:10 12:21 13:10 15:6,19 17:7,8 21:15 23:20 27:11 30:10 32:7 59:3,13 60:2 66:24 70:5</p>	<p>72:2 78:5 82:22 110:22 110:22 officer 67:14 82:12 125:4 official 5:22 9:19 10:5,7,14,18 10:19,24 11:2 11:4,15 35:21 36:4 57:11 officials 22:18 22:18 71:17,18 97:17 often 36:12 54:10 84:11,12 95:2 103:24 Oh 54:6 97:8 okay 27:5 28:2 28:21 31:5,19 49:1 53:4 56:12 91:19 96:7 102:14 113:18,18 omitted 46:6,13 once 38:16 97:2 99:23 one 6:16 11:9 14:10 17:7 18:23 19:16 20:2 21:18,18 28:4 35:6 36:22 37:8,19 39:9,15 40:3 46:9 48:9 50:8 51:1 52:1,2 53:10 55:16 58:20 61:5,6,8 61:18 66:12,17 67:3,9 68:18 73:20 74:15 78:2 79:2 80:19 82:6 86:5,20 89:5 90:18 92:2 93:12 94:16 96:1,15 98:16 101:12,22 106:15 111:6</p>	<p>114:10 115:16 117:13 118:16 122:24 123:9 123:11 ones 54:1,1 72:4 one's 116:1,6,7 ongoing 47:7 only 4:6 5:12 6:1 8:13 15:3 18:15 21:18,19 42:9 66:21 67:4,18 69:13 90:13,14,17 91:7 111:2 112:12 114:10 116:9 119:17 open 100:5 102:15 opened 43:16 opening 6:13 8:22 17:19 26:5 62:17 operator 30:15 30:17 opinion 8:13 114:14 124:11 opponent 29:6 opportunities 16:1 opportunity 16:19 46:23,24 58:2 62:2 68:23 78:18 82:12 95:14 109:5 opposed 20:22 88:1 97:4 102:18 opposite 65:18 68:16 oppression 63:10,11 orchestrate 104:13 order 3:4 5:7,9 7:23 18:11 27:22 42:10 44:14 50:13</p>
--	--	---	--	---

<p>55:21 73:3 77:19 100:10 100:11 108:10 108:10 119:22 ordinary 70:3 original 70:9 originally 26:7 ostensibly 19:6 46:13 other 6:12 15:14 20:17 23:5 37:21 39:18 40:15,18 52:15 54:22 57:21 58:4 62:12 74:20 81:18 88:9 89:17 90:1 91:6,23 92:9 97:16 99:12,24 101:13 104:16 106:16 109:10 113:2 114:4,8 others 101:9 otherwise 46:18 125:14 ought 72:15 ourselves 85:24 out 14:10 15:4 15:10,12 20:15 21:16,19,22,23 35:6 40:22 45:7 52:1 53:5 53:24 54:10 64:2,22 67:8 71:22 73:7 74:10 78:13 82:20,24 84:12 84:19,23 86:7 86:8 87:23 89:14 90:4 92:4 93:5,17 93:18,19,20 94:3,13,14 103:3 105:19 106:13,13,16 107:20,21 108:4 109:3</p>	<p>111:1,17 112:3 112:7 117:12 117:15,21 118:2,18 119:12 outcome 18:11 18:16,20 80:6 80:10 104:9,13 125:14 over 4:14 7:5 8:5 14:15 36:6 39:16 40:13,16 47:13 55:18 71:17 82:21 86:6 94:1 96:1 98:4 100:18,19 100:19,20,20 100:20 101:7 102:12,13 106:5,5 110:21 overlapping 89:8 owes 13:19,19 13:20 own 9:4 10:10 16:20 60:10 62:6 66:22 73:1 74:4 94:9 100:24 114:14 118:19 owner 14:10 32:12 owner's 33:7 57:12 owns 17:7 o'clock 12:4</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>P 2:14 paced 104:14 page 39:8,12 40:2,12,22 41:2,3 45:4 67:9 71:23 117:1 pages 70:15 paid 14:11 39:20 painful 83:23</p>	<p>pall 98:2 panel 19:2 88:13 paper 60:17 62:5 paperwork 22:1 57:21 parades 71:22 paragraph 41:3 41:3 62:7,7,8,8 70:18,18,18 paragraphs 61:5 parenthetically 63:24 Park 33:7 part 5:18,19 23:15 28:19 37:13 44:6 52:18 55:6 70:12 90:11 105:17 108:1 117:14 partially 103:9 participate 16:21 participated 12:21 46:17 participating 9:18 10:4 particular 44:9 45:9 52:7 64:22 117:10 particularly 12:9 parties 125:10 125:13 partisan 98:13 99:6 partner 18:4 parts 53:4 55:7 party 29:6 past 14:19 30:4 39:17 40:13,16 Patrick 27:11 37:2 38:24 45:24 110:22 Pause 28:6,13 38:13,18</p>	<p>pay 30:4 84:21 116:16 paying 113:6 116:12 payment 29:23 33:12,19 34:4 payroll 97:16 penalty 84:7 121:11,16 122:23 123:1,6 Pennsylvania 18:17 pension 15:13 32:19 people 10:9 11:5 17:8 18:4,15 18:18,21,22 19:3,3,6 20:20 48:1 61:11 63:17,18 64:8 66:8 70:7 71:24 72:1,2,2 72:23,24,24 73:5 82:14 83:10 84:5 85:6,7,20 86:18 87:13,17 88:1 89:15 90:17,22,22 91:6 92:4,14 93:18 95:16 97:3,7 99:9,13 100:22,23 101:9 103:3,4 103:22 104:4 104:23 105:6 111:11 115:3 116:15 119:10 People's 13:3 perceive 117:5 perceived 106:24 percent 21:6,7,8 101:12,13 109:2 perfect 60:13 100:21</p>	<p>perfectly 98:14 perform 69:18 perhaps 65:24 66:1,4,9,9 103:14 period 10:11 36:6 39:22 98:5 100:18 permission 22:2 permit 118:8 Perry 59:15 person 41:20,24 42:12 47:4 59:1 66:7,24 89:20 94:5 98:3 111:6,7,8 111:13 112:23 114:8 118:14 119:16 personal 9:19 10:4,10 personally 32:3 57:14 95:16 124:8 persons 8:1 perspective 7:24 110:17 persuade 22:22 persuaded 101:1 pertain 77:16 petty 34:3 phase 23:8 119:1 phone 44:21 98:4,8 100:17 101:19 piece 26:8 60:17 62:5 pieces 82:20 place 6:21 12:14 43:22,23 64:18 64:19 67:23 100:18 placed 15:2 38:3 44:21 plan 70:9 planned 10:20 planning 36:20</p>
--	---	---	--	--

