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BEFORE THE
ILLINOIS HOUSE OF REPRESENTATIVES
101ST GENERAL ASSEMBLY

HOUSE SPECIAL INVESTIGATING COMMITTEE II

Hearing held, pursuant to Notice, on the
29th day of September, 2020, between the hours of
2:00 p.m. and 7:03 p.m., in Room C-1, Stratton
Building, Springfield, Illinois.

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1 COMMITTEE MEMBERS PRESENT:

2 Representative Emanuel Chris Welch, Chairman

3 Representative Tom Demmer, Minority

4 Spokesperson

5 Representative Elizabeth Hernandez, Member

6 Representative Natalie A. Manley, Member

7 Representative Deanne M. Mazzochi, Member

8 Representative Grant Wehrli, Member

9

10 ALSO PRESENT:

11 Representative Leader Jim Durkin.
12 Petitioner

13 Mr. Rod Safer
14 Counsel to Petitioners

15 Mr. Reid Schar
16 Counsel for David Glockner

17 COURT REPORTER:

18 Joyce D. Lawrence, CSR, CCR, RPR
19 CSR# 84-1716 CCR# 1329
20 Alaris Litigation Service
21 15 S. Old State Capitol Plaza
22 Springfield, Illinois 62701.
23
24

1 (Hearing commenced at 2:23 p.m.)

2 CHAIRMAN WELCH: Good afternoon, everyone.

3 The House Special Investigation Committee shall come
4 to order, the hour of 2 p.m. having come and gone.

5 Ladies and gentlemen, please be advised
6 that there have been several precautions taken to
7 protect participants' health and safety during the
8 COVID-19 pandemic, while also allowing this to be an
9 open and transparent discussion. The number of
10 in-person participants has been limited to ensure
11 social distancing, with the number of spaces
12 reserved for members of the media and other seating
13 available for members of the public. In addition to
14 live streaming available on ilga.gov, a public
15 viewing room has been arranged at the Bilandic
16 Building in Chicago. As we all are here in this
17 room, I'm sure at the Bilandic Building face
18 coverings are required of participants at all times
19 during this Committee hearing, including when
20 testifying before the Committee.

21 So at this time, I see that all members
22 are present. I will ask the Clerk to please take
23 the role.

24 CLERK: Welch.

1 CHAIRMAN WELCH: Here.

2 CLERK: Demmer.

3 REPUBLICAN SPOKESPERSON DEMMER: Here.

4 CLERK: Hernandez.

5 REPRESENTATIVE HERNANDEZ: Here.

6 CLERK: Manley.

7 REPRESENTATIVE MANLEY: Here.

8 CLERK: Mazzochi.

9 REPRESENTATIVE MAZZOCHI: Here.

10 CLERK: Wehrli.

11 REPRESENTATIVE WEHRLI: Here.

12 CHAIRMAN WELCH: All six members being
13 present, we do have a quorum. We may proceed.

14 Ladies and gentlemen, as was stated at
15 the last hearing, this is a non-partisan
16 investigatory process to evaluate whether there are
17 reasonable grounds to discipline an elected state
18 representative. It is not a legal proceeding. We
19 are not a court of law. As such, this Committee is
20 not bound by traditional rules of evidence.
21 However, we are bound to adhere to the rules of
22 decorum.

23 This particular case is unique to the
24 previous special investigating committees in that

1 the member that is the subject of the Petition has
2 not been accused by federal prosecutors of any
3 criminal activity.

4 As the Committee agreed at our last
5 hearing, myself and Minority Spokesperson Demmer
6 spoke on the phone with U.S. Attorneys John Lausch
7 and John Ricorus of the Northern District of
8 Illinois on September 14, 2020.

9 On September 16, 2020, Minority
10 Spokesperson Demmer and I sent our own letters to
11 the U.S. Attorney's office, to which we received a
12 joint response the next day.

13 On Friday, September 18, 2020, I sent
14 letters to everyone on the list of Republican
15 requested witnesses in the manner the Republican
16 members of this Committee requested.

17 As of Monday, September 28, yesterday,
18 the Committee has received a response from all of
19 the requested witnesses.

20 At this time, I hereby enter the letters
21 between the Committee and the United States
22 Attorney's office as Exhibits 7, 8, 9, 12, and 13.
23 All the letters requesting witnesses appear will be
24 marked as Exhibits 10 A through 10 H. And all

1 responses from witnesses regarding the Committee's
2 request will be marked as Exhibits 11 A through 11
3 H.

4 (Exhibits 7, 8, 9, 12, and 13, letters
5 between the Committee and the United State's
6 Attorney's office, were identified for the
7 record.)

8 (Exhibits 10 A through 10 H, letters
9 requesting witnesses appear, were identified for the
10 record.)

11 (Exhibits 11 A through 11 H, responses
12 from witnesses regarding Committee's request, were
13 identified for the record.)

14 REPRESENTATIVE MAZZOCHI: Further order,
15 Mr. Chairman.

16 CHAIRMAN WELCH: State your point.

17 REPRESENTATIVE MAZZOCHI: Yes. I don't
18 believe that you should be entering all of these
19 letters into the record because some of them appear
20 to contain what I would call testimonial evidence,
21 even though they are stating they are not going to
22 appear to give testimony before the Committee. So I
23 think that we should go through each one of them
24 individually and decide on motion whether we are

1 going to agree that those should be accepted into
2 the record.

3 CHAIRMAN WELCH: Your point is noted and
4 overruled. As the Chair, I enter these items into
5 the record as indicated. These items --

6 REPUBLICAN SPOKESPERSON DEMMER: I object
7 to your ruling.

8 CHAIRMAN WELCH: You are not recognized.
9 You are not recognized.

10 REPRESENTATIVE WEHRLI: Objection.

11 CHAIRMAN WELCH: Objection is noted for
12 the record.

13 REPRESENTATIVE MAZZOCHI: The basis -- an
14 objection is always in order.

15 CHAIRMAN WELCH: It is the prerogative of
16 the Chair -- it is the prerogative of the Chair to
17 overrule your objection. Objection is noted for the
18 record. We will proceed.

19 All letters, as previously indicated, are
20 being marked for transparency and made a part of the
21 record, and you can go to ilga.gov and this
22 particular committee and those letters will be
23 there.

24 REPRESENTATIVE MAZZOCHI: Mr. Chairman,

1 again --

2 CHAIRMAN WELCH: You are not recognized.

3 You are out of order, Member.

4 Reasonable people can disagree, which was
5 why the letter from the U.S. Attorney's office
6 spelling out their guidelines and objections was
7 included with the witness request letters. Because
8 it is not for Members to decide what witnesses are
9 going to say it is up to the witnesses and their
10 counsels to determine what they're going to say.
11 That is why the U.S. Attorney's office letter was
12 sent, along with the letters from the Committee.

13 REPUBLICAN SPOKESPERSON DEMMER:

14 Mr. Chair, I renew my objection, and I would agree
15 that, while reasonable people can disagree, as a
16 legislative body, we have a method of resolving
17 those disagreements, and that method is to cast a
18 vote.

19 CHAIRMAN WELCH: The objection is noted
20 for the record.

21 REPUBLICAN SPOKESPERSON DEMMER: And you
22 refuse to allow a vote on that objection?

23 CHAIRMAN WELCH: What is your motion?

24 REPUBLICAN SPOKESPERSON DEMMER: My

1 motion is to accept -- my motion is to appeal the
2 ruling of the Chair that all the letters would be
3 entered into the record.

4 CHAIRMAN WELCH: And there is a motion on
5 the floor. I believe that these are public
6 documents that should all be made available to the
7 public and made immediately available to the public
8 on our website, and so Representative Demmer has
9 made a motion to appeal the decision of the Chair.

10 REPRESENTATIVE WEHRLI: Second, Wehrli.

11 CHAIRMAN WELCH: Seconded by Mr. Wehrli.
12 To pass, there has to be 4 affirmative votes.

13 Madam Clerk, please call the roll.

14 CLERK: Welch.

15 CHAIRMAN WELCH: No.

16 CLERK: Demmer.

17 REPUBLICAN SPOKESPERSON DEMMER: Yes.

18 CLERK: Hernandez.

19 REPRESENTATIVE HERNANDEZ: No.

20 CLERK: Manley.

21 REPRESENTATIVE MANLEY: No.

22 CLERK: Mazzochi.

23 REPRESENTATIVE MAZZOCHI: Yes.

24 CLERK: Wehrli.

1 REPRESENTATIVE WEHRLI: Yes.

2 CHAIRMAN WELCH: On a three-three vote,
3 the motion fails. The ruling of the Chair stands.

4 REPRESENTATIVE MAZZOCHI: I would like a
5 parliamentary ruling, Mr. Chairman.

6 CHAIRMAN WELCH: So currently, the way
7 the motion was phrased and the way the vote turned
8 out, there is no item entered into the record. That
9 was the vote. So none of these letters will be
10 entered into the record.

11 You still want your parliamentary
12 procedure?

13 REPRESENTATIVE MAZZOCHI: Yes. I would
14 like to move, Mr. Chairman, that all of the letters,
15 besides Speaker Madigan responding to your letter
16 seeking voluntary testimony, be entered into the
17 record.

18 REPRESENTATIVE WEHRLI: Second, Wehrli.

19 CHAIRMAN WELCH: There has been a -- one
20 moment.

21 There has been a motion and properly
22 seconded that all letters, except Speaker Madigan's
23 letter, be entered into the record.

24 Madam Clerk, please call the roll.

1 CLERK: Welch.

2 CHAIRMAN WELCH: No.

3 CLERK: Demmer.

4 REPUBLICAN SPOKESPERSON DEMMER: Yes.

5 CLERK: Hernandez.

6 REPRESENTATIVE HERNANDEZ: No.

7 CLERK: Manley.

8 REPRESENTATIVE MANLEY: No.

9 CLERK: Mazzochi.

10 REPRESENTATIVE MAZZOCHI: Yes.

11 CLERK: Wehrli.

12 REPRESENTATIVE WEHRLI: Aye.

13 CHAIRMAN WELCH: Motion fails. No

14 letters will be entered into the record.

15 REPRESENTATIVE MAZZOCHI: Mr. Chairman,

16 may I be recognized?

17 CHAIRMAN WELCH: Not at this time.

18 We have here with us today a

19 representative from Commonwealth Edison. Mr. David

20 Glockner is here. He is also present with his

21 attorney, ComEd's attorney, Mr. Reid Schar.

22 I apologize; I don't know who is who.

23 Who is Mr. Glockner?

24 Mr. Glockner has raised his hand for the

1 record. And Mr. Schar is the other gentleman who is
2 now also raising his hand.

3 Thank you both for being here today. I
4 want to welcome you to Springfield. Normally, it's
5 a little bit warmer here. We are looking forward to
6 hearing your testimony here today, and I'm sure a
7 number of Members have questions for you.

8 However, before we get to the questioning
9 phase, I want to enter something into the record.

10 I want to enter at this moment Leader
11 Durkin's letter as Petitioner to the Committee as
12 Exhibits 7 -- as Exhibit 7 and my response to Leader
13 Durkin as Exhibit 8.

14 Give me one moment.

15 Let me restate. Before moving further, I
16 want to enter Leader Durkin's letter as Petitioner
17 to the Committee as Exhibit 14 and my response as
18 Exhibit 15.

19 (Exhibit 14, Leader Durkin's letter to
20 the Committee, was entered into evidence.).

21 (Exhibit 15, Chairman Welch's response,
22 was entered into the record.).

23 CHAIRMAN WELCH: I want to say this
24 before we go further. We cannot set precedent

1 allowing any Member of the Body to ask questions at
2 a Committee hearing. This investigatory process is
3 set up to keep one person from abusing the process
4 to railroad another Member. Leader Durkin is a
5 Petitioner in this process. It would be improper
6 for him to act as the accuser, the advocate,
7 investigator, the judge, and the jury. It would
8 also be a conflict of interest for Leader Durkin,
9 because he is a potential material witness to our
10 investigation, to have any role in directing the
11 investigation of this Committee.

12 If Leader Durkin wanted to be on the
13 Special Investigating Committee, he could have
14 simply not signed the Petition, and he could have
15 appointed himself to the Special Investigating
16 Committee or the Select Committee on Discipline,
17 which is the adversarial part of the investigatory
18 process. Please take a look at House Rule 85 for
19 that.

20 Now, Minority Leader Durkin appointed
21 members of the Republican caucus to this Committee
22 to conduct this investigation. All three of these
23 members are very capable members.

24 Therefore, I am offering a compromise to

1 Leader Durkin, and I believe that Leader Durkin can
2 give his opening statement and questions to
3 Representative Demmer or to Representative Wehrli or
4 to Representative Mazzochi as members of this
5 Committee, and one of them would be allowed to give
6 the opening statement. Then we would go to the
7 questioning of Mr. Glockner, and then one of them
8 could also -- or all of them could split up the
9 questions. I believe that is a fair compromise.

