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BEFORE THE
ILLINOIS HOUSE OF REPRESENTATIVES
97TH GENERAL ASSEMBLY

HOUSE SPECIAL INVESTIGATING COMMITTEE

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

TRANSCRIPT OF PROCEEDINGS

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I N D E X

WITNESSES

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Representative Jim Sacia

7

E X H I B I T S

EXHIBITS

DESCRIPTION

PAGE

Exhibit No. 1

e-mail

6

Exhibit No. 2

written charge

10

Exhibit No. 3

criminal complaint

10

(The exhibits were retained by the committee.)

1 COMMITTEE MEMBERS PRESENT:

2 Representative Elaine Nekritz, Chairperson

3 Representative Dennis M. Reboletti,

4 Republican Spokesperson

5 Representative William Davis, Member

6 Representative JoAnn D. Osmond, Member

7 Representative Andre´ M. Thapedi, Member

8 Representative Franco Coladipietro,

9 Substituting for Member Jil Tracy

10

11 ALSO PRESENT:

12 Mr. Dave Ellis, Counsel

13

14 COURT REPORTER:

15 Ms. Dorothy J. Hart, CSR, RPR

16 Illinois CSR No. 084-001390

17 Midwest Litigation Services

18 15 South Old State Capitol Plaza

19 Springfield, Illinois 62701

20 (217) 522-2211

21 1-800-280-3376

22

23

24

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

2

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

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

10 Welcome, Franco.

11 With that, the clerk shall call the roll.

12 CLERK: Nekritz.

13 CHAIRPERSON NEKRITZ: Yes.

14 CLERK: Reboletti.

15 REPRESENTATIVE REBOLETTI: Present.

16 CLERK: William Davis.

17 REPRESENTATIVE DAVIS: Present.

18 CLERK: Osmond.

19 REPRESENTATIVE OSMOND: Present.

20 CLERK: Thapedi.

21 REPRESENTATIVE THAPEDI: Here.

22 CLERK: Coladipietro.

23 REPRESENTATIVE COLADIPIETRO: Present.

24 CHAIRPERSON NEKRITZ: Six members being

1 present, we have a quorum.

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

10 MR. ELLIS: Thank you, Madam Chair.

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

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

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

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

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

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

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

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

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

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

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

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

22 REPRESENTATIVE SACIA: I am, Madam Chair.

23 CHAIRPERSON NEKRITZ: Please, proceed.

24 REPRESENTATIVE SACIA: Thank you, Madam

1 Chair, Members of the Committee.

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

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

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

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

24 In addition, a copy of the sworn criminal

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

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

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

24 Submitted March 27th, 2012, and signed by

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

2 CHAIRPERSON NEKRITZ: Thank you,
3 Representative Sacia.

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

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

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

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

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

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

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

1 if they choose.

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

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

15 A couple of notes just on the process.

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

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

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

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

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

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

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

1 to his exoneration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 his office.

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

7 Thank you.

8 CHAIRPERSON NEKRITZ: Thank you,
9 Representative.

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

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

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

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

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

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

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

15 Representative Davis so moves.

16 Is there any discussion from the committee
17 members?

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

20 CLERK: Nekritz.

21 CHAIRPERSON NEKRITZ: Aye.

22 CLERK: Reboletti.

23 REPRESENTATIVE REBOLETTI: Aye.

24 CLERK: Davis.

1 REPRESENTATIVE DAVIS: Yes.

2 CLERK: Osmond.

3 REPRESENTATIVE OSMOND: Yes.

4 CLERK: Thapedi.

5 REPRESENTATIVE THAPEDI: Yes.

6 CLERK: Coladipietro.

7 REPRESENTATIVE COLADIPIETRO: Aye.

8 CHAIRPERSON NEKRITZ: Aye votes, six

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

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

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

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

5 (The committee recessed at 11:21 a.m.)

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CERTIFICATE OF REPORTER

STATE OF ILLINOIS)

) ss

COUNTY OF SANGAMON)

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

Notary Public in and for
the State of Illinois

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