<p>play 21:19 102:6 plead 63:15 please 3:5 38:17 43:12 113:7,13 120:7 121:20 pled 92:12 106:17 plenty 18:18 plotting 11:2 plus 92:24 pocket 15:5 point 8:17 18:24 19:13 20:9 32:19 36:18,21 42:14 43:2 44:17 45:7 47:5 52:14 53:21 54:21 59:24 64:4 79:2 88:8,20 90:6 93:22 101:11 108:4 123:20 pointed 40:22 103:3 police 84:4 political 15:24 59:7 87:10 politics 99:6 poll 19:7 portion 15:17 109:24,24 110:14,15 portions 6:4 71:18 86:9 110:2 pose 41:14 55:16 81:7 posing 41:14 position 8:10 17:6 50:15 52:17,23 67:15 89:12 93:2 95:23 110:11 positively 105:7 possible 64:13 possibly 4:17 8:9 18:3 119:6</p>	<p>potentially 8:4 power 6:19 7:2 7:11,16,16,17 9:18 10:3 15:5 18:15,19,19 19:3,3 43:2 69:20 powers 6:22 7:1 7:23,23 8:17 practical 87:10 practitioner 108:11 prejudice 78:12 preliminary 5:3 6:12,16 8:21 8:24 prepared 17:18 32:17 96:6 119:1,24 124:1 prescribed 74:2 presence 119:22 present 2:1,9 3:15,21,23 4:1 4:5,24 14:19 25:2,8 29:9 36:11,20 43:10 presentation 12:16 presented 26:14 26:17 37:22 114:5,6,7 124:5,13 presenting 9:8 presently 8:17 presidential 21:11 press 21:9 73:21 119:18 pressed 90:4 pressuring 20:23 Presumably 22:6,8 presuppose 7:19 pretty 52:4 80:19 98:2 101:23 102:3</p>	<p>previous 58:15 previously 9:24 24:18 25:9,17 37:5 38:23 99:18 primary 40:1 50:8 principle 104:11 principles 80:11 82:14 printing 67:5 prior 7:20 20:24 36:23 39:9,15 40:3,6,9 92:22 prison 92:2 104:2 prisons 84:2 privilege 58:20 probable 95:12 probably 101:12 probation 40:7,9 problem 96:8 114:1 problems 32:20 32:20 63:7 procedural 7:4 13:21 procedures 8:12 proceed 4:14 6:13 8:12,22 28:7,21 38:10 38:17,20 42:4 57:5 121:11 proceeding 12:1 18:7 19:23 20:18 22:24 23:3 33:22 42:13 47:11 53:18 57:8 59:7 64:3,7,18 64:19 65:8,10 65:11,16 67:12 67:14 68:17,18 68:20 69:9 75:10 77:22 78:1 81:5 82:9 89:8,19 95:24 102:3 115:17</p>	<p>proceedings 1:20 11:18 12:9 16:8,13 28:20 44:7 59:19 64:20 81:2 105:14,17 106:6,11,12,13 106:14,22,24 process 14:23,24 15:24 16:22,23 18:11 19:5 20:2,18 21:3 21:19 22:10 55:10 57:5 59:20 61:22,24 65:6,7,7,10 66:5 67:21 116:22 prodded 101:1 produce 91:20 123:21 profile 21:13 program 119:1 prohibit 42:8 project 31:9 proof 13:22 14:4 14:6 15:6 28:22 41:14 42:12 43:3,11 57:19 58:9 67:20 68:1,3 properly 84:6,8 proposals 65:21 propose 29:1 proposed 37:18 58:9 70:11 proscribed 75:3 75:5 proscription 74:5 prosecuted 21:11 prosecutor 21:16 prosecutors 21:14 protect 66:21 67:14 72:21,22</p>	<p>protecting 60:11 82:9 Protective 27:21 42:10 44:14 55:21 77:18 100:11 prove 59:14 proven 13:23 provide 10:14 27:14 62:3 76:24 provided 24:16 28:19 39:21 57:11 78:4 provides 39:4 providing 10:24 provision 74:12 75:9 prowess 74:21 public 5:24 8:6 9:15 11:4 12:21 14:18 15:2,13 22:18 24:17 46:13 52:3,11 55:20 60:3 66:24 67:1,14 71:24 72:10,23 74:14 75:23 76:6 97:16 119:18 publicly 52:13 99:4 103:15 pull 18:2 53:24 punish 87:6 punishment 49:24 50:1,9,9 50:12 51:3,3,4 51:5 64:22 90:4 91:11 94:3,4 111:1 111:12,13 117:7,11,16,21 117:22 118:2 punitive 67:13 purported 35:21 purpose 6:2 46:8 46:13 47:9,10 48:13 50:18</p>
---	--	--	--	---

<p>67:13,16 97:2 purposely 74:10 purposes 39:21 47:13,14 48:23 pursuant 1:12 28:24 42:23 pursue 57:7 push 82:14 pushed 101:1 put 17:23 18:22 20:1,5 22:2 32:13 53:24 54:5,18 55:20 57:21 65:7 70:7 71:16 84:7 85:12,16 87:22 89:14 93:11 94:18 97:17 104:1,2 104:3,4 105:16 110:10 114:20 124:6 puts 53:11 putting 58:3,13 94:15 p.m 35:4</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>qualifications 64:17 qualified 69:19 quarter 102:14 question 13:14 30:1,8,20 32:4 35:9 38:5 41:19 45:19 46:16 50:10,11 50:14,15 51:11 55:4 58:5,11 63:23 77:4,13 78:2 80:18 81:7,9 87:7,9 88:17 94:7 101:14,22 105:16,19 107:13,16 108:23 110:20 110:23 112:8,9</p>	<p>112:10,11 114:18 115:23 118:1 120:4 questions 12:6 12:14 14:4 23:15,17 29:1 29:10,19 41:14 43:4,14,20 44:1,4,19 51:16,20 54:16 55:16 56:18,18 58:9 60:3,15 60:16 66:6 70:11,13 73:17 75:21 77:10 88:13 89:22 94:10 95:1 110:11 112:15 118:22 quick 55:3 77:12 quickly 16:11 114:22 quite 65:17 89:23 quorum 4:6 quote 34:9 62:18</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>R 39:1 raise 85:23 raised 63:23 105:17 ran 111:7,8,9,15 111:18 Rangel 116:12 rather 17:14 72:5 100:18 rational 66:24 reach 18:11 reached 102:10 119:4 reaction 4:11 reacts 99:11 read 3:5 9:23 36:17,17 39:13 40:20,23,24 50:2 53:5 62:18 70:9</p>	<p>71:10,23 97:7 98:13 99:9 113:3 117:8 reader 47:18 readily 47:18 reading 39:3 41:11,15 70:13 97:3 109:24 110:14,15 reads 13:6 ready 31:24 34:15 38:20 45:16 55:1 56:14,15 79:15 79:16 103:24 104:1,2 real 55:14 87:10 88:2 92:15 really 49:9 52:3 54:12 70:24 79:21 80:7,9 82:13 94:6,23 94:24 98:11,20 98:24 reason 11:9 55:11 78:16 89:6 97:6 114:12 reasonable 59:16,22 110:16 reasons 15:24 46:9 rebuttal 23:18 118:8 recall 64:21 74:16 recap 5:3 receive 10:23 30:17 35:16 received 39:17 40:14,17 55:11 61:23 62:9,10 95:10 recently 89:11 recess 4:10,16 119:2,5,19,20</p>	<p>recitation 54:4 reckoning 86:5 recognizing 22:23 recommend 17:11 51:5 59:11 73:12 recommendati... 