10 Leader Durkin, are you willing to accept
11 that compromise?

12 REPRESENTATIVE WEHRLI: Chair.

13 CHAIRMAN WELCH: You're not recognized
14 right now. I'm talking to Leader Durkin.

15 LEADER DURKIN: May I be recognized?

16 CHAIRMAN WELCH: I asked a question,
17 Leader. Are you willing to accept that compromise?

18 LEADER DURKIN: For purposes of the
19 question, what you have stated is that you will
20 allow me to offer, as a Petitioner and a Member of
21 the General Assembly and also a constitutionally
22 created position as House Republican Leader, the
23 ability to make an opening statement on my case as
24 Petitioner, correct?

1 CHAIRMAN WELCH: What I have said is that
2 you can give your opening statement and your
3 questions to one of the Members of the Committee and
4 they will do those items. Because under the rules,
5 sir, you are not allowed to be a part of this
6 investigatory process.

7 LEADER DURKIN: If you read the rules,
8 sir --

9 CHAIRMAN WELCH: Because you signed the
10 Petition.

11 LEADER DURKIN: If you read the rules,
12 Rule 91, a petitioner is a minority leader. I am
13 prohibited from serving -- if I signed the Petition,
14 I cannot serve on the Committee. But your letter
15 yesterday states that I cannot participate, and that
16 is not what your House Rules state.

17 So as I said, this is an open public
18 meeting. I plan to give my opening statement, sir.

19 CHAIRMAN WELCH: You will not be
20 recognized for an opening statement, Leader.

21 LEADER DURKIN: Can you cite where in the
22 House Rules that I am not able to -- I am not
23 allowed to provide an opening statement as the
24 Petitioner, as we do in any other forum within this

1 country? I believe that what you are doing is
2 stretching the reality and the rules beyond all
3 imagination, sir. And I believe that I have the
4 inherent right, in my position as a sitting Member
5 and also as the Petitioner, to make my case and make
6 my statement personally.

7 CHAIRMAN WELCH: Leader, with all due
8 respect, sir, you and I are friends outside of here,
9 and you know how much I respect you, but you're
10 wrong on this. Let me finish.

11 Out of deference to you, at the
12 organizational meeting, I allowed you as one of the
13 Petitioners to put the Petition into the record --
14 out of deference. However, on Thursday, you sent me
15 a letter telling me what you're going to do at this
16 Committee that I chair. That letter, in and of
17 itself, was improper and out of order. Under House
18 Rule 10, which I specifically mentioned during the
19 organizational meeting, this Committee will conduct
20 itself pursuant to House Rule 10. And under House
21 Rule 10(c), the chair has the discretion to deviate.
22 I am not granting that request that you instructed
23 me to do. That is out of order. We are going to
24 follow precedent. What you're asking has never been

1 done in the history of this committee before. Now,
2 I am conscious of committees that will come in the
3 future. We are not going to set that precedent. On
4 all committees of this Body, the General Assembly,
5 the House of Representatives, we do not allow
6 nonmembers of the Committee to ask questions, and
7 that is what we're doing in this case.

8 LEADER DURKIN: Well, I will -- just for
9 the record, Representative Manley did ask questions
10 of me last meeting. Seems to be there is a waiver
11 issue.

12 But secondly, my goal is to provide an
13 opening statement and nothing more. I will not be
14 asking questions. I will be making an opening
15 statement which describes what I believe the
16 evidence will lay out and then I will finish.

17 CHAIRMAN WELCH: You just said something
18 different and I want to get it clear on the record.
19 You just said here now something different than in
20 your letter. Now you are asking if you could give
21 an opening statement, and you will allow the Members
22 to ask the questions. Is that what you just said?

23 LEADER DURKIN: What I am saying is that
24 I am just here to provide an opening statement.

1 CHAIRMAN WELCH: Members of the Committee
2 will ask the questions, correct?

3 LEADER DURKIN: That's correct. That is
4 my one purpose for today, sir, is to provide an
5 opening statement and nothing more.

6 CHAIRMAN WELCH: Give me a moment,
7 please.

8 I just want to note for the record that,
9 on September 24, 2020, I received a letter from
10 Leader Durkin at about 8:30 in the morning. In that
11 letter, he stated that, as I am the Petitioner in
12 this matter, I am writing to inform you that I will
13 proceed with my Petition or case-in-chief in the
14 following manner:

15 No. 1, as Petitioner, I will be
16 presenting an opening statement at the September 29
17 hearing.

18 No. 2, as Petitioner, I, or my designated
19 legal counsel, shall be the first party to ask
20 questions of any of the witnesses who appear at the
21 next or any subsequent hearing regarding the
22 Petition that was filed.

23 And then 3, you noted that a
24 representative of Commonwealth Edison had confirmed

1 that they will be here today.

2 For the record, Leader, I am asking you
3 to confirm that you are stating that you, as the
4 Minority Leader, would like to give an opening
5 statement here today; is that correct?

6 LEADER DURKIN: That's correct. And I
7 also, for the record, would like to state that I am
8 withdrawing the second statement in that letter,
9 that I stated that I would be asking questions. I
10 might -- as I said earlier, I would like the
11 opportunity to make an opening statement, sir.

12 CHAIRMAN WELCH: Leader, you and I are
13 friends. We go way, way, way back. And as the
14 Minority Leader, not as a Petitioner, I am willing
15 to make the motion to allow you to give an opening
16 statement, and the questioning of witnesses will be
17 done by this Committee, the Investigating Committee.
18 So I make that motion. Is there a second?

19 REPRESENTATIVE HERNANDEZ: Second.

20 CHAIRMAN WELCH: Representative Hernandez
21 second. Roll call.

22 REPUBLICAN SPOKESPERSON DEMMER: Mr.
23 Chairman, I would like a clarification on the
24 motion.

1 CHAIRMAN WELCH: The motion is to allow
2 Minority Leader Durkin to make an opening statement,
3 and all questions will be done by the Committee
4 Members only.

5 REPUBLICAN SPOKESPERSON DEMMER: So on
6 the second piece of that, I would cite there is
7 precedent in the Smith investigative committee in
8 which counsel asked questions. I would like to
9 retain the option that Members of the Committee or
10 counsel would be able to ask questions.

11 CHAIRMAN WELCH: Counsel for the
12 Committee?

13 REPUBLICAN SPOKESPERSON DEMMER: That our
14 counsel. In the Smith case, counsel at the time was
15 Mr. Ellis, and he asked questions of Mr. Smith's
16 attorney.

17 CHAIRMAN WELCH: He was counsel for the
18 Committee.

19 REPUBLICAN SPOKESPERSON DEMMER: We would
20 like to retain the ability for our designated
21 counsel to ask questions of witnesses.

22 CHAIRMAN WELCH: Who is your designated
23 counsel?

24 REPUBLICAN SPOKESPERSON DEMMER: Mr.

1 Safer.

2 CHAIRMAN WELCH: He is counsel to the
3 Committee? He has never counseled me.

4 REPUBLICAN SPOKESPERSON DEMMER: He is
5 the counsel to the Republican Members of the
6 Committee. We each have counsel. Mr. Safer is
7 serving as counsel to the Committee.

8 CHAIRMAN WELCH: I disagree with that. I
9 think questions should come from Members of this
10 Committee.

11 REPUBLICAN SPOKESPERSON DEMMER: As I
12 said, in the only case that we have as precedent
13 here, Mr. Ellis, who was not a member of the
14 committee but instead was counsel, asked questions
15 of the attorney for Mr. Smith, who appeared before
16 the committee.

17 CHAIRMAN WELCH: I'm going to withdraw my
18 motion.

19 Leader Durkin's letter of September 24
20 specifically referred to Mr. Safer as his designated
21 legal counsel. And unlike special investigation
22 committees of the past, unfortunately, this has had
23 a lot of partisan nature to this particular one. In
24 the past, this has only been done when members have

1 been charged and under indictment and this committee
2 has been able to work together in a
3 nonpartisan-bipartisan way. And I am very conscious
4 of the precedent that we are setting here today.
5 And to allow a lawyer, who is not lawyer to the
6 entire Committee, to ask questions of a witness, I
7 am just not comfortable with, especially when Leader
8 Durkin's letter refers to him as his designated
9 counsel. Now, Leader Durkin is a Petitioner and
10 accuser in this case. That is just not proper.

11 I am willing, again, as a compromise, to
12 allow Leader Durkin to make his opening statement.
13 However, the questions, just like at all other
14 committees, should be done by members sitting on a
15 committee. If we can reach agreement on that, we
16 can proceed and not waste Mr. Glockner's and Mr.
17 Schar's time.

18 Leader Durkin, are you comfortable with
19 that, as I'm suggesting?

20 LEADER DURKIN: Yes, I am.

21 CHAIRMAN WELCH: You are comfortable with
22 that?

23 LEADER DURKIN: I am comfortable.

24 Correct.

1 CHAIRMAN WELCH: One moment, please. One
2 moment. This room is kind of small. I can see you
3 guys, all right. Everyone will be recognized today.

4 I want to put on the record, under House
5 Rule 95, proceedings before the Select Committee on
6 Discipline shall be the one that is adversarial in
7 form, with the managers for the House presenting the
8 case for the disciplinary action.

9 You guys are jumping ahead in the
10 process. I just wanted to get that on the record.
11 This is not supposed to be adversarial. This is
12 supposed to be investigatory. And I think this
13 Committee, who I have gotten to know quite well, are
14 very capable of investigating and asking questions.
15 And Leader Durkin has indicated on the record that
16 he is comfortable with the compromise I'm proposing.

17 Is that correct, Leader?

18 LEADER DURKIN: That is correct. And
19 also, the witnesses should not be left with pulling
20 strings out of the bag and let them talk. I think
21 that there should be interchange between the
22 witnesses and also the Committee Members.

23 CHAIRMAN WELCH: There will be. There
24 will be back and forth.

1 LEADER DURKIN: Thank you.

2 CHAIRMAN WELCH: Are we in agreement
3 before I make my motion?

4 LEADER DURKIN: I am prepared to move
5 forward. And yes, I am in agreement.

6 CHAIRMAN WELCH: Thank you.

7 Okay. At this time, I would like to make
8 a motion to allow Leader Durkin to make -- Minority
9 Leader Durkin, not in his capacity as one of the
10 Petitioners, to make an opening statement here
11 today. All questioning of witnesses will be done by
12 Members of this Committee.

13 Is there a second?

14 REPRESENTATIVE HERNANDEZ: Yes.

15 CHAIRMAN WELCH: It has been moved and
16 properly seconded to allow Leader Durkin to make an
17 opening statement. All witnesses will be questioned
18 by Members of this Committee.

19 Roll call vote, please.

20 CLERK: Welch.

21 CHAIRMAN WELCH: Yes.

22 REPRESENTATIVE MAZZOCHI: May -- can we
23 have discussion?

24 CHAIRMAN WELCH: We are in the middle of

1 our roll call vote.

2 REPRESENTATIVE MAZZOCHI: Can we have
3 discussion?

4 CHAIRMAN WELCH: We are in the midst of
5 our roll call vote. I vote yes.

6 CLERK: Demmer.

7 REPUBLICAN SPOKESPERSON DEMMER: Yes.

8 CLERK: Hernandez.

9 REPRESENTATIVE HERNANDEZ: Yes.

10 CLERK: Manley.

11 REPRESENTATIVE MANLEY: I have a question
12 before we move forward -- before I cast my vote.

13 CHAIRMAN WELCH: We are in the midst of
14 the roll call, Representative.

15 REPRESENTATIVE MANLEY: Can we suspend
16 that while I ask a parliamentary question?

17 CHAIRMAN WELCH: I will withdraw my
18 motion.

19 You want to withdraw your second?

20 REPRESENTATIVE HERNANDEZ: Yes.

21 CHAIRMAN WELCH: Motion has been
22 withdrawn. I'm going to recognize Leader Manley,
23 and then we'll recognize Representative Mazzochi.

24 REPRESENTATIVE MAZZOCHI: Thank you.

1 CHAIRMAN WELCH: Leader Manley.

2 REPRESENTATIVE MANLEY: If we allow --
3 based on the motion that you just previously said,
4 is there any reason that Leader Durkin will not be
5 eligible or not be able to be called before this
6 Committee as a witness in the future? I need to
7 know for sure.

8 CHAIRMAN WELCH: Give me one moment.

9 REPRESENTATIVE MANLEY: Sure.

10 CHAIRMAN WELCH: Leader Manley, can you
11 state your question on the record again? I just
12 want to be clear what the question is.

13 REPRESENTATIVE MANLEY: Certainly.

14 My question is, if we allow Leader
15 Durkin, as the House Minority Leader, to make an
16 opening statement at this Committee hearing, will
17 that in any way prohibit us from calling him as a
18 witness in the future? I think that's very
19 important.

20 CHAIRMAN WELCH: It is my opinion, after
21 seeking legal counsel, that we can still call Leader
22 Durkin as a witness.

23 On the record, I want to ask Leader
24 Durkin: You are waiving any right to claim that we

1 can't call you as a witness, right?

2 LEADER DURKIN: Counsel, as you know,
3 opening statements are not evidence. I am not a
4 witness. I am giving an opening statement.

5 CHAIRMAN WELCH: But you acknowledge the
6 fact --

7 LEADER DURKIN: But I will not try to
8 stand in your shoes. I am not going to make that --
9 respond to that. That is an important matter for
10 the Committee.

11 CHAIRMAN WELCH: You acknowledge that you
12 could possibly be a witness before this Committee,
13 correct?

14 LEADER DURKIN: Chairman Welch, you can
15 decide that, and also your Members, on how you want
16 to move forward. I am not a witness today. I am
17 making an opening statement, which is not evidence,
18 as you know, and we'll take it from there.

19 CHAIRMAN WELCH: Thank you.

20 Representative Mazzochi, I apologize
21 again. It is your opportunity.

22 REPRESENTATIVE MAZZOCHI: Thank you,
23 Chairman.

24 One of the concerns that I have about

1 suggesting that Members of the Committee cannot rely
2 on counsel to either facilitate the questioning or
3 to even participate in questioning is that, while,
4 you know, Mr. Welch, you are an attorney, I am an
5 attorney, there are other individuals where you may
6 have a future committee comprised of this that is
7 not made up of attorneys, where they may need to be
8 able to ask particular nuanced investigative
9 questions. They need to have particular knowledge
10 of criminal law and statutes in a way that your
11 typical legislator may not.

12 So because, again, I am very concerned
13 about precedent, as well, going forward, I am very
14 concerned about the notion that we are taking the
15 position that committee -- only committee members
16 can ever ask questions of a witness and that they
17 cannot also rely on advice and assistance from
18 potential legal counsel to facilitate the
19 investigation.

20 I also think that, from the perspective
21 of an efficiency standpoint, you can sometimes get
22 through things a lot more quickly when you have
23 professional attorneys asking questions. We know
24 that this is done very frequently at the federal

1 level in the context of investigative committees. I
2 don't think it's out of the ordinary to say that we
3 should be allowed to do this at the state level.
4 And to the extent the parties cannot -- the Members
5 of the Committee cannot agree on one counsel, then
6 certainly, if they can agree on, you know,
7 particular Members which have counsel and other
8 Members wish to have counsel, as long as the time is
9 divided up fairly, then that seems to me to be an
10 appropriate way to move forward.

11 CHAIRMAN WELCH: Representative Mazzochi,
12 let me first say, we may not agree on policy, but I
13 respect you for what you do here, and I respect you
14 for what you do out of here. I think you are a very
15 capable attorney who can handle yourself quite well,
16 and I'm assuming that is why Leader Durkin appointed
17 you to this Committee.

18 Also, just as you have all seen me lean
19 over and seek advice of our counsel, there is
20 nothing prohibiting you from leaning over and
21 seeking advice from your counsel.

22 However, only Members of this Committee
23 will be allowed to ask questions of witnesses.

24 Representative Wehrli.

1 REPRESENTATIVE WEHRLI: Thank you,
2 Chairman.

3 My question to you as the Chair is, what
4 is the basis of your accusation that Leader Durkin
5 would be a material witness? And do you have a
6 similar basis of findings or belief that Leader
7 Manley or Representative Hernandez can also be a
8 material witness to this investigation?

9 CHAIRMAN WELCH: Well, first of all, let
10 me say that Representative Leader Durkin is a
11 Petitioner. He signed the Petition, and our rules
12 specifically address that particular issue.

13 Secondly, Leader Durkin and former
14 Governor Bruce Rauner put on a press release where
15 they say they have to move mountains to get energy
16 legislation passed in 2016. And so that only leaves
17 the possibility of us calling him as a witness. I
18 haven't said he will be a witness for sure, but the
19 fact that he could possibly be a witness is yet
20 another reason, in addition to the fact that he is a
21 Petitioner. I am not aware of anything that would
22 disqualify any of us who are Members of this
23 Committee from serving in our roles and being able
24 to ask questions here.

1 There being no further one seeking
2 recognition, I move to allow Leader Durkin to make
3 an opening statement in his capacity as the Minority
4 Leader, not as a Petitioner, and that only Members
5 of this Committee will ask witnesses questions
6 during this process.

7 Is there a second?

8 REPRESENTATIVE HERNANDEZ: Yes.

9 CHAIRMAN WELCH: It has been moved and
10 properly seconded. Any further discussion?

11 Seeing none, Madam Clerk, please call the
12 roll.

13 CLERK: Welch.

14 CHAIRMAN WELCH: Yes.

15 CLERK: Demmer.

16 REPUBLICAN SPOKESPERSON DEMMER: Yes.

17 CLERK: Hernandez.

18 HERNANDEZ: Yes.

19 CLERK: Manley.

20 REPRESENTATIVE MANLEY: Yes.

21 CLERK: Mazzochi.

22 MAZZOCHI: No.

23 CLERK: Wehrli.

24 REPRESENTATIVE WEHRLI: Yes.

1 CHAIRMAN WELCH: On a vote of 5 voting
2 yes, 1 voting no, the majority voting, Leader Durkin
3 will be recognized for an opening statement.

4 Let me say this just procedurally really
5 quickly. I want to recognize Leader Durkin for an
6 opening statement. I am then going to ask --
7 introduce the witness and, if he has any opening
8 statement, allow him to make an opening statement,
9 and then we will proceed to Members of the Committee
10 asking questions. And I intend today to go in order
11 of seniority, but I'm going to alternate parties. I
12 will begin the questioning. I will then go to
13 Leader Demmer and bounce back and forth, Democrat,
14 Republican.

15 Okay. Leader Demmer.

16 REPUBLICAN SPOKESPERSON DEMMER: Thank
17 you, Mr. Chair.

18 As we enter some items into the record as
19 exhibits, we had quite a few documents that were
20 tied up in the initial motion. We had some
21 disagreement over witness response letters, but I
22 would move that the correspondence between me and
23 you and the U.S. Attorney's office, those series of
24 letters, be admitted into the record as exhibits.

1 REPRESENTATIVE MAZZOCHI: Second.

2 CHAIRMAN WELCH: It has been moved and
3 properly seconded to move letters between myself and
4 Representative Demmer and U.S. Attorney Mr. Lausch
5 and U.S. Attorney Mr. Ricorus into the record. All
6 letters, I'm assuming your second letter and your
7 second response from Mr. Lausch.

8 Give me one moment.

9 There's a motion that has been moved and
10 properly seconded on the floor. Everyone
11 understands the motion. Any discussion?

12 Anyone object to this passing on leave?

13 Seeing no objection, leave being granted,
14 on a motion of 6 voting yes, no voting no, none
15 voting present, those items will be moved into the
16 record.

17 Representative Mazzochi.

18 REPRESENTATIVE MAZZOCHI: Thank you,
19 Mr. Chairman.

20 For the convenience of the Committee, I
21 have prepared subpoenas directed to Michael McClain,
22 and I would hereby move that this Committee issue a
23 subpoena to Michael McClain for testimony to appear
24 before this Committee on or prior to October 15,

1 2020.

2 REPRESENTATIVE WEHRLI: Second, Wehrli.

3 CHAIRMAN WELCH: Let me ask this
4 question, and I'm not asking you to not make your
5 motion. Can we deal with this after Leader Durkin
6 has made his opening statement, after Mr. Glockner
7 and Mr. Schar have finished here, and we would deal
8 with this before we adjourn today?

9 REPRESENTATIVE MAZZOCHI: Yes. I
10 actually wanted to do it before our last Committee
11 meeting, but as long as you're committing that we
12 will get to it before we adjourn for the day, then
13 that's fine.

14 CHAIRMAN WELCH: I am committed to
15 that.

16 REPRESENTATIVE MAZZOCHI: Thank you.

17 CHAIRMAN WELCH: Trying to be respectful
18 of the folks in front of us.

19 Motion withdrawn.

20 Leader Durkin, you are recognized, sir.

21 LEADER DURKIN: Thank you, Mr. Chairman,
22 and thank you, ladies and gentlemen of the Special
23 Investigative Committee.

24 I would like to begin with this following

1 statement.

2 CHAIRMAN WELCH: I've gotten several
3 messages that you can't be heard, and I don't want
4 to be accused of you not being heard. Can you speak
5 up a little bit?

6 LEADER DURKIN: All right. I have to
7 wear this, correct?

8 CHAIRMAN WELCH: Yes, you do.

9 LEADER DURKIN: You got it. How is this?
10 All right. Thank you.

11 As I said, I would like to begin with the
12 following statement: While we have seen major steps
13 forward, we have also seen the good work of the many
14 honest members of this legislature be overshadowed
15 by the wrongdoing of individuals who have sought to
16 put themselves first. It is clear that we must take
17 significant steps within the coming weeks to restore
18 confidence in state government.

19 Those words were not mine, but they
20 should serve as a roadmap of this Committee's work.
21 Those words were spoken by Speaker Michael J.
22 Madigan on January 29, 2020, after Governor
23 Pritzker's state-of-the-state address in the wake of
24 the corruption scandals of Senator Martin Sandoval

1 and Assistant House Majority Leader Luis Arroyo.

2 It was a different world in January of
3 2020. The coronavirus had not yet affected this
4 country. And Speaker Madigan's systematic pattern
5 of corruption had not been laid bare by Commonwealth
6 Edison's admissions.

7 Now, we know that for almost a decade,
8 it, Commonwealth Edison, had bribed Speaker Madigan
9 in exchange for and/or to reward favorable action on
10 legislation that saved Commonwealth Edison at least
11 \$150 million.

12 The people of Illinois endured corruption
13 for so long that corruption has been on both sides
14 of the aisle in every level of government. Now you,
15 Members of the Committee, have been called upon of
16 doing the hard work of being impartial arbiters of
17 whether or not there are reasonable grounds to
18 support the charges in this case.

19 I do not believe that finding the
20 objective truth is hard. The evidence will be
21 direct, strong, convincing, and will meet the burden
22 of proof for this Committee. That is whether
23 reasonable grounds exist to authorize charges.

24 However, I am a realist and I believe it

1 will be hard to be objective. There are three
2 Democrats and three Republicans on this Committee,
3 and no one in the State of Illinois believes that
4 this will come out any other way than a 3-3 split
5 along party lines. That is because, as the Speaker
6 stated earlier, people have lost faith in
7 government.

8 This Committee has an opportunity to
9 restore some of the confidence people used to have
10 in Illinois government. And at a time where
11 partisanship has never been more extreme and our
12 system has never been more polarized, you can put
13 aside your party's affiliation and be those
14 impartial arbiters of the facts. If you do that,
15 there will only be one possible conclusion.

16 In this statement, I will describe the
17 evidence that is already in the record, the evidence
18 that you hopefully will hear and the conclusion that
19 this evidence can house. Briefly, the Deferred
20 Prosecution Agreement, which can be referred to
21 interchangeably as the DPA.

22 The DPA is the evidence that compels a
23 conclusion that there are reasonable grounds to
24 sustain this charge, and it's already in the record.

1 We filed it last week. And of course, that evidence
2 is the Deferred Prosecution Agreement.

3 Now before I highlight what that Deferred
4 Prosecution Agreement says about the Speaker, let me
5 talk about what the Deferred Prosecution Agreement
6 represents in comparison to an indictment or a
7 complaint that has been mentioned over and over
8 again by the Chairman.

9 An indictment or a complaint is a
10 charging document that sets forth the government's
11 version of the facts. It is not evidence. And in
12 the Derrick Smith, it was not evidence. It is one
13 side's view of what the evidence will show. An
14 indictment or a complaint is inadmissible in any
15 court of law because it carries no evidentiary
16 value. And yes, in those situations of an
17 indictment or a complaint, the defendant is presumed
18 innocent.

19 In contrast, the Deferred Prosecution
20 Agreement, the DPA, contains an agreed upon
21 statement of facts between the government and the
22 defendant, in this case, Commonwealth Edison. It is
23 admissible evidence. It carries significant
24 consequences. Both sides, the government and the

1 defendant in a DPA, agree that the events described
2 in that document took place. That carries much more
3 weight and significance than a mere charge,
4 complaint, or indictment rendered by any one of
5 those. Think about it. What carries more weight,
6 an allegation or an admission of fact?

7 In this case, Commonwealth Edison has
8 admitted to a scheme that spanned almost a decade,
9 where Speaker Michael Madigan sought to obtain from
10 ComEd jobs, vendor subcontractors, and, ultimately,
11 a board position for his associates, including
12 precinct captains who operated in his legislative
13 district.