4:20,20 50:9 50:12 123:2 recommended 112:12 123:1 recommending 112:15 122:23 recommends 4:18 reconvene 4:15 4:16 119:3 record 6:18 7:14 7:18 9:6,24 21:20 27:8 28:18,19 36:23 37:6,14 38:6 38:23 42:20 45:11 46:14 57:1 60:11,19 70:12 71:8 76:24 81:19 86:7 123:7 recorded 15:9 records 25:3 40:16 red 111:6,7,8,9 111:13,15,18 111:20 reduced 125:8 reelection 66:14 66:23 67:3 reestablish 73:3 73:4 refer 29:20 40:23 49:6 reference 36:24 92:13 102:5 referenced 39:6 99:19 references 19:21</p>	<p>referred 39:11 40:20 43:17 55:22 referring 77:3 refers 50:22 96:21 reform 15:13,13 refusal 12:8,12 68:10,17,19 refuse 71:12 refused 16:21 52:12 69:1 74:16,17 refuses 60:2 63:14 regard 7:8 44:14 regarding 75:4,7 75:8 77:13 94:22 regret 36:5 reiterate 8:16 100:3 reject 35:24 related 50:14 125:10 relates 48:20 64:6 103:9 relating 46:11 relative 65:20 125:12 release 21:21 89:12 released 54:13 82:23 93:23 108:3,3 relented 78:15 relevant 22:7,9 54:10 119:16 relocation 39:22 remain 19:10 69:5 92:17 remained 69:24 remains 61:12 remarks 17:24 26:6 remedial 67:13 remember 11:19 14:16,19 16:10</p>
--	---	---	--	---

<p>31:18 34:19,20 56:17 62:18 63:8 82:4 83:19 remind 17:1 reminds 99:22 removal 74:3 75:1,5 78:20 Renee 2:5 reopen 62:22 repeat 82:8 98:20 repeatedly 89:10 rephrase 41:19 71:11 replicate 41:23 report 123:21,22 reported 2:19 36:4 Reporter 125:1 125:4 reporting 25:8 represent 66:7,8 representation 6:3 17:6,14 42:21 100:7 representations 7:20 46:19 47:3 REPRESENT... 93:21 Representative 2:2,2,3,3,4,4,5 2:5,6,6,7,7,11 2:13,15 3:9,11 3:13,15,17,19 3:21,23 4:1,3,5 4:23 7:19 8:12 9:5,7,14,17 10:2,7,8,12,18 10:20,23 11:3 11:15,16 12:1 12:2,15,20 13:4,11,12,17 13:24 14:7,9 14:14 15:4,8 15:11,14,20</p>	<p>16:1,5,15,18 16:20 17:3,4,7 17:9,11 23:11 23:19 24:4,10 24:16 25:1,8 25:13,15,24 26:9,20 27:7 27:20 28:2,7 28:10,11,17,19 28:23 29:9,11 29:21,22 30:1 30:5,9,14,22 31:6,12,14,15 31:20,23 32:5 32:10 33:5,6 33:13,17,18 34:17 35:2,4,9 35:17,19,23 36:17 37:16 38:2,9 39:12 40:21,24 41:5 41:7,8,12,13 41:24 42:5 43:5,6,8,16,18 43:19,20 44:13 45:18 46:4,15 47:2,8,21 48:4 49:1,2,3,15,21 50:5,22,24 51:7,10,11,13 51:14,24 52:3 54:8 55:2,3,18 56:4,9,12,20 56:23 57:2,3,9 57:10,24 58:1 58:12 59:8 60:7 62:16,20 63:3,14,19 64:22 65:13 66:2 68:10,23 69:4,20,23 70:3,16 72:12 73:12,18,19,20 74:7,8,19,23 75:17,18,19,21 75:22 76:1,2,3 76:5,13,18,19 76:20,21 77:3</p>	<p>77:8,12,18 78:2,8,20,22 78:23 79:1,5,6 79:7,13 80:21 80:22,22,23,24 81:1 82:15,15 82:17,18,19,21 83:1,7 84:10 84:14 87:7 88:7,13,15,24 89:4,9,17 90:11,15 91:7 91:16 92:5,11 93:7,16 94:20 94:21 95:11,18 96:6,7,8,10 97:10,20,24 99:1,4,6,15,17 99:18 100:4,8 101:20,21,22 102:22,23,24 103:2 104:18 104:19 105:8 106:2,3,8,10 106:23 107:2,4 107:5,8,9,10 107:12,15 108:5,6,20 110:4,5 112:4 112:20,21,22 112:24 113:10 114:10,15 115:10,24 116:7,12 117:3 117:12 118:5 118:10,20 119:13 120:9 120:11,13,15 120:17,19,21 120:23 121:1,3 121:5,7,12,23 122:1,3,5,7,9 122:11,13,15 122:17,19,21 124:3 representatives 1:2 5:2 9:9,12 11:7 14:15,17</p>	<p>15:18 17:12,15 21:20 25:4 32:1,6,15 59:1 64:17,24 71:15 72:6 73:13 75:6 82:11 96:12 98:9 104:24 105:5 114:3,14 116:10,20 123:5,11 Representativ... 55:23 100:17 represented 48:9 representing 98:18 99:3 represents 63:17 reprimand 117:13 Republican 21:15 80:24 98:12 104:22 105:2 Republicans 83:14,16 98:12 98:21 request 7:15,22 8:18 20:2 42:9 requests 22:3 require 20:20 62:1 65:1,1,2 65:18 123:5 required 8:14 102:10 requires 62:1 residents 16:12 resolution 59:12 64:24 123:23 resolve 32:19 respect 8:10 15:20 33:23 38:21 74:20,20 79:11 98:1 99:2,2 103:16 105:1,4,13 124:8,10</p>	<p>respectful 79:8 respectfully 109:22 respectively 39:8 respects 117:2 respond 8:2 92:19 94:11 100:2,3 105:9 114:16,22 responded 31:19 31:21 33:14 110:5 Respondent 4:10 9:4 120:5 120:6 121:9 responding 43:13 response 7:14 20:6 34:23 54:16 61:12 69:21 77:4 87:16 91:13 92:1 96:24 101:14 114:18 responses 12:6 35:3 89:5 responsibilities 17:5 115:14 responsibility 57:4 63:20 64:7 70:4 114:4 rest 52:7 53:7,9 119:10 restricted 16:6 result 64:20 retire 119:2 retreat 36:2 return 4:13 119:14 returning 34:18 review 47:15 69:16 reviewed 45:22 45:23 56:2 rhetorical 30:8</p>