14 Commonwealth Edison admitted that they
15 paid person after person who was associated with
16 Speaker Michael Madigan thousands of dollars even
17 though those Madigan associates did little or no
18 work. Commonwealth Edison also admitted that
19 several of its executives and agents knew the
20 purpose of these payments and that was to influence
21 and reward Michael Madigan in connection with his
22 official duties.

23 For example, Commonwealth Edison admitted
24 that Michael Madigan and Anne Pramaggiore,

1 Commonwealth Edison's former CEO, to hire one of his
2 political allies who was retiring from Chicago's
3 City Council in May of 2018. ComEd followed
4 Madigan's directive and laundered payments to a
5 Madigan associate for \$5,000 a month to a lobbying
6 company. Importantly, Anne Pramaggiore agreed that
7 Michael Madigan could tell this person about the
8 arrangement rather than someone from ComEd. And why
9 did he do that? Because he wanted to make sure that
10 Michael Madigan got the credit directly for these
11 underhanded payments.

12 ComEd admitted that to conceal their
13 scheme and to prevent law enforcement from finding
14 out about its unlawful conduct with Michael Madigan,
15 ComEd wanted their payments to Madigan's associates
16 through consulting companies. The individuals at
17 ComEd paid, in order to influence or reward Michael
18 Madigan, include one of Madigan's top three precinct
19 captains, former ward committeemen, and aldermen and
20 many others in what was described as part of an
21 old-fashioned patronage system. It's a publicly
22 held company, a public utility, one of the largest
23 public utilities in the United States.

24 ComEd admitted that it paid approximately

1 \$1.3 million to Michael Madigan's associates who did
2 little or no work for ComEd. Let me say that again.
3 One of the largest utilities in the nation paid over
4 \$1.3 million in bribes to influence or reward the
5 Speaker of the Illinois House of Representatives,
6 Michael Madigan, in connection with the advancement
7 and passage of legislation favorable to ComEd in the
8 General Assembly. In a state that has long
9 witnessed and suffered from scandal and corruption,
10 that admission, in itself, is breathtaking.

11 Now, keep in mind, when we talk about
12 precedent, let's go back to 2002. That's when we
13 threw former Representative Derrick Smith out of
14 this august body, the House of Representatives,
15 under the same process that we are here today.
16 Discipline -- a petition -- a discipline -- a
17 special investigative committee, a select committee
18 on discipline, and then a vote of the House. He was
19 thrown out of that body because he was accused of
20 taking a single \$7,000 bribe from a -- bribe from an
21 informant who was working for the federal
22 government.

23 Now, in this case, we have concrete,
24 solid evidence that, over the course of almost a

1 decade, ComEd's bribes totaled over 189 times the
2 amount that Derrick Smith was accused of taking.
3 The differences are stark. There is concrete
4 evidence versus a charge. There is a pattern of
5 bribes for almost a decade, which has been admitted
6 to by Commonwealth Edison, versus a single bribe.

7 And there is one other difference in
8 those two matters. Derrick Smith did not have the
9 clout that Michael Madigan has. With Derrick Smith,
10 there was a bipartisan effort to say that corruption
11 would not be tolerated, and yet it remains to be
12 seen whether this Committee will live up to that
13 precedent or let clout prevail.

14 Speaker Madigan's corruption went beyond
15 bribery with money. Commonwealth Edison admitted
16 that, in 2017, Michael Madigan wanted one of his
17 associates placed on ComEd's board of directors. No
18 small favor at all. There was opposition to this
19 within ComEd, as would be expected. CEO Anne
20 Pramaggiore asked Mike Madigan through his chosen
21 intermediary and gatekeeper, Mike McClain, whether
22 it would be okay if ComEd gave this person a job for
23 \$78,000 a year but not place him on the board. The
24 message came back from Madigan, not good enough.

1 Get him on the board. Ultimately, that deed was
2 done. Madigan got his board member. ComEd admitted
3 that person was appointed to influence and reward
4 Madigan in connection with his official duties.
5 Just like that. That would be enough to qualify as
6 an extraordinary pattern of corruption.

7 Unfortunately, there's more.

8 ComEd admitted to hiring a law firm with
9 the intent of influencing and rewarding Michael
10 Madigan. ComEd understood that giving that contract
11 to a particular law firm was important to Speaker
12 Michael Madigan. When the contract was up for
13 renewal, ComEd sought to change the contract with
14 the law firm because the firm was being paid for
15 many more hours than it had worked. ComEd sought to
16 pay only for the work the law firm had performed. I
17 would suggest that that is a reasonable business
18 position.

19 That -- excuse me.

20 Speaker Madigan would not have any of
21 that. Gatekeeper Mike McClain wrote to CEO
22 Pramaggiore: I am sure you know how valuable Lawyer
23 A is to our friend. That's code for Mike Madigan.
24 McClain wrote: I know this drill and so do you. If

1 you do not get involved and resolve this issue of
2 850 hours for this law partner per year, then he
3 will go to our friend, Michael Madigan, and our
4 friend will call me and then I will call you. Is
5 this a drill we must go through?

6 So it's very clear that this was not an
7 isolated incident. The pattern of ComEd pushing
8 back against Mike Madigan when he wanted to exploit
9 this corrupt relationship, Mike Madigan threatening
10 ComEd, and ComEd ultimately conceding to Madigan's
11 demands was a drill that they had all been through
12 before. Pramaggiore understood the threat and
13 didn't want to anger the Speaker of the House,
14 Michael Madigan.

15 Sorry, she wrote. No one informed me. I
16 am on this. Pramaggiore ordered the ComEd employee
17 who was assigned to assist in obtaining approval for
18 the Future Energy Jobs Act to ensure that Law Firm
19 A's contract was renewed under the terms that
20 Speaker Madigan demanded. This employee had nothing
21 to do with the legal work, but the law firm was
22 hired, in part, to influence Madigan's vote for
23 passage of FEJA. Of course, the contract was
24 renewed.

1 We expect to call witness or witnesses
2 from ComEd. The gentleman to my right will explain
3 its relationship with Michael Madigan. He will
4 explain that they paid bribes. He will explain that
5 Michael Madigan had their economic fate in their
6 hands. The impact of this testimony is clear.

7 As I stated in my Petition, Speaker
8 Michael Madigan abused his office. Speaker Michael
9 Madigan abused the public's trust.

10 This afternoon, we'll attempt to subpoena
11 Mike McClain and others, as allowed under the
12 Illinois House Rules, but I don't know what they're
13 going to tell you if they do appear. It appears
14 that what you would have -- what they would have you
15 believe, in order to explain away the devastating
16 testimony from ComEd, they would have to say there
17 were no bribes. Yet, ComEd paid over \$1.3 million
18 to people and received no work in exchange for that
19 money. Yes, these people were former employees of
20 Michael Madigan and they were close associates of
21 Michael Madigan. But Speaker Michael Madigan had
22 nothing to do with it and didn't ask for it and
23 didn't know about it.

24 In order to buy that, you would have to

1 believe that Mike McClain, the gatekeeper, duped the
2 CEO and other top executives of one of the largest
3 utilities in the country for over a decade. Yes,
4 McClain said in a wiretap call that he was acting at
5 Madigan's behest. Yes, he wrote in emails that he
6 was acting at Madigan's behest. But he wasn't. He
7 pulled the wool over the eyes of Anne Pramaggiore?
8 Partner at one of the nation's largest law firms,
9 chair of the Federal Reserve Bank, CEO of Exelon,
10 Mike McClain took advantage of her? Mike McClain on
11 his own?

12 But they would have to testify also to
13 more than that. They would have to say that, when
14 ComEd paid over \$1.3 million in what they intended
15 to be bribes to so many close associates of Michael
16 Madigan as those payers, it not only was because
17 Madigan wanted it to happen, but he knew absolutely
18 nothing about it. Because if he did, if he did know
19 that ComEd was paying this money to his associates
20 as gifts, they would put two and two together, as
21 any reasonable person would, that ComEd was doing
22 this to curry favor with him. And if he were true
23 to his oath of office, he would go to ComEd and tell
24 them to stop. This is not going to work.

1 So in order to discredit ComEd's
2 admissions, you would have to believe that Michael
3 Madigan didn't know what was going on around him.
4 That would be an extremely tough sell to this
5 group -- to this group, to this Committee, let alone
6 12 jurors. It's impossible to sell that to you.
7 You know Michael Madigan. He is not ignorant of
8 what is going on around him. He is not naive and he
9 is not easily surprised.

10 I hope that Speaker Madigan changes his
11 mind because, not only myself, but Governor Pritzker
12 would like to hear what he has to say. The governor
13 of our state says the Speaker needs to come before
14 this Committee and explain it to you all.

15 Now, there have been suggestions that
16 these proceedings are political theater and are
17 being conducted to earn free media. Chairman Welch
18 and Speaker Madigan, this Committee was convened
19 under your House rules and not mine.

20 And if we are to believe that public
21 statements have been made about the motivation of
22 the convening of this Committee, we would have to
23 believe that there are two sets of rules in the
24 House, one for 117 members and another one for the

1 Speaker.

2 Those statements that I also mentioned
3 earlier about the political theater are truly
4 remarkable given what has transpired. Are we really
5 going to pretend that I, as the Republican Leader,
6 am creating this issue out of whole cloth for some
7 political purpose? Are we really going to pretend
8 that a major utility is not admitting in federal
9 court that the Speaker of the Illinois House of
10 Representatives, as a central figure in an almost
11 decades long, over \$1.3 million bribery scheme?

12 The DPA isn't an allegation that the
13 Speaker recommended someone for a job. It is an
14 admission of a systemically corrupt scheme. It is a
15 scheme that took place day after day, week after
16 week, month after month, year after year for
17 virtually the entire last decade. And it would
18 still be going on if it were not for the United
19 States Attorneys and FBI investigation. This is a
20 bribery scheme that is so pervasive that
21 Commonwealth Edison paid \$200 million as a penalty
22 for its conduct. If everyone believed that
23 Commonwealth Edison paid over \$1.3 million to affect
24 the Speaker's conduct as a Representative, but the

1 Speaker knew nothing about it, it is either
2 willfully ignorant or doesn't -- that person doesn't
3 know the first thing about Speaker Madigan and how
4 he operates.

5 If the Speaker wants to try to sell that
6 bill of goods to this Committee and to the public, I
7 look forward to him taking the oath, testifying, and
8 subjecting himself to cross-examination. The door
9 is still open.

10 No one should invoke the federal
11 investigation into Speaker Madigan's corruption as a
12 shield to this Committee's work. On September 14,
13 2020, representatives of this Committee spoke with
14 the U.S. Attorney about the Committee's desire to
15 respect the federal criminal investigation.
16 Somehow, Mr. Lausch's comments were interpreted as
17 saying that the Committee could call witnesses but
18 could not really ask any substantive questions.

19 In his letter of September 17, 2020, the
20 U.S. Attorney disabused everyone on that notion. He
21 said that we recognize the SIC's, Special
22 Investigative Committee's, independence in its
23 obligation to conduct its inquiry.

24 Mr. Lausch also wrote, in direct

1 contradiction of what the Speaker -- or what the
2 Speaker has said, we do not have a general objection
3 to the SIC seeking testimony from witnesses or the
4 production of documents in the course of the
5 investigation. We understand that the SIC's
6 investigation will include topics related to the
7 federal criminal investigation. But given that the
8 SIC has specifically referenced the DPA entered in
9 the ComEd -- entered by the Commonwealth Edison
10 Company, we recognize the SIC's separate and
11 independent responsibilities; and, therefore, we do
12 not object generally to the SIC's pursuit of
13 testimony or the production of documents on those
14 topics, even if the party previously shared the same
15 underlying factual information with federal
16 prosecutors or law enforcement agents, except as
17 admitted below.

18 The only exception were to witnesses who
19 asked only questions -- only exceptions were
20 questions that asked witnesses about information
21 provided to the witness by the government, and to
22 questions that asked witnesses to identify what they
23 told the government.

24 This very clear and straightforward

1 direction from the U.S. Attorney was somehow
2 interpreted differently in the invitation sent to
3 witnesses before this Committee.

4 Those letters told the witnesses that the
5 Committee would not ask about, among other things,
6 nonpublic information you provided to the federal
7 government in connection with its investigation.
8 That is directly contrary to what the U.S. Attorney
9 said and wrote.

10 After these letters were sent to
11 witnesses, Representative Demmer sent yet another
12 letter to the United States Attorney's office asking
13 if the letter sent by this Committee to witnesses
14 accurately reflected his objections. Once again,
15 the U.S. Attorney emphatically stated: To be clear,
16 this office has not objected generally to witnesses
17 providing nonpublic information and such, an
18 understanding of the objections in our office's
19 September 17 letter would be incorrect. There was
20 no remaining doubt that the letter sent to the
21 witnesses were wrong about the United States
22 Attorney's office objections.

23 Now, Speaker Madigan wrote to this
24 Committee, in light of Mr. Lausch's letter to the

1 Committee: In order to ensure that the federal
2 investigation runs its course without interference
3 or distraction, I do not believe that I can provide
4 testimony for the Committee at this time.

5 That's not true. That's false. The U.S.
6 Attorney had made it clear in its phone conversation
7 on September 17, in his letter, in his phone
8 conversation, in his September 23 letter, that he
9 does not object to witnesses testifying and
10 providing nonpublic information. There's no
11 interference. There's no interference based on what
12 was stated incorrectly in Speaker Madigan's letter
13 to this Committee.

14 The U.S. Attorney's office was given
15 Michael Madigan's name as a witness, and he said
16 that he did not object to Speaker Madigan testifying
17 before the SIC. The Speaker is concerned for the
18 federal government's investigation into his criminal
19 conduct is interesting. But in context, it's a
20 transparent attempt to avoid his responsibility to
21 appear before this Committee, answer this charge,
22 and testify before this Committee.

23 If he chooses not to do so, it's to
24 protect -- it is not to protect the United States

1 Attorney's office. It is to protect himself from
2 cross-examination.

3 Let me end where I began with Speaker
4 Madigan's words. Let's be clear, bad actors will
5 always try to game the system and break the law. We
6 must commit to sending the clear sign that the game
7 is over and every step will be taken to prosecute.

8 As I conclude, I'll just state that the
9 evidence that supports this charge is overwhelming,
10 it's strong, it's direct. Speaker Madigan abused
11 his office. Speaker Madigan abused the public
12 trust. Speaker Madigan committed conduct unbecoming
13 a Representative. That charge will be proved beyond
14 any doubt, let alone the applicable standard,
15 reasonable grounds.

16 To fulfill your obligation -- if you
17 fulfill your obligation and astute rank
18 partisanship, you will have no choice but to vote
19 for disciplinary action for the next stage in this
20 process.

21 Thank you.

22 CHAIRMAN WELCH: Thank you, Leader
23 Durkin.

24 Before we move on, Mr. Glockner, I just

1 want to make a quick note, just for the record, and
2 remind everyone in attendance and those listening
3 via live streaming that Leader Durkin was provided
4 an opportunity via agreement of the Committee to
5 make an opening statement. Opening statements are
6 not evidence. These are his opinions, not
7 statements of fact provided under oath.

8 Leader Durkin appears by his opening
9 statement to know quite a bit. So we will look
10 forward to welcoming Leader Durkin back at some
11 point as a witness under oath.

12 At this time, I would like to move and
13 recognize our guests here today.

14 Mr. David Glockner, the Executive Vice
15 President of Compliance and Audit for Exelon
16 Corporation and all of its operating companies. In
17 that role, he is responsible for ensuring that the
18 company and its employees remain in compliance with
19 all laws, regulations, and internal and external
20 policies affecting Exelon and its operating
21 companies.

22 Mr. Glockner, welcome here today as our
23 first witness. I would like to ask you, sir, if you
24 would raise your right hand.

1 DAVID GLOCKNER,
2 called as a witness, being first duly sworn, was
3 examined and testified as follows:

4 CHAIRMAN WELCH: Thank you,
5 Mr. Glockner. Welcome.

6 Before the Committee launches into
7 questions, I would like to ask if you would like to
8 begin with an opening statement of some kind?

9 MR. GLOCKNER: So thank you, Chairman. I
10 don't have an opening -- I don't have -- can you
11 hear me?

12 I don't have an opening statement. I do
13 think it would be useful if I just explained briefly
14 a couple of parameters that I'm going to --

15 CHAIRMAN WELCH: A little closer, like
16 this, especially with the masks that we are wearing.

17 MR. GLOCKNER: Okay. Any better?

18 All right. I think it would be helpful
19 if I explained a couple of parameters that will
20 govern my ability to answer questions today.

21 First, I need to be respectful, as I am
22 sure the Committee wishes to be, of the constraints
23 that have been placed on us by the U.S. Attorney's
24 office. Certain information we received from the

1 U.S. Attorney's office or our counsel received from
2 the U.S. Attorney's office in connection with this
3 matter I will not be able to disclose.

4 And then I would also note that
5 information that I have received or the company has
6 received through the internal investigation
7 conducted by our outside counsel, subject to
8 attorney-client privilege, is also information that
9 I'm not in a position to disclose.

10 What I can do in answering your questions
11 to the best of my ability is speak to facts that are
12 known to us from the documents and other materials
13 in our possession and from other nonprivileged
14 sources. But I'll do the best I can in being
15 responsive to the Committee's questions.

16 The only thing I think I should probably
17 note is, I joined the company in March of this year.
18 So I was not with the company at the time these
19 events transpired. So my personal knowledge does
20 not extend to some of the matters that I will be
21 testifying about today.

22 CHAIRMAN WELCH: Thank you, Mr. Glockner.
23 That was actually one of the questions I was going
24 to ask.

1 most ethical and legally compliant manner possible.

2 Part of that has -- part of that role has
3 involved putting into place a series of ethics and
4 compliance reforms since I joined the company. But
5 part of that is also making sure that we continue to
6 be as cooperative as possible with those in the
7 public sector and others who are attempting to get
8 to the truth of what happened at ComEd.

9 **Q. With the exception of the letter inviting**
10 **you here today and your email confirmation of**
11 **attendance that we received from your counsel, have**
12 **you or other employees of ComEd, officers of ComEd,**
13 **or representatives of the company had any**
14 **communications with the Petitioners who signed the**
15 **Petition in this case, any of the Members here, any**
16 **of our staffers, like the attorneys, in the last**
17 **month?**

18 MR. SCHAR: The only -- I'll jump in
19 here, Chairman.

20 I was in contact with Petitioner's
21 counsel regarding a request to appear and the
22 logistics of it and was informed that I could
23 confirm for the company Mr. Glockner's appearance
24 through Petitioner's counsel. It became clear I

1 could not do that, at which point, I believe on
2 Friday evening, I confirmed Mr. Glockner's
3 appearance.

4 Other than that, there was not that we're
5 aware of.

6 MR. GLOCKNER: I have had no such
7 communication.

8 BY CHAIRMAN WELCH:

9 **Q. And Petitioner's counsel being Mr. Safer,**
10 **for the record?**

11 A. Yes. Correct.

12 **Q. That has been -- the only communication**
13 **with anyone involved in this process has been with**
14 **Mr. Safer?**

15 MR. SCHAR: Other than the confirmation
16 that you noted of via our attendance today.

17 CHAIRMAN WELCH: Thank you, sir.

18 BY CHAIRMAN WELCH:

19 **Q. Mr. Glockner --**

20 MR. SCHAR: May I add one thing? Prior
21 to Mr. Safer, there was another attorney who had
22 reached out also indicating representation by the
23 name of Robert Milan, who I had very preliminary
24 discussions with. But I understand he is not

1 involved.

2 CHAIRMAN WELCH: What is his name again?

3 MR. SCHAR: Robert Milan, M-i-l-a-n.

4 CHAIRMAN WELCH: And who did he
5 represent?

6 MR. SCHAR: My understanding, again, just
7 through his communications with me, also the
8 Petitioner.

9 CHAIRMAN WELCH: If you don't -- I know
10 you're not the witness, Mr. Schar. But I just want
11 to ask you, when did you have your conversation with
12 Mr. Schar -- Mr. Safer?

13 MR. SCHAR: That would have been last
14 week.

15 CHAIRMAN WELCH: Last week. Was that the
16 first and only time that you talked to Mr. Safer
17 about this?

18 MR. SCHAR: I think there might have been
19 a handful of conversations last week, understanding
20 the timing of the Committee's hearing and the
21 subject matter. I couldn't give you the exact
22 dates, but it would have been in the last week, week
23 and a half.

24 CHAIRMAN WELCH: And those communications

1 were only with Mr. Safer?

2 MR. SCHAR: Only with Mr. Safer.

3 BY CHAIRMAN WELCH:

4 Q. Mr. Glockner, in preparation for coming
5 here today, with whom did you communicate with in
6 preparation for this hearing?

7 A. Sir, I communicated with our outside
8 counsel. I communicated with a number of others
9 within ComEd and Exelon.

10 Q. Are you able to tell us who those people
11 were that you communicated with in preparation for
12 the hearing?

13 A. Counsel beyond Mr. Schar would have
14 included Gayle Littleton at Jenner and Block, Nicole
15 Allen at Jenner and Block.

16 Other -- at ComEd, a larger number, but
17 really more about logistics.

18 In terms of the substantive work, really
19 that was essentially my review of the DPA, my work
20 in connection with attorneys at Jenner in terms of
21 understanding what information we had underlying the
22 DPA that might be nonprivileged and we might be in a
23 position to share with the Committee. I don't know
24 that I would really characterize communications that

1 I had with others at ComEd or Exelon as being
2 preparation for this.

3 **Q. Other than attorneys -- I don't want to**
4 **ask you about conversations with your attorneys.**

5 **The nonattorneys that you spoke with in**
6 **preparation for this hearing, can you tell us who**
7 **those people were are?**

8 A. If you -- if by preparation you mean sort
9 of discuss anything having to do with the hearing?

10 **Q. Yes.**

11 A. To take it very broadly, that would
12 include Judy Rader, head of our communication team;
13 others on her staff, including Bill Gibbons; Paul
14 Elsborg, who is ComEd's communication staff; Joe
15 Dominguez, who is CEO of ComEd; William Von Hoene,
16 the executive vice president of -- Senior Executive
17 Vice President of Exelon; Veronica Gomez, I think
18 the general counsel of ComEd. All of those I would
19 really describe as kind of nonsubstantive
20 communications, however.

21 **Q. Everyone you just listed were all**
22 **nonsubstantive conversations?**

23 A. I think so. I mean, there were -- there
24 also were some joint communications with counsel and

1 others within ComEd and Exelon.

2 Q. Other than the attorneys for ComEd and
3 Exelon, have you given us all of the names of the
4 nonattorneys that you have spoken with in
5 preparation for this hearing?

6 A. I have given you the names of those that
7 I can remember.

8 Q. In preparation for this hearing, did you
9 speak with Anne Pramaggiore?

10 A. No.

11 Q. In preparation for this hearing, did you
12 speak with Fidel Marquez?

13 A. No.

14 Q. In preparation for this hearing, did you
15 speak with John Hooker?

16 A. No.

17 Q. In preparation for this hearing, did you
18 speak with Michael McClain?

19 A. No. None of those are current ComEd
20 employees. I don't have access to them.

21 Q. Understood. I just want to ask, just for
22 the record, the Committee sent the formal invitation
23 requesting your presence here today or a
24 representative of Commonwealth Edison here today.

1 Instead of responding to the request, ComEd -- we
2 found out about it because Paul Elsberry was quoted
3 in a publication in the Chicago Tribune also, I
4 believe, actually mentioned your name.

5 But I had no formal indication that
6 anyone from ComEd was coming here today. And no one
7 on the Committee did, including our counsel,
8 Margaret Livingston, who is sitting here to my
9 right.

10 So I think I put out a statement at five
11 o'clock on Friday that we had not received any
12 formal notification of any witnesses attending here,
13 and it was not intended to be misleading in any way.
14 However, we did receive an email from Mr. Schar
15 about seven o'clock Friday night, indicating that a
16 representative from ComEd would be here today. And
17 then yesterday, we received an email from Mr. Schar
18 with your name.

19 So was there any particular reason that
20 ComEd did not respond to us until after seven
21 o'clock last Friday?

22 MR. SCHAR: Let me -- I might be the best
23 person to answer that question because that's on
24 counsel and not Mr. Glockner or Commonwealth Edison.

1 In my conversations with Mr. Safer, he
2 had indicated that my confirmation to him that
3 Mr. Glockner would appear met the requirements of
4 the notice I received from Ms. Livingston, I
5 believe. I received an email, I believe it was
6 later on Friday evening, from Mr. Safer indicating
7 that -- that a formal response to the email was
8 required, and I, thereafter -- I think, pretty
9 shortly thereafter -- responded formally to
10 Ms. Livingston. I believe I received an email
11 Monday -- I can't be certain -- might have been late
12 on Sunday evening or Monday morning -- asking for
13 the specific name. Monday was a holiday I do
14 observe, so I was not able to get back to her with
15 that name until later in the day on Monday. But as
16 soon as I was able to get back and active, I did
17 provide that name. So that's the sequence of events
18 that led, and I apologize if there was confusion.
19 And as outside counsel, I take responsibility for
20 that.

21 CHAIRMAN WELCH: Thank you, Mr. Schar.

22 BY CHAIRMAN WELCH:

23 **Q. Mr. Glockner, what can you tell us about**
24 **the Deferred Prosecution Agreement?**

1 A. Well, I executed it on behalf of the
2 company, so I am familiar with the facts underlying
3 the Deferred Prosecution Agreement, and I'm not
4 really sure where to begin in terms of answering
5 that question.