---	---	--	---	--

<p>richly 14:18 Ridiculous 71:4 right 14:1 18:11 18:23 19:1,6 19:10,12,17 26:9 31:21 34:23 42:7,7 49:11 54:3 60:7,13 63:9 63:10,13,17,22 67:8 69:5 72:20 73:6 75:12 80:16 81:17 83:17,21 84:11 85:22,22 86:1,1,2 88:6 91:8,11,14,15 92:14,16 93:24 95:23 104:5 111:14 112:19 115:17 117:22 rightfully 91:5 rights 16:17 88:4 115:2 Riley 2:7 4:2,3 51:13,14,24 53:4 54:8,21 73:18,19 74:19 75:17,22 114:15 115:10 115:11,24 116:5 117:3 118:5 121:4,5 122:18,19 Riley's 77:4 rise 115:14 117:15,18 rises 78:20 risk 100:14 115:3 Rob 13:1 16:17 19:22,23 Rod 12:10 93:22 Roger 21:13 104:3 roll 3:5 120:7 121:21</p>	<p>room 1:14 4:13 87:16 98:16 113:24 123:3 root 73:6 rope 102:12 Rose 2:2 3:8,9 72:16 76:20,21 77:8 99:17,18 101:21,22 102:22 108:5,6 108:20 120:10 120:11 121:24 122:1 124:2,3 Rostenkowski 116:14 rotten 98:6 RPR 2:20 125:3 125:18 rule 6:24 7:4 13:22 28:24 54:17 74:11,13 75:2,2,3,16 80:21 83:12 84:15,16,16,20 84:20,20,22,24 84:24,24 85:1 85:2 86:15 87:24 89:21 93:8 103:20,21 103:22 104:11 104:16 rules 6:17,21,24 7:4 13:21 16:5 16:7,8 19:15 19:15,16 20:19 20:19 42:8 57:5 59:8 62:1 65:10,18,19 67:23 68:2 74:5 75:4,5,7,8 75:9,11,12 77:4,6 79:3,4,6 79:7,8 80:5,6,6 80:9 93:6 102:6,8 103:19 104:8 115:1 117:8</p>	<p>ruling 6:7 26:12 37:22 42:9 49:7,16 65:13 88:16,17 rulings 29:2 65:20 run 100:9 111:20 113:21 115:3 running 66:22 67:3 76:10 111:6 runs 111:13 rush 21:2,2 22:22 87:9,9,9 87:10,10,11 103:8 rushed 105:17 Russia 88:1</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>Sacia 57:9 sad 123:10,10 salacious 36:16 Sally 86:22,23 Sam 18:5 same 21:9,14 23:2,17 31:7 33:11 34:1 40:19 41:12 43:7 44:1,4 60:14 74:13,18 78:10 79:18 87:8 94:17 99:11 103:18 103:19 105:12 111:11 115:18 sanction 117:7 sand 85:13,16 105:16 sane 66:23 sat 70:22 89:24 92:6 109:23 110:13 satisfy 87:16 saw 94:23 saying 7:12 22:11,12 45:22</p>	<p>48:8,14 52:6 74:21,23 76:23 86:3,4,5 89:22 90:20 91:17 94:17 97:22 100:15 103:11 112:2,3 113:6 113:20 117:4 says 39:2 53:21 53:22 57:10 85:18 91:22 scheduled 1:13 88:18 Scheduling 5:7 scheme 9:18 10:4 15:9,10 school 18:17 script 113:3 Sears 66:18 seat 21:1 29:12 90:23 113:2 seated 43:21 second 50:10,13 50:15 51:17 61:5 64:11 76:23 112:8,11 secondarily 46:11 48:20 96:17 Secretary 82:5 Section 77:2 sections 71:9 securing 35:22 see 21:24 31:18 33:1 53:2 72:5 106:19,22 110:6,19 111:8 seeing 39:3 seek 24:12 25:13 25:24 26:20 seeking 7:5 117:14 seem 20:7 53:7 seems 67:11 76:16 109:3,18 segment 70:20 seizure 111:23</p>	<p>select 1:4 3:3 7:2 9:10 24:1,20 25:22 26:19 27:24 54:4 selective 86:10 self 116:6 self-incriminate 60:8 self-incrimina... 14:1 self-interests 15:3 send 60:17 62:4 62:5,5 67:6,8 sense 85:18 89:20 102:5 sentence 111:3 sentenced 40:7,8 sentencing 111:3 separate 44:15 89:8 94:13 106:15 separated 83:23 103:23 series 70:11 99:19 serious 5:24 12:18 seriously 83:11 servants 14:19 serve 12:22 59:2 70:7 72:3,3,16 72:19 82:12 served 8:8 20:21 42:24 83:9 services 2:21 29:24 85:17,23 serving 14:16 session 15:11,17 31:23 32:9,14 32:16 34:12,16 98:8 sessions 37:8 set 77:6 88:19,21 sets 75:16 setting 65:5 100:8</p>
--	---	--	---	--

<p>seven 70:14 96:18,21 several 103:3 severe 112:13,16 112:17 severely 67:16 Shapiro's 110:22 shift 97:10 Shit 34:9 short 18:20 93:1 98:4 100:18 shot 114:23 show 24:15 72:14 109:17 showing 98:4 shows 115:16 sic 112:22 side 16:2 80:14 84:18 sides 105:23 106:1 124:6 Sidney 2:6 sign 10:18 32:13 61:7 signature 29:16 58:13 signed 13:5 29:17 33:4 54:5 118:14,16 significant 61:24 118:12 signing 14:12 32:23 silence 57:15,23 58:10 59:5 68:15 69:7,8 69:11 74:15 118:21 silent 19:11 63:16 69:5,24 76:11 88:5 92:17 similar 8:9 109:23 110:12 simple 12:19 58:5 59:24 61:13 80:19</p>	<p>simply 7:13,18 41:15 47:11 65:22 70:14 74:1 76:14 77:3 78:10 simultaneously 100:6 since 5:4 7:17 27:2 40:23 42:8 47:11 66:2 70:11 76:15 106:13 114:21 sincerely 