6 **Q. But you were the person that executed it**
7 **on behalf of the company?**

8 A. Yes.

9 **Q. Your signature is on the Deferred**
10 **Prosecution Agreement?**

11 A. Yes.

12 **Q. And as you -- you stated in your opening**
13 **statement of sorts, your signature is on the**
14 **Deferred Prosecution Agreement, but it is not based**
15 **on any of your personal knowledge of facts,**
16 **correct?**

17 A. That's correct.

18 **Q. I want to ask you a question because I**
19 **know you are also a respected attorney, as well.**

20 **What -- what constitutes a crime of**
21 **bribery under federal law as it applies to the**
22 **Deferred Prosecution Agreement?**

23 A. So Chairman, that's really a -- that's a
24 legal question that -- that I'm not really prepared

1 to answer in this context. In the Deferred
2 Prosecution Agreement, ComEd has made admissions
3 with respect to a number of facts. ComEd has been
4 charged with bribery. ComEd has not pled guilty to
5 bribery, has not been convicted of bribery. If
6 ComEd complies with the terms of the DPA, at the end
7 of three years, ComEd will not stand convicted of
8 the admissions that ComEd has made in the Deferred
9 Prosecution Agreement. I think they speak for
10 themselves, and I would rather not characterize them
11 further.

12 **Q. Is a public official guilty of bribery**
13 **because someone tries to bribe them or is there more**
14 **to it? Are you allowed to answer that?**

15 A. So I think, with all due respect, my role
16 here is as a fact witness with respect to matters
17 related to ComEd. I don't think I'm best equipped
18 to provide, essentially, legal advice or testimony
19 on matters of law to the Committee.

20 **Q. Thank you. I don't mean to be**
21 **disrespectful. I apologize.**

22 **What does it mean that ComEd official's**
23 **plea is not guilty, but they admit to the statement**
24 **of facts in the Deferred Prosecution Agreement?**

1 A. So in the -- in the court proceedings --
2 so let me back up a moment.

3 In connection with the Deferred
4 Prosecution Agreement, a criminal charge referred to
5 as a criminal information was filed against
6 Commonwealth Edison. Procedurally, when the -- when
7 that case was put on the district court docket and
8 assigned a district court judge, it was the judge's
9 decision that, in order for that case to proceed as
10 a formal matter, there needed to be entry of a
11 formal plea. Because as a -- under the terms of the
12 Deferred Prosecution Agreement, ComEd would not end
13 up with a conviction, would not be convicted, ComEd
14 could not plead guilty, was not pleading guilty, and
15 there are two options when you enter a plea in
16 federal court. One is guilty and the other is not
17 guilty. And so we pled not guilty.

18 **Q. You pled not guilty, but you readily**
19 **admit to the facts in the Deferred Prosecution**
20 **Agreement?**

21 A. That's correct.

22 **Q. And I've read the Deferred Prosecution**
23 **Agreement a few times, and I just want to be clear**
24 **on the record, since this is our first hearing with**

1 **witnesses.**

2 **The Deferred Prosecution Agreement**
3 **requires full compliance and cooperation with**
4 **government authorities during the term of a DPA, and**
5 **that is, like, three years, correct?**

6 A. I believe the cooperation requirement
7 extends beyond that; but, at a minimum, it requires
8 it for a three-year period.

9 **Q. So at a minimum for three years?**

10 A. Yes.

11 **Q. Okay. Does that cooperation include**
12 **investigatory bodies, like this Committee?**

13 A. Whether or not it formally does, we
14 certainly would interpret that as being the case.
15 We want to be as cooperative with this Committee as
16 we can be.

17 **Q. Is it ComEd's interpretation that being**
18 **before the Committee today is required by the**
19 **Deferred Prosecution Agreement?**

20 A. I don't know that I would say that.
21 We -- we think it is important for us to be here as
22 a -- as a corporate citizen. We think it is
23 certainly consistent with the cooperation agreement.
24 I have not focused on whether the DPA, as a formal

1 legal matter, specifically requires cooperation in
2 these proceedings. I don't want to characterize
3 that, but --

4 **Q. You say it is certainly consistent. If**
5 **you had chosen not to be here today, would you have**
6 **been considered in violation of the Deferred**
7 **Prosecution Agreement?**

8 A. I don't think so.

9 MR. SCHAR: Our position would be, I
10 believe, we would not be in violation of the DPA by
11 failure to be here. But clearly, I think, as
12 Mr. Glockner has said, it's the company's view that
13 they are going to be as cooperative as they can
14 be.

15 CHAIRMAN WELCH: Thank you. Thank you,
16 Mr. Schar.

17 BY CHAIRMAN WELCH:

18 **Q. So is it fair to say, though, that there**
19 **are some questions, just like the couple that I**
20 **asked earlier, that you won't be able to answer --**
21 **that you can't answer?**

22 A. Yes. As I said at the outset, there are
23 certain limitations on my ability to answer
24 questions, and there are others -- for example, the

1 one you just asked about an interpretation of a
2 specific passage in the DPA, that I had not
3 considered before. It's -- there will be questions
4 that I don't expect to be able to answer.

5 **Q. The Deferred Prosecution Agreement**
6 **Statement of Facts contains descriptions of numerous**
7 **acts of wrongdoing on the part of ComEd. You have**
8 **testified here today that you have signed the**
9 **Deferred Prosecution Agreement. Is it your**
10 **testimony here today that Commonwealth Edison**
11 **admitted to hiring individuals and firms that did**
12 **little or no work for ComEd and influenced -- in an**
13 **effort to influence Public Official A?**

14 A. Yes.

15 **Q. Is it your testimony here today that**
16 **Commonwealth Edison admits in a Statement of Facts**
17 **that it did not enforce Exelon's Code of Conduct**
18 **which prohibits bribery in third-party vendors and**
19 **requires ComEd to maintain accurate and complete**
20 **records regarding payments, contact -- conduct due**
21 **diligence reviews of potential agents and**
22 **consultants?**

23 A. So are you referring to a particular --
24 if you could point me to a particular passage in the

1 DPA you are reading from, it would be easier for me
2 to respond.

3 Q. Let me come back to that one. I didn't
4 mark the page number.

5 Would it be accurate to say that
6 Commonwealth Edison agreed and admitted to
7 wrongdoing, that it placed an individual on its
8 board of directors without doing a thorough vetting
9 interview process for other applicants pursuant,
10 presumably, to influence Public Official A?

11 A. So with respect to that point, I would
12 stand on the statement in the Statement of Facts
13 that is attached to the DPA which indicates that
14 that ComEd -- and again, I could summarize here, but
15 there's a two-paragraph description, and it might be
16 simpler and more accurate if I simply read that, if
17 you prefer.

18 Q. Give me one moment.

19 You may proceed. I just wanted to get
20 the DPA in front of me.

21 A. Sure.

22 Q. You may proceed.

23 A. So what the DPA says with respect to the
24 appointment of Board Member 1 is that, beginning in

1 or around 2017, Public Official A sought the
2 employment of an associate to the ComEd board of
3 directors, hereinafter referred to as Board Member
4 1. Public Official A's request was communicated by
5 Individual A to CEO-1 in or around May 2018 in
6 response to internal company opposition to the
7 appointment of Board Member 1, CEO-1 asked
8 Individual A if Public Official A would be satisfied
9 if CEO-1 arranged for Board Member 1 to receive a
10 part-time job that paid an equivalent amount of
11 money to a board member position, namely, \$78,000 a
12 year. Individual A told CEO-1 that Public Official
13 A would appreciate it if CEO-1 would keep pressing
14 for the appointment of Board Member 1 and CEO-1
15 agreed to do so. In or around September 2018,
16 CEO-1, who by this time had been promoted to an
17 executive position within Exelon Utilities, in which
18 capacity CEO-1 maintained oversight authority over
19 ComEd, assured Individual A that CEO-1 was
20 continuing to advocate for the appointment of Board
21 Member 1 made at Public Official A's request because
22 "You take good care of me and so does our friend
23 (Public Official A) and I will do the best that I
24 can to take care of you."

1 On or about April 25, 2019, CEO-1 advised
2 Individual A by text message, "Just sent out board
3 approval to appoint Board Member 1 to ComEd board."
4 The following day, April 26, 2019, ComEd filed a
5 notice with the United States Securities and
6 Exchange Commission stating that Board Member 1 had
7 served as a director of ComEd since April 2019.
8 Although ComEd and Exelon conducted due diligence on
9 Board Member 1 and ultimately determined he was
10 qualified for a board position, no one at ComEd or
11 Exelon recruited Board Member 1 to serve as a
12 director, and ComEd did not interview or vet other
13 outside candidates for the vacant board seat. ComEd
14 appointed Board Member 1 in part with the intent to
15 influence and reward Public Official A in connection
16 with Public Official A's official duties.

17 So that's what ComEd admits with respect
18 to that episode.

19 **Q. Thank you, Mr. Glockner. And that pretty**
20 **much is the long version of my previous question.**

21 A. It is; and, in part, this is baggage
22 associated with my being an attorney, trying to be
23 very careful to be as precise as possible on these
24 matters.

1 BY REPRESENTATIVE MAZZOCHI

2 Q. All right. I just want to start by
3 confirming, Mr. Glockner, you joined Exelon as the
4 Executive Vice President for Compliance and Audit in
5 March of 2020?

6 A. Yes.

7 Q. All right. And you personally were the
8 one who signed the Deferred Prosecution Agreement
9 with the United States Attorney's office for the
10 Northern District of Illinois on behalf of ComEd?

11 A. Yes.

12 Q. What was it about your role that allowed
13 you to sign the Deferred Prosecution Agreement with
14 the U.S. Attorney's office?

15 A. I was authorized by the Board of
16 Directors.

17 Q. All right. And did you satisfy yourself
18 that all of the facts stated therein in the
19 Statement of Facts were accurate before you signed
20 them?

21 A. Yes.

22 Q. And you signed it on July 16, 2020?

23 A. I believe that's the date.

24 Q. Yep. All right. Now, before I ask you

1 **about some of the contents of the DPA, let me ask**
2 **you a few questions about your background.**

3 **Can you describe your employment history**
4 **before you started at Exelon?**

5 A. So for the little over two years before I
6 was at Exelon, I was the chief compliance officer
7 for Citadel, which is a hedge fund located in
8 Chicago.

9 For approximately four years prior to
10 that, I was the regional director of the Securities
11 and Exchange Commission for the Chicago office,
12 which covers the nine midwest states and was
13 responsible for enforcement and examination
14 activities in those states.

15 For about a year and a half before that,
16 I was a managing director at a digital risk
17 management consulting firm called Stroz Friedberg
18 that had an office in Chicago.

19 And then for the bulk of my career, about
20 24 and a half years, I served in the United States
21 Attorney's office in Chicago. The last 11-plus of
22 those as chief of the criminal division.

23 **Q. Thank you. Now, I would like to get into**
24 **a little bit of background about the Deferred**

1 **Prosecution Agreement. Can you just explain for the**
2 **Committee what is a Deferred Prosecution Agreement?**

3 A. A Deferred Prosecution Agreement is an
4 agreement between the government and a -- either
5 actual or potential defendant in a criminal matter,
6 by which the government allows a party to
7 demonstrate through good behavior or some other
8 terms as agreed to between the parties the conduct
9 to the satisfaction of the government such that the
10 government chooses either not to bring charges or to
11 dismiss charges that have been filed.

12 Q. **And are you familiar with the DPA both**
13 **from your experience with ComEd, as well as chief of**
14 **the criminal division with the U.S. Attorney's**
15 **office?**

16 A. Yes.

17 Q. **All right. So let's take a look at the**
18 **Deferred Prosecution Agreement you signed on behalf**
19 **of ComEd, which has been identified as Exhibit 2 to**
20 **the Committee. Do you have a copy of it before**
21 **you?**

22 A. I do.

23 Q. **All right. Now, I would like to turn to**
24 **paragraph 1 of the Deferred Prosecution Agreement.**

1 Now, does paragraph 1 contain an
2 admission that ComEd violated Title 18 in United
3 States Code paragraph -- Section 666(a)(2)?

4 A. No.

5 Q. Sorry. Wrong paragraph.

6 Well, doesn't it state that ComEd
7 acknowledges and agrees the government will file the
8 accompanying Information in the United States
9 District Court for the Northern District of Illinois
10 charging ComEd with bribery in violation of Title
11 18, United States Code, Section 666(a)(2)?

12 A. Yes, that's correct.

13 Q. All right. And ComEd knowingly waived
14 any right to indictment on that charge, as well as
15 any rights to a speedy trial under the Sixth
16 Amendment; isn't that fair?

17 A. Yes, I would agree.

18 Q. Title 18 USC 666(a)(2), I believe that is
19 titled --

20 A. Federal Program Bribery Statute.

21 Q. Yes. And I believe it's titled theft or
22 bribery concerning programs receiving federal funds.
23 Does that sound about right?