73:11 104:7,8 single 58:11 59:12 70:20,21 sit 58:2 66:7 85:11 86:24 96:1 110:13 123:19 sits 84:6 sitting 19:2 20:12 44:2,5 78:17 84:1 86:16,17 92:2 100:21 123:12 situation 90:18 91:3 six 107:14,14 skeptical 83:13 83:16 skip 102:12 slaves 18:24 slow 93:12 small 94:23 Smith 2:15 4:23 5:15 6:1 7:19 9:14,17 10:3,7 10:13,18,23 11:15 12:1,20 13:4,7,17,24 14:7,9,14 15:4 15:8,11,14,20 16:1,15,18,20 17:4,4,11,14 18:8 19:9,18 21:4 22:14,15</p>	<p>23:21,22 24:16 25:8,16 28:12 28:15,19 29:9 29:11,21,22 30:1,5,9,14,22 31:12,14,15,20 31:24 32:5,10 33:5,13,18 34:5,6,17 35:2 35:5,9,17,19 35:23 39:23 41:1,14 42:6 43:20 49:21,24 52:3 57:11,20 57:22,24 58:1 58:12,21,22 59:4,8,8 60:7 61:14 62:16,20 62:23 63:3,14 64:5,23 65:13 66:3 67:19 69:4,16,20,24 70:16 73:12 76:2,13 79:20 80:21 82:16,18 82:19,21 83:1 83:7 84:10 86:3,6,16 87:6 87:8,11 89:4,9 89:21 90:11,16 91:7 92:5 96:10,20 98:5 106:8 107:5,15 110:4 112:24 113:10 114:10 118:20 119:8 Smith's 11:3 12:3 21:1 29:2 33:17 39:24 68:10 72:12 86:4 103:5 123:14 smoke 104:7 smoking 77:24 solely 46:13 solemnly 13:7 some 5:4 10:5 18:4 20:1,5,20</p>	<p>22:19,20 26:16 29:22 36:15,20 39:23 42:16 46:1,4 47:23 50:12 51:15,19 51:24 53:1,2 54:22 55:14,15 56:5 59:21 60:13 61:9 62:13 64:1 65:12 70:9 71:19 72:18,19 74:4 78:12 80:15 82:4 85:2 87:17,19 87:20 88:9 91:20 95:5 96:2,4 97:14 99:5 100:14,16 101:8 103:21 109:4 113:7,15 116:14,18 117:6,14 124:10 somebody 20:23 22:15 66:16 80:7,7 83:5 84:17,18 87:19 87:20 97:15 110:12 114:23 119:14 somehow 64:1 someone 43:13 47:19 53:13 93:1,7,8,12 100:19 101:4 something 13:15 20:16 21:5 36:24 52:6 61:18 78:19 79:11,20 84:10 96:5 99:10 100:22,23 101:4,6,6,7,16 105:6 107:1 sometime 69:6 114:20</p>	<p>sometimes 53:15 53:15 79:9 104:11 114:24 soon 119:7 sophisticated 47:19 sorry 24:4 26:11 26:22 38:22 45:9 55:1 101:21 105:10 115:22 116:4 sort 37:23 73:21 74:3 117:7 Sosnowski 2:7 4:4,5 55:2,3 56:4,9,12 77:11,12 78:2 121:6,7 122:20 122:21 sought 99:21 sound 36:17 source 6:10 7:10 8:20 14:8 15:8 29:20,24 30:2 30:6,15,23 31:9,11,17,19 32:2,10,16,23 33:12,12,15,19 33:20 34:2,4,6 34:8,13,14,18 34:20,23 35:5 35:6,11,12,15 35:15,18,24 spare 70:12 speak 18:2 41:20 41:24 54:9 101:18 115:2 123:9 Speaker 11:12 98:23 speaking 9:1 15:9 69:10 73:9 104:5 speaks 29:6 special 5:14 6:5 6:9 9:12,16 16:3,16 24:14 26:17 27:13</p>
---	--	--	---	---

<p>38:4,6 39:6 115:17 specific 7:1 13:6 15:7 70:17 specifically 37:15 51:1 77:1 Specification 120:1 specifications 4:12 9:23 10:2 10:6 120:2,5 specifics 67:18 67:19 specified 69:15 speculate 54:15 54:22 107:18 speed 93:14 109:1 116:21 spend 15:17 67:5 68:9 85:19 spending 85:23 spent 14:23 61:21 83:20 118:12,13 124:9 split 34:5 Spokesman 27:13 Springfield 12:23 15:11 34:8 37:9 82:17 115:6,8 St 2:21 stacks 33:21,22 96:19,21 staff 14:24 82:10 staffs 124:9 stage 17:22 85:12 stand 7:21,22 13:17 17:24 28:11 63:20 66:17 67:4 80:11 82:14 83:2,15 85:8 87:12 109:7,11</p>	<p>109:14 standard 23:1 59:2 65:15,15 68:3 85:2 90:21 102:1,20 104:5 105:2 standards 65:16 65:17,18 90:21 117:10 standing 66:14 stands 124:15 start 3:1 97:3 started 57:8 starting 99:19 starts 89:3 state 9:6,14,21 10:8,10,19 11:5,16 13:9 13:12 14:8 16:12 17:7 22:17 27:7 29:10,15,23 30:16 33:6 42:21 44:14 57:12 58:13 63:18,19 64:9 66:8 70:3,4 71:17,18 73:5 76:24 78:20 82:5 84:2,5 85:6,17 87:13 98:15 102:2,8 103:4 104:23 116:19 121:15 stated 6:24 26:5 32:12 33:6 75:12 124:12 statement 8:22 15:20 17:19 67:1 108:18 statements 6:14 34:19 39:5 41:18 91:23 states 5:15,16 7:6,7 11:10 13:8 16:7 21:10 27:11 29:16 35:20</p>	<p>39:8,15 40:3 40:13 77:19 82:11 92:17 116:20 State's 38:24 stating 27:14 34:21 stay 76:11 step 52:16 58:3 stepped 61:15 Stevens 21:15 stick 18:20 86:15 still 30:10 55:17 67:7 69:18 75:24 94:4 95:9 112:23 114:13 stipulate 96:22 stipulated 23:23 24:18,23 25:9 25:17 stipulation 26:11 stole 84:18 stop 36:1 story 16:2 85:9 101:3 strategically 109:18 Stratton 32:7 street 1:14 69:6 83:16 100:8 strict 74:5 strip 94:13,14 strongly 71:6 stuck 35:7 studied 110:1 study 110:13 stuff 87:4 subject 26:4,12 26:15 42:6 113:23 submit 37:17 64:3,14 77:22 77:24 81:15 83:4 86:1 88:8</p>	<p>submitted 10:21 55:6 77:17 97:21 subpoena 6:9,19 6:21 7:2,11,15 7:16,17,23 8:1 8:8,13,17 42:24 43:2 subpoenaing 7:10 subpoenas 7:12 subsequently 9:22 48:11 substantive 54:14 suburbs 105:3 sudden 88:5 suffice 115:9 sufficient 49:23 94:2,3 suggest 61:23 71:6 suggestion 78:5 summary 96:4 support 10:6,14 10:19,24 13:8 14:13 31:13 32:11 33:7 57:11 112:17 112:19 supports 89:9 supposed 43:13 50:17 supposedly 96:4 sure 38:15 48:1 56:4 66:2 70:5 71:8 72:7,10 76:23 88:18 90:2 95:15 100:9 102:6 119:8,11 sustained 5:18 swear 13:7,18 swore 29:15 sworn 14:14 125:7 system 63:7 83:20,21,21,21</p>	<p>83:22 84:2,6,8 84:14,14 111:19,20 systems 15:14 88:3</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>table 80:21 89:15 tact 53:8 take 5:21 8:10 8:23 12:6 20:24 30:6 48:23 49:17,19 49:22 53:20 54:17 56:21 57:21 63:3 64:18,19 66:19 70:24 72:23 73:2 76:16 80:21 83:10 92:15 95:2 98:24 109:7,19 110:1 111:10 113:21 114:7 117:1 123:8 taken 9:11 39:24 42:15 49:9 74:11 87:19 125:5,7,11 takes 83:17 84:11 85:24 105:21 116:23 123:11 taking 52:16 87:20 94:15 97:3 111:14,21 talk 6:21 19:4,17 51:19 89:20 98:6 talked 11:19 24:9 32:11,16 33:19 34:13,18 78:8 117:9 talking 27:3 31:20 47:8 61:22 66:20 108:24 112:1,1</p>
---	--	---	---	---

<p>112:6 talks 74:24 tape 52:7 53:21 54:3 62:14 67:3 78:15 109:8,9 tapes 19:20 21:23 51:22 52:1,10,14,16 52:18 53:1,7,9 53:13,19,23 54:11 56:5,6 71:2 77:15,16 77:20,21,22,24 78:1,3,6,12 82:24 93:23 95:2,2,5,5,6,12 95:15,19,20,21 96:3,4,5 113:1 taxes 19:7 84:21 85:17,23 116:12 Ted 21:15 telephone 46:5 119:16 tell 13:18 15:23 17:23 18:5 23:14 30:2,6,9 33:24 35:10 48:12,16 51:1 52:22 59:18 62:19,21,23 63:1,2,4,5,21 64:7,9,9,10 66:22 68:5,6,6 72:14 74:17 76:7,8,9 81:17 82:2 84:23 85:8,20 86:8,9 86:11,11,12,13 86:19,21,22 88:3 89:6,23 90:16 91:10 95:22 96:20 97:11,13 109:24 112:23 113:19 114:8 114:10,11</p>	<p>118:20 telling 71:10 83:10 84:5 85:11 86:10 87:5 90:5 104:15 tells 53:20 91:5 ten 12:4 84:17 term 12:8 terms 8:11 52:4 116:7 117:4 test 82:15 110:1 110:13 testify 12:8,12 14:5 42:13 68:10,18,20 107:15 109:16 testimony 8:19 13:23 71:7 109:13 125:6,7 text 12:5 35:2 texted 61:18 thank 3:9 9:5 17:16,17,20 23:6,7 24:10 24:24 25:10 26:24 28:10,23 36:8 45:15,18 49:3 51:12,14 54:23 56:12 73:10,13,15,19 75:17,19 76:18 76:21 77:8 78:23 79:1,13 79:15 88:11,12 94:21,22 102:22,24 104:19,21 106:3 107:8,10 108:21 115:11 118:5,6,10 121:13 122:22 124:3 theft 20:16 40:10,11 81:23 their 4:11 15:3 26:5 33:8 48:17,19 51:18</p>	<p>54:1,18 58:20 59:3 70:7 72:1 72:1 73:1 78:12 88:3 100:24 103:6 111:10 themselves 53:19 thereof 51:18 thereto 125:13 thing 21:9,18,18 32:2 48:9 72:20 73:6 79:19 83:17 84:11,12,12 85:21,22,22 86:1,2,2 88:6 91:15,17 92:9 103:18 105:12 115:16 things 36:22 40:22,23,24 46:12,16 48:2 48:22 51:21 53:7 54:22 62:10,10 63:8 63:9,12 64:4 65:2 72:13,13 72:19 73:20 74:4,15 86:11 86:12 89:24 90:1,20 97:3 104:4 109:10 113:1,7,23 114:9 115:13 115:18 116:6 116:11,15 117:6,15,19 think 6:20 7:6 7:11 14:2 20:20 27:23 29:6,7 42:14 43:1,9,15 44:8 44:17 45:16 48:2,5 50:7 52:10,14,15 54:18,21 66:1 66:4,9,10,10</p>	<p>66:11 67:18 68:7,8 69:14 69:15 72:4,4 72:17 74:16 76:22 77:11 78:5,10,11,19 78:21 84:9 85:2,14 87:16 90:6,11 91:7 91:10 92:19 93:2,24 97:7 98:1 100:14 101:3,5,5,23 102:15,16,20 103:20 104:10 104:14 105:13 105:20,24 106:15,18,19 106:20 107:22 108:15 109:23 114:17,19 115:16 116:13 116:16,18 117:17,19 118:24 123:9 124:4 thinks 71:20 third 61:6 98:10 thirdly 100:9 thoroughly 16:11 104:23 though 27:1 48:5 thought 22:7,8 48:2 67:20 thousands 15:1 15:2 67:5 three 16:1 35:7 39:17 40:13,16 66:13,14 69:1 111:11,12 119:18 threshold 22:24 102:9 112:15 through 10:12 13:16 14:6 15:9 55:12 61:14 62:2</p>	<p>63:6 67:18 71:7 95:9 97:5 throughout 18:14 throw 80:13 thrown 83:24 tie 50:23 51:7 tied 89:7,9 113:14 time 3:1 10:11 14:23 15:17,18 18:5,14,24 19:5,13,24 20:9 32:4,5 36:6,18 39:23 46:15 47:5 50:22,24 52:14 53:22 55:14,15 60:18 61:21 62:19,21 63:2 63:4 64:10 70:19,20 78:18 82:6 83:20 87:6 88:9 89:3 93:22 96:20 98:5,6,18 100:18 101:15 103:14 107:13 107:21 108:4 109:2 116:24 118:13,13,14 118:19 124:10 124:17 times 18:18,20 20:16 36:12 70:14,21 82:17 92:22 113:17 115:5,8 timing 103:8,16 title 63:19 80:16 today 4:7,15,24 5:8 7:21 9:9 11:17 13:14,15 16:2,21 22:15 29:9 30:9 45:8 49:21 53:14 58:19 59:15 63:14 70:22</p>
---	--	--	--	--