24 A. Yes.

1 Q. All right. And I'll read for the record
2 Section 666(a)(2) reads:

3 (a) Whoever, if the circumstance
4 described in subsection (b) of this section
5 exists --

6 (2) corruptly gives, offers, or agrees to
7 give anything of value to any person, with intent to
8 influence or reward an agent of an organization or
9 of a state, local, or Indian tribal government, or
10 any agency thereof, in connection with any business
11 transaction or series of transactions of such
12 organization, government, or agency involving
13 anything of value of \$5,000 or more shall be fined
14 under this title, imprisoned not more than 10 years,
15 or both.

16 And as I understand your testimony, sir,
17 in the Deferred Prosecution Agreement, ComEd does
18 not dispute that it must comply with this federal
19 law, 18 USC Section 666(a)(2)?

20 A. We agree not to violate any laws going
21 forward, and I'm not totally sure I understand the
22 question.

23 Q. Sure. Well, you're familiar with that
24 statute from your role as chief of the criminal

1 division for the Northern District of Illinois,
2 right?

3 A. Yes.

4 Q. All right. Now, the facts supporting the
5 government's criminal information in the Deferred
6 Prosecution Agreement appears in a Statement of
7 Facts that is attached to the Deferred Prosecution
8 Agreement as Exhibit A; is that right?

9 A. Yes.

10 Q. All right. Could you turn to that,
11 please?

12 All right. So do you have the document
13 that is headed Attachment A, Statement of Facts,
14 starting at page A-1?

15 A. I do.

16 Q. All right. And just to be clear, you
17 agreed on behalf of Commonwealth Edison that the
18 entirety of the Statement of Facts is true?

19 A. Yes.

20 Q. All right. Now, if you take a look at
21 page A-3, Commonwealth Edison, in the Overview,
22 stated: From in or around 2011 through in or around
23 2019, in an effort to influence and reward Public
24 Official A's efforts, as Speaker of the Illinois

1 House of Representatives, to assist ComEd with
2 respect to legislation concerning ComEd and its
3 business, ComEd arranged for various associates of
4 Public Official A, including Public Official A's
5 political allies and individuals who performed
6 political work for Public Official A, to obtain
7 jobs, vendor subcontracts, and monetary payments
8 associated with those jobs and subcontracts for
9 ComEd, even in instances where certain political
10 allies and workers performed little or no work that
11 they were purportedly hired to perform for ComEd.

12 Have I read that correctly?

13 A. Yes.

14 Q. And you agree, on behalf of ComEd, that
15 that statement is true?

16 A. Yes.

17 Q. All right. And Public Official A, of
18 course, was Illinois House Speaker Mike Madigan?

19 A. Yes.

20 Q. All right. Now, specifically, if we take
21 a look at pages A-3 to A-4, this starts to go
22 through how Commonwealth Edison arranged for various
23 associates of Michael Madigan, including the
24 political allies and individuals who performed

1 political work for Michael Madigan, to obtain jobs,
2 vendor subcontracts, and monetary payments
3 associated with those jobs and subcontracts; is that
4 right?

5 A. Yes.

6 Q. And again, ComEd has admitted that that
7 money was paid to influence and reward Michael
8 Madigan's efforts to assist ComEd with respect to
9 legislation concerning ComEd and its business?

10 A. So I would say that's essentially right
11 with the -- what we acknowledge is that the -- the
12 payments were made, at least in part, with the
13 intent to influence. I would have to -- I would
14 have to --

15 Q. Sure. I understand that qualification.
16 At least in part to influence Illinois House Speaker
17 Mike Madigan?

18 A. Right.

19 Q. Okay. And if we take a look at these
20 payments, it's ComEd's understanding that these
21 associates who were being paid who were the
22 affiliates of Speaker -- or associates of Speaker
23 Madigan, performed little or no work for ComEd?

24 A. In many instances, that's correct.

1 Q. All right. If you could take a look at
2 page A-5.

3 At the top, there's a reference -- very
4 top of the page, there's a reference to Consultant
5 1. And that's Michael McClain, yes?

6 A. Yes.

7 Q. And can you identify --

8 A. Sorry. Thank you, Mr. Schar.
9 Consultant 1 was Jay Doherty.

10 Q. Jay Doherty, okay.

11 And Company 1, was that Mr. Doherty's
12 lobbying firm, JA Doherty, Limited?

13 A. I believe it was JD Doherty and
14 Associates.

15 Q. Okay. All right. And according to
16 Commonwealth Edison's understanding -- I believe
17 this is on page A-8, if you need to validate the
18 number -- Commonwealth Edison paid over \$1.3 million
19 over the relevant time frame in the DPA to influence
20 Michael Madigan's actions as the Speaker of the
21 House?

22 A. I'm reading the passage that you are
23 pointing to. And that particular passage does not
24 reference the intent to influence, but I think the

1 broader DPA does. And I would agree that at least a
2 partial motive for those payments was to influence
3 the Speaker.

4 Q. Okay. So let me try to rephrase it then.

5 Is it fair to say that Commonwealth
6 Edison paid over \$1.3 million, at least in part, to
7 influence Michael Madigan's actions as Speaker of
8 the House?

9 A. Yes.

10 Q. Okay. And the money was not paid
11 directly to Michael Madigan but rather to other
12 people associated with him?

13 A. Yes.

14 Q. All right. How were those people who
15 Michael Madigan wanted paid identified for ComEd?

16 A. Primarily -- one moment.

17 Q. Sure.

18 A. So I don't have a source of information
19 that I can speak to that permits me to answer that
20 question.

21 Q. Okay. In general -- well, let's go
22 through some of the specifics then.

23 If you can go back to page A-5. The
24 paragraph that is at the bottom of the page that

1 starts off: Certain senior executives and agents of
2 ComEd were aware of these payments from their
3 inception until they were discontinued in or around
4 2019. For example, in or around May 2018, Public
5 Official A, meaning Madigan, through Individual A --
6 let me stop there. That's Mike McClain?

7 A. Yes.

8 Q. Okay.

9 A. Wanted to check my score card.

10 Q. I understand. And then asked CEO-1 --
11 meaning Anne Pramaggiore?

12 A. Yes.

13 Q. -- to hire a political ally of Public
14 Official A, meaning Madigan, who was retiring from
15 the -- the Chicago City Council at the end of the
16 month, Associate 3. And that's Mike Zalewski,
17 Senior?

18 A. Yes.

19 Q. All right. So then in terms of talking
20 about what happened, it says: CEO-1, meaning Anne
21 Pramaggiore, in coordination with Senior Executive 1
22 and Consultant 1 -- I believe Consultant 1 we
23 identified as Jay Doherty. Do you recall who Senior
24 Executive 1 was?

1 A. Senior Executive 1 was Fidel Marquez.

2 Q. Okay. All right. And Mr. Marquez is the
3 one who pled -- I believe he pled guilty in federal
4 court today?

5 A. That's my understanding.

6 Q. Okay. In connection with some of the
7 events with the DPA?

8 A. That's my understanding.

9 Q. All right. Okay. So we have here in the
10 DPA that CEO-1, meaning Pramaggiore, in coordination
11 with Senior Executive 1, Marquez, and Consultant 1,
12 Doherty, agreed that ComEd would pay Associate 3,
13 Zalewski Senior, approximately \$5,000 a month
14 indirectly as a subcontractor through Company 1,
15 Mr. Doherty's company.

16 All right. Now, I take it it's fair to
17 say that ComEd was not posting any job postings that
18 they needed another lobby subcontractor at that
19 time?

20 A. Not that I'm aware of.

21 Q. All right. Do you know where that -- so
22 that request came from Mr. McClain on behalf of
23 Speaker Madigan?

24 A. That's not a question I'm able to answer

1 under the parameters of government testimony.

2 Q. Okay. At the time the -- it says here in
3 the Deferred Prosecution Agreement: At the time
4 CEO-1 approved this arrangement, CEO-1 was aware
5 that there were other associates of Public Official
6 A that were paid indirectly as subcontractors
7 through Company 1, which CEO-1 referred to as the
8 roster.

9 So do you know how many other associates
10 of Public Official A were being paid indirectly as
11 subcontractors through Mr. Doherty's company?

12 Approximately. I'm not -- I mean --

13 A. I'm pausing here to think through both
14 numbers and to make sure that I've got a
15 nonprivileged, non-U.S. Attorney origin source for
16 that information.

17 Q. Sure.

18 A. Sorry. The answer is approximately
19 three.

20 Q. Approximately three, okay. So there
21 could be more?

22 A. The number would be approximately
23 three.

24 Q. Okay. That's fine.

1 And again, let me ask you this: Was it
2 ComEd's understanding that many of these associates
3 of Public Official A that it was going to be paying
4 to do either little or no work for ComEd, were most
5 of them that you're aware of identified by Michael
6 McClain to ComEd?

7 A. Unfortunately, I don't believe that I can
8 answer that question consistent with the
9 restrictions imposed by the U.S. Attorney's office
10 and our attorney-client privilege.

11 Q. Okay. Is it ComEd's understanding that
12 Michael McClain was the intermediary between ComEd
13 and Michael Madigan?

14 A. So the -- so without speaking to -- to
15 particular incidents and individuals, I think I can
16 say that there were instances in which Mr. McClain
17 held himself out as speaking on behalf of or
18 representing the interests of Speaker Madigan.

19 Q. Can you answer what ComEd did to confirm
20 that McClain was, in fact, accurate when he
21 represented himself to be acting on behalf of
22 Speaker Madigan?

23 A. I don't think I can. I don't know that
24 answer.

1 Q. Okay. When you say you don't know that
2 answer, is it because you can't answer because of
3 what is going on with the U.S. Attorney's office or
4 because it may reveal information that was obtained
5 in connection with privileged investigations?

6 A. Actually, I just don't know.

7 Q. Okay. Did ComEd -- but no matter what,
8 ComEd, at least for some of the instances identified
9 here in the Deferred Prosecution Agreement, did
10 understand that Mike McClain was acting at the
11 direction of Michael Madigan?

12 A. Yes. ComEd -- ComEd has acknowledged
13 that it believed that it was -- it was seeking to
14 influence Speaker Madigan through these actions.

15 Q. Okay.

16 A. I'll leave it at that, which we -- we
17 said in the DPA.

18 Q. Sure. In your experience as an Assistant
19 U.S. Attorney and also chief of the criminal
20 division, is it common for public officials who are
21 involved in a bribery scheme to use
22 intermediaries?

23 A. I think that's really asking for me to
24 characterize the evidence here, which I really don't

1 think it's appropriate for me to do.

2 Q. I'm just asking based on your personal
3 experience as head of the criminal division in the
4 Northern District of Illinois and as a former
5 Assistant U.S. Attorney. In your personal
6 experience in that capacity, did you find it common
7 or did you at least see many instances where public
8 officials who were involved in a bribery scheme used
9 intermediaries?

10 A. So I can certainly say that there were
11 times when I saw people use intermediaries and there
12 were times when I didn't.

13 Q. Okay. And in the times when they used
14 intermediaries, do you have an understanding, again,
15 based on your personal experience as chief of the
16 criminal division in the Northern District of
17 Illinois, why public officials would use those
18 intermediaries?

19 CHAIRMAN WELCH: Pause for one moment.
20 Mr. Glockner, can you speak directly into that
21 microphone. What I'm noticing is that your mouth
22 seems to be off to the side. So I'm still getting
23 complaints that people can barely hear you.

24 MR. GLOCKNER: Sorry.

1 So with respect to that last question,
2 I -- with all due respect, I really don't want to
3 opine on criminal behavior. You know, there's a
4 whole spectrum of behaviors that I've seen, and you
5 talked about a couple examples. Sometimes public
6 officials use intermediaries, sometimes they act
7 directly, sometimes you have intermediaries or
8 people who purport to be intermediaries who aren't
9 really intermediaries and are sort of operating for
10 themselves. Sometimes you have gradations of all of
11 that. You know, I'm not in a position here to speak
12 to any of that.

13 I'm in a position to speak to what ComEd
14 did and the information that we are in a position to
15 share with the Committee. But I -- I really don't
16 want to get into, and I don't think it's appropriate
17 for me to try to characterize, people's motives,
18 particularly when I don't have all of the
19 information available.

20 BY REPRESENTATIVE MAZZOCHI:

21 **Q. All right. Let's go back then to the**
22 **Deferred Prosecution Agreement page A-4.**

23 **And I would like to take a look at the**
24 **second full paragraph on page A-4 of the Deferred**

1 Prosecution Agreement Statement of Facts.

2 It says: Beginning no later than in or
3 around 2011, Public Official A and Individual A
4 sought to obtain from ComEd jobs, vendor
5 subcontracts, and monetary payments associated with
6 those jobs and subcontracts for various associates
7 of Public Official A, such as precinct captains who
8 operated within Public Official A's legislative
9 district. Do you see that?