<p>73:2 76:13 77:7 80:18 89:24 92:21 98:13 108:21 109:5 112:24 123:8,19 today's 16:19 28:20 59:9 together 35:7 50:23 53:11,24 120:3 told 20:2,13 22:10 33:15,20 34:2,4 35:16 52:11 54:7 82:18 92:3 tolerance 13:1 tomorrow 4:17 119:7 tools 73:7 tooth 93:16 touch 34:21 tough 72:9,18 108:8 toward 43:20 towards 12:10 117:6 Tower 66:18 trace 33:14,16 96:10,11,14 traced 14:11 trained 82:3 training 25:15 transaction 50:21 82:1 transactions 52:2 transcribed 53:13 78:3 transcriber 53:14 Transcribers 53:14 transcript 1:20 6:5 71:8,9 78:7 95:19 transcripts 24:14 53:5</p>	<p>55:6,7 58:5 transparent 18:10 96:15 transpire 105:18 transpired 19:23 112:14 tremendous 109:4 trepidation 100:14 trial 11:20 17:2 17:2 55:13 59:7 64:1,2,6 71:19 86:6 88:18,19,21,22 89:3,7,7 90:7 90:19,21 91:1 92:18 99:23 114:1,2 115:15 115:19 trials 115:15 Tribune 98:14 tricked 109:11 tricycle 84:19 tried 29:4,5 86:7 93:7,20 108:3 tripped 74:16 trivial 12:19 trouble 87:18 96:19 98:3 troubled 98:7 troubling 15:6 true 6:3 27:4 34:2 46:22 50:19 53:17 54:5 60:22 68:16 71:3 74:18,18 76:17 84:22 91:24 92:5 97:4 109:17,18 trust 17:7 67:15 67:22 72:1 74:14 75:23 76:6 truth 5:20 13:18 13:18,19 18:6 48:12 60:20</p>	<p>61:4 62:19,22 62:23 63:2,2,4 63:5 64:1,10 64:10 66:22 82:2,18,19,23 83:2,2,3,3,4,5 83:5 85:8,10 85:13,15,19,20 86:9,9,10,10 86:13,13,13 89:23 90:5,14 91:10 99:10 114:11,11 118:20 truthful 90:8 try 42:17 51:7 93:9,17,19 119:17 trying 15:12 31:18 71:16 83:8 96:18 100:5 101:17 108:10 117:4,5 turn 9:2 17:20 23:10 44:10 turned 9:4 55:18 92:4 110:21 TV 99:23 twelve 66:5 67:17 78:21 121:8 two 7:24 35:6 36:16,22 39:4 40:6 44:15 48:4 50:8 52:5 52:20 62:20,20 68:24 74:6 75:21,21 89:5 96:18,21 105:14 112:15 115:1,7 117:3 120:3 two-fold 92:2 two-thirds 4:21 65:2 123:5 type 23:3 103:13 typewriting 125:9</p>	<p style="text-align: center;">U</p> <p>unanimously 9:17 unavailable 27:15 44:16 uncomfortable 18:4 uncontroverted 109:15 under 7:4 13:21 13:22 47:15 57:5 59:8,12 60:14 82:3,11 108:10,17 109:20 110:7 115:1 125:9 undercover 6:10 undermine 67:16 understand 14:23 20:19 90:2,3 91:16 93:21 103:7,7 103:11 108:11 108:13 115:22 understandable 73:23 undertake 73:3 103:10 unfortunate 73:11 unimportant 52:21 81:6 103:24 Unintelligible 116:14 unintelligible 40:1 80:23 96:13 115:4 116:13,17 unintentional 53:15 United 5:15,15 7:6,7 11:9 13:8 21:10 27:11 29:16 35:20 38:24 77:19</p>	<p>82:11 92:16 116:20 University 18:16 unless 4:21 16:23 unlimited 117:20 unquote 34:9 unseal 34:24 unspecified 5:7 unspoken 105:21 untested 82:7,8 until 5:7 23:16 34:22 52:13 54:2 86:6 Unwilling 62:24 uphold 75:3 upright 61:9 105:23 upstanding 61:9 use 5:11 7:22 16:6 67:20 69:8 73:7 77:20 114:21 used 19:4 30:4 65:19 69:7 97:1 113:24 using 12:21 29:23 77:22 usurp 83:8 U.S 7:20 21:10 42:10 62:11 78:5,19 82:21 109:6</p> <p style="text-align: center;">V</p> <p>vacancy 29:13 vague 85:2 vain 18:18 validity 54:16 variable 104:6 various 69:14 vast 59:16 version 78:7 101:15 versus 5:15 101:4,7 103:24</p>
--	--	--	--	---

<p>104:22 105:4 very 9:6 11:8 12:18,22 17:16 22:4 36:8 45:15 61:11 71:10,14,15 72:18,19 73:13 73:15 78:17 79:15 83:11,23 89:19 91:3 96:15,19 97:6 109:15 114:18 115:16 118:11 123:10 124:4 vibrant 124:4 Victor 2:14 123:14 view 83:13,16 vigorously 99:21 violate 72:1 violated 59:3 violating 67:21 violation 12:18 74:14 75:23 76:6 111:11 virtually 74:13 109:12,21 virtue 82:7,7,8,8 voice 71:1 109:8 109:9 volition 100:24 volumes 29:7 voluntarily 42:22 voracity 26:15 49:9,18 90:24 vote 4:14,19 17:13,14 19:7 51:5 67:7 68:8 79:4,10 92:14 92:15 109:3 119:24 120:1,3 123:5 voted 75:2 79:3 79:10 121:8 votes 59:13 65:1 65:1 122:23</p>	<p>voting 17:13 19:8 <hr/> W <hr/> wait 12:4 22:22 23:16 62:22 waiting 63:24 walk 100:5,12 108:10 walking 102:12 waltzed 61:14 want 7:19 11:17 11:19 16:14,22 19:3 23:16,17 27:7 33:14,14 34:21 35:11 44:7 45:13 47:16 49:6 51:17 52:19,23 53:24 54:8 58:7,8 62:24 66:21 67:7 68:9,11 76:9 76:23 80:10,19 81:3,7,13,21 81:22 83:14 84:16,24 85:3 85:4,10,13,14 85:15,21 86:17 89:23 96:9,11 96:13,14,22 97:10 98:10,15 98:21,23 100:15 104:13 107:2 108:12 108:15 119:9 124:3,8 wanted 14:10 18:19 19:19 33:13,16 34:20 48:1,22,23 49:17 62:12,13 79:1 85:12,15 115:5,6 wants 82:19 85:20 86:8 98:17 warrants 11:6</p>	<p>Washington 82:10 116:22 117:1 wasn't 18:23 19:1 45:12 83:21,22 84:8 92:4 113:6 watching 12:5 35:2 way 8:12 15:4 16:14 18:3 23:5 41:21 42:1,3,4 54:6 57:8 68:8 78:12 84:12 97:5 99:11 108:7 111:9,14 119:11 ways 52:20 62:20,21 109:4 109:15 weapons 40:11 week 22:15 weeks 37:17 95:8 107:14 weighing 103:6 well 8:1 9:3 20:4 37:8,10 40:9 42:6,15 43:4 43:15 52:9 57:7 58:21 60:24 62:19 65:14,15 73:21 79:5 80:8 83:17 90:22 91:8,19 97:8 97:24 101:23 102:4 106:12 112:10 114:2 124:7 went 48:11 52:5 61:16,17 63:6 were 7:11 9:24 12:10 15:8,12 18:15,21 19:6 19:7 20:2,3 22:1,10 27:3 29:11,14 30:18</p>	<p>32:4,5,6,7,18 32:19,20 33:15 33:16 40:22,23 40:23 43:20 44:2,5 46:2,5,6 46:17 48:2,8 48:18 49:19 50:20 52:10,11 53:5 54:5 57:6 64:21 71:13,13 72:3 75:22 76:22 79:10 84:3 86:16 90:17 101:16 109:10 111:7,9 113:16 West 33:6 wet 30:10 we'll 12:4 23:9 33:1 62:22 93:12 119:13 120:1 we're 4:12,14 13:21 15:24 22:11,12 23:8 38:11,14 41:2 45:16 46:20 47:8,15 48:16 49:19 54:21,24 55:19 56:1,14 71:16 77:7 79:15,16 83:12 85:23 86:8,12 87:14,22 90:7 90:14 91:6,6 93:13 94:1,7 94:17 95:23 101:24 103:5 103:10,24 104:9,14 111:16,24 112:1,3 115:18 115:18 119:16 we've 13:16 49:11 55:18 62:9,10 67:2 75:15 94:2 95:1 99:9</p>	<p>102:14 115:12 while 15:12 59:19 68:14 69:4,5,6 74:8 74:12,23 77:23 77:23 100:6 105:20 whit 64:5 whole 13:18 66:20 82:19 86:9 101:11,19 114:11 116:15 wife 84:17 111:10,21 willing 14:5 72:9 wiretaps 54:11 wish 33:23 69:2 withdraw 28:2 38:9 withheld 109:6 110:9 witness 12:14 13:23 58:2 68:21 125:5,7 witnessed 13:16 witnesses 6:19 7:24 16:4 21:23 27:15 37:17 53:3,13 78:13 82:24 114:9 woman 98:2 women 18:21 19:2,3,4 63:11 wonderful 82:6 98:18 word 4:19 53:20 91:20,21 109:14 114:21 123:4 words 16:20 20:17 33:15,16 33:17 34:22 work 30:4 31:24 69:19 72:10 111:20 123:13 123:17 124:6</p>
---	---	---	---	---

<p>worked 84:6 working 15:15 47:15 84:8 110:7 works 18:9 69:11 111:19 world 96:15 wouldn't 19:2 66:23 73:24 78:6 90:4,20 93:19 107:2 109:24 110:2 write 31:15 94:24 writing 31:13 written 80:15 wrong 21:5 36:1 46:18 83:14 84:5,10,11,12 85:21 88:3 100:22,24 101:4,6 106:7 wrongdoing 21:14,15 22:19 83:11 93:9</p> <hr/> <p style="text-align: center;">Y</p> <p>yeah 96:11 113:1 114:24 year 5:17 14:15 14:21,21 69:6 88:18,23 years 13:17 16:10 19:1 29:22 39:17 40:13,16 80:15 84:17 yelled 61:16 yesterday 22:1 89:11</p> <hr/> <p style="text-align: center;">Z</p> <p>zero 13:1</p> <hr/> <p style="text-align: center;">\$</p> <p>\$1,000 35:16,17 \$1,200 40:14 \$1,400 39:20</p>	<p>\$1200 39:18 \$2,100 40:17 \$5,000 30:18 \$50,000 33:8 34:5 \$7,000 9:20 14:11,12 30:18 31:20 35:20 57:14,20,22 58:6,12 59:4 63:3 70:24 110:20 118:21</p> <hr/> <p style="text-align: center;">1</p> <p>1 23:20 39:8,9 40:3,12 1st 10:17 25:6 32:22 1-800-280-3376 2:22 10 6:5 37:1 38:22 44:23 45:5 48:13 70:10 10th 10:22 11:16 13:11 24:15 27:12 31:11 35:4 71:7 103:12 103 45:2 11 13:22 28:24 11th 5:9 35:14 110,000 63:17 12 39:5 76:7 12th 5:17 48:10 120 45:3 101:8 123 96:9 125 45:4 13 16:12 41:3 63:18 64:8 73:4 104:23 13th 9:21 136 45:4 15 5:12,19 6:1 6:11 8:23 17:19 21:7 24:9 26:8,8 45:1</p>	<p>150 98:4,7 153 45:5 99:20 100:17 16th 57:3 160 1:14 17 5:11 19 45:4 19th 1:12 12:24 1960's 92:14 1978 40:7</p> <hr/> <p style="text-align: center;">2</p> <p>2 10:11 28:1 45:2 2nd 33:4 2,000 34:6 58:8 20 20:4,16 40:9 41:3 2004 40:6 2010 38:22 2011 10:12 13:6 14:16 23:21 29:12,18,22 30:13 2012 1:13 5:9 6:5 9:13,21 10:12,17,22 12:24 24:15,15 24:15 25:5,5,6 25:6,6,7,7,16 27:12 31:7,11 31:22 32:9,15 32:22 33:4,18 34:12,16 35:4 35:14 37:1 38:22 39:5 41:1 44:22,23 45:1,2,3,3,5 70:10 71:7 21st 25:5,5 31:22 22 41:3 24th 13:6 14:15 23:21 29:12,17 25 45:2 26th 24:15 40:24 27th 24:15 28th 25:5,6 32:9</p>	<p>29th 32:15</p> <hr/> <p style="text-align: center;">3</p> <p>3 10:17 24:2,6 39:8,12 40:2 40:12 45:3 3rd 30:22 31:7 44:21 3:00 35:4 3:52 124:17 30 5:8 19:24 20:5 54:6 89:1 101:7 31 44:22 99:20 31st 25:16</p> <hr/> <p style="text-align: center;">4</p> <p>4 10:22 24:13,21 45:4 85:12 4th 33:18 34:1,7 44 44:23 48th 98:18</p> <hr/> <p style="text-align: center;">5</p> <p>5 11:1 21:6 25:2 25:12 5,000 34:5 50 113:17</p> <hr/> <p style="text-align: center;">6</p> <p>6 25:14,23 26:11 29:22 35:7 39:7 40:22 89:2 6th 9:13 25:6 34:12 6(d) 77:2 60 21:12 65:1 89:2 101:7 60's 19:6 65 21:7</p> <hr/> <p style="text-align: center;">7</p> <p>7 26:1,11,19 33:21,21 35:7 41:2,2 71 65:1 72 45:1</p>	<p>79 65:3</p> <hr/> <p style="text-align: center;">8</p> <p>8 27:10,19 41:4 8th 25:6 34:16 80 70:14 82nd 9:7 89th 57:9</p> <hr/> <p style="text-align: center;">9</p> <p>9 27:21 39:7 9th 25:7 9:15 41:1 9:30 1:13 9:51 3:1 90 101:8 91 7:4 97TH 1:3 99 101:13</p>
--	---	---	--	--