10 A. Yes.

11 Q. All right. So Commonwealth Edison has
12 admitted that Public Official A and Individual A
13 sought to obtain from ComEd jobs, vendor
14 subcontracts, and monetary payments for various
15 associates of Public Official A, right? Not or.
16 And?

17 A. Yes. That was ComEd's belief.

18 Q. Okay. And earlier, when Chairman Welch
19 asked you about any direct steps, he didn't take you
20 to this particular paragraph. So again, it's not --
21 in this particular paragraph, this is indicating
22 that Public Official A sought to obtain from ComEd
23 jobs, vendor subcontracts, and monetary payments
24 associated with those jobs and subcontracts for

1 various associates of Public Official A; is that
2 fair?

3 A. Yes.

4 Q. Okay. Now, it also says: Beginning
5 in -- starting at the bottom of A-4, last full
6 paragraph on that page: Beginning in 2011 -- I'm
7 sorry -- in or around 2011, Individual A, referring
8 to McClain, and Lobbyist 1 developed a plan.

9 Do you know who Lobbyist 1 is?

10 A. Yes. Lobbyist 1 is John Hooker.

11 Q. Okay. And it says: They developed a
12 plan to direct money to two of Public Official A's
13 associates, Associate 1 and Associate 2.

14 Can you identify who those are, please?

15 A. Associate 1 is Ray Nice and Associate 2
16 is Frank Olivo.

17 Q. Can you spell both -- can you spell both
18 of those names, please, for the record?

19 A. Nice is N-i-c-a (sic). And Olivo is
20 O-l-i-v-o.

21 Q. Sorry. I just want to make sure I got it
22 clear for the record. So can you just spell the
23 full name for Associate 1.

24 A. Ray Nice, N-i-c-e.

1 Q. Okay. And Associate 2?

2 A. Frank Olivo, O-l-i-v-o.

3 Q. Okay. All right. So let me then kind of
4 read this with people's names in there.

5 In or around 2011, Mike McClain and John
6 Hooker developed a plan to direct money to two of
7 Mike Madigan's associates, Ray Nice and Frank Olivo,
8 by having ComEd pay them indirectly as
9 subcontractors to Consultant 1, Jay Doherty. Is
10 that right?

11 A. Yes.

12 Q. All right. And then the payments to Ray
13 Nice and Frank Olivo, as well as later payments to
14 other subcontracted associates of Public Official A,
15 continued until in or around 2019, even though those
16 associates did little or no work during that period.
17 Is that right?

18 A. Yes.

19 Q. All right. Were you -- are you able to
20 say whether Ray Nice ever did any work for ComEd
21 during that period?

22 A. We have found no evidence of work product
23 and no evidence of specific -- when I say evidence,
24 I mean documentation.

1 Q. Sure.

2 A. No documents reflecting work product, no
3 documents reflecting specific taskings.

4 Q. Okay. And similarly for Frank Olivo, has
5 ComEd been able to identify any -- or has ComEd been
6 able to document any work that Frank Olivo ever did
7 for ComEd?

8 A. Not that I'm aware of.

9 Q. Okay. Thank you.

10 Do you have an understanding as to what
11 Ray Nice's relationship is -- I'm sorry.

12 Does ComEd have an understanding as to
13 what Ray Nice's relationship is to Michael Madigan?

14 A. Not that I can address within the
15 parameters of my government testimony.

16 Q. Okay. And can you say what the
17 relationship was between Frank Olivo and Mike
18 Madigan?

19 A. Same response.

20 Q. Sure. Do you know why ComEd paid these
21 people for eight years if they did little or no work
22 for ComEd?

23 A. I think the DPA indicates that ComEd
24 believed that it would be helpful for the company,

1 Speaker Madigan.

2 **Q. All right. And why did ComEd care what**
3 **Speaker Madigan wanted?**

4 A. As the DPA noted, Speaker Madigan was an
5 influential public official.

6 **Q. All right. Now, because these two people**
7 **were paid through JD Doherty and Associates, those**
8 **eight years of payments were not reflected in the**
9 **vendor payment system used by ComEd; is that**
10 **right?**

11 A. It is, although I would note that the
12 vendor payment system is not set up so that any
13 subcontractor would be identified. So if you look
14 in ComEd's vendor payment system, you would see
15 payments to vendors; you would not see a separate
16 line for payments to subcontractors.

17 **Q. Do you have an understanding as to why**
18 **ComEd has a vendor payment system?**

19 A. Every company has one and they use it to
20 track your expenditures and it's kind of an
21 essential part of your financial operations.

22 **Q. All right. Is it also a central part of**
23 **your internal control mechanism for auditing**
24 **purposes?**

1 A. Sure.

2 Q. Okay. Do you know whether there's any --
3 well, do you know whether the vendor payments or a
4 portion of them have to be reported to the Illinois
5 Commerce Commission?

6 A. You know, I'm not familiar with our
7 specific reporting rules to the ICC. There are
8 others in the company who would be, but I'm -- I do
9 think we report at least certain of our expenses to
10 the ICC, but I'm, unfortunately, not an expert on
11 our ICC reporting rules, at least six months into
12 the job.

13 Q. That's fair. I understand.

14 Do you know whether ComEd has to put its
15 political donations anywhere into its vendor payment
16 system?

17 A. I believe those are in the vendor payment
18 system, and we also disclose our political donations
19 publicly.

20 Q. Okay. And when political donations are
21 put into the vendor payment system, do you know
22 whether they are actually marked or designated as --
23 you know, with a category of political donations so
24 that they can appropriately be disclosed in

1 **accordance with election rules?**

2 A. I don't have personal knowledge of that,
3 but I would assume so.

4 **Q. Okay. Thank you.**

5 **All right. So now we're looking on page**
6 **A-5 of the Deferred Prosecution Agreement. And**
7 **there's no record in ComEd's vendor payment system**
8 **of any money going to Ray Nice or Frank Olivo. And**
9 **that arrangement where no one could find payments to**
10 **these persons in the ComEd system, that was**
11 **discussed with Michael McClain, right?**

12 A. Could you indicate to me where you are
13 referring to in the DPA?

14 **Q. Yeah, I'm just trying to summarize. And**
15 **if you don't feel comfortable summarizing, I'll**
16 **start reading.**

17 A. Right. Well, just point me to a
18 paragraph. I just -- I want to be very careful that
19 I'm not mischaracterizing anything through a
20 summary.

21 **Q. Sure. Well, okay. Let me go ahead and**
22 **rephrase it this way. Let's do this.**

23 **Let's jump to -- let's jump to the bottom**
24 **of page A-5. It says: Certain senior executives**

1 and agents of ComEd were aware of these payments
2 from their inception until they were discontinued in
3 or around 2019. For example, in or around May 2018,
4 Public Official A, meaning Madigan, through
5 Individual A, meaning McClain, as CEO-1, meaning
6 Pramaggiore, to hire a political ally of Public
7 Official A who was retiring from the Chicago City
8 Council at the end of the month. And that was
9 Alderman Zalewski Senior.

10 All right. Now, it says in the next
11 sentence: CEO-1, in coordination with Senior
12 Executive 1, meaning Marquez, and Consultant 1,
13 meaning Doherty, agreed that ComEd would pay
14 Associate 3, Zalewski Senior, approximately 5,000 a
15 month indirectly as a subcontractor through Company
16 1, Doherty's company.

17 And then it says: At the time CEO-1
18 approved this arrangement, CEO-1, meaning
19 Pramaggiore, was aware that there were other
20 associates of Public Official A that were paid
21 indirectly as subcontractors.

22 And then it says: CEO-1 also agreed that
23 Public Official A, meaning Madigan, rather than an
24 officer or employee of ComEd or Company 1, meaning

1 Doherty, would advise Associate 3 of this new
2 arrangement. Do you have that?

3 A. Yes.

4 Q. All right. So ComEd agreed to pay
5 Michael Zalewski Senior \$5,000 per month as a
6 subcontractor for JD Doherty and Associates,
7 right?

8 A. Yes.

9 Q. And doing it this way, there is no record
10 of those payments to the Madigan associate in
11 ComEd's system that was in place at the time,
12 right?

13 A. Correct.

14 Q. All right. And ComEd had an
15 understanding that Associate 3, Michael Zalewski
16 Senior, was very close to Michael Madigan, wasn't
17 he?

18 A. He was -- what the DPA says is that ComEd
19 understood that he is an associate of Mr. Madigan.
20 I don't know that it speaks to the degree of
21 closeness.

22 Q. Okay. Well, again, we are at the top of
23 page A-6. First full sentence: CEO-1, meaning
24 Pramaggiore, also agreed that Public Official A,

1 Madigan, rather than an officer or employee of ComEd
2 or Company 1, would advise Zalewski Senior of this
3 new arrangement. That's true, right?

4 A. Yes.

5 Q. All right. So ComEd's CEO agreed that
6 Michael Madigan would be the one to tell Michael
7 Zalewski Senior about this \$5,000 per month
8 arrangement?

9 A. Yes.

10 Q. All right. And again, there were -- were
11 you able to document any work that Alderman Zalewski
12 Senior actually did for ComEd while he was being
13 paid this \$5,000 a month under Company 1's
14 contract?

15 A. So we have no written documentation of
16 that.

17 Q. Okay.

18 A. I can't go beyond that in responding to
19 the question.

20 Q. Sure. That is fair.

21 So the payment that we just discussed,
22 where ComEd's CEO agreed that Michael Madigan would
23 tell Michael Zalewski Senior about the \$5,000 per
24 month arrangement, that was done to influence and

1 reward, at least in part, Michael Madigan in
2 connection with Madigan's official duties; is that
3 true?

4 A. It was part of the course of conduct that
5 was done for that purpose.

6 Q. Okay. All right. And Michael McClain
7 would often inform ComEd of the details of how and
8 why some of these people were important to Michael
9 Madigan, didn't he?

10 A. So I don't believe I can answer that
11 based on information that is available to me for the
12 purposes of this hearing.

13 Q. Okay. Well, let's go to page A-6 of the
14 Deferred Prosecution Agreement, paragraph A. It
15 says: On or about May 16, 2018, Individual A,
16 meaning McClain, explained to Senior Executive 1,
17 meaning Marquez, why certain individuals were being
18 paid indirectly through Company 1, meaning Jay
19 Doherty's company, by making reference to their
20 utility to Mike Madigan's political operation.
21 Right?

22 A. Yes.

23 Q. Okay. And Individual A identified
24 Associate 1, who was Ray Nice, as one of the several

1 individuals on Jay Doherty's company's payroll as
2 one of the top three precinct captains who also
3 trains people how to go door-to-door. So just to
4 give you an idea how important the guy is. ComEd
5 has admitted to that, right?

6 A. Yes.

7 Q. All right. And Michael McClain, at the
8 very least, explained to ComEd, according to this,
9 why Ray Nice was so important to Public Official A,
10 Mike Madigan?

11 A. Yes. And I was not recalling that
12 specific paragraph --

13 Q. That's fine.

14 A. -- when I responded earlier.

15 Q. That is why I figured I would go through
16 it.

17 A. A lot of paragraphs in here.

18 Q. I know.

19 All right. And then likewise, if we take
20 a look at subparagraph (b), it says: On or about
21 February 7, 2019, Individual A, referring to
22 McClain, advised Senior Executive 1, meaning
23 Marquez, about how to present information within
24 ComEd concerning the renewal of Company 1's

1 contract, meaning Jay Doherty's contract, for 2019.

2 So there again, Mr. McClain was giving a
3 representative of ComEd how to present information
4 within ComEd about Jay Doherty's contract for 2019.
5 Is that right?

6 A. Yes.

7 Q. All right. And in that conversation,
8 Mike McClain advised Mr. Marquez, "I would say to
9 you don't put anything in writing," explaining later
10 in the conversation because, "all it can do is hurt
11 ya." ComEd has admitted to that fact, correct?

12 A. Yes.

13 Q. All right. So Michael McClain was giving
14 an individual at ComEd advice about how to hide this
15 scheme; is that fair?

16 A. I think the statement speaks for itself,
17 but that's a -- that's one -- certainly a
18 characterization of it.

19 Q. Okay. Is it a characterization that
20 ComEd would be willing to dispute?

21 A. I would not dispute that
22 characterization.

23 Q. Okay. Thank you.

24 All right. So then if we go further on

1 in this subparagraph (b), which is at the top of
2 page A-7, Mike McClain further advised Marquez that
3 if asked by a ComEd official why Jay Doherty's
4 company was being paid, Marquez should explain that
5 the associate's of Madigan were former ward
6 committeemen and aldermen, that it was a "favor" and
7 that it would be up to Jay Doherty to prove that
8 Madigan's associates performed work, not ComEd.
9 That's also a true statement?

10 A. Yes.

11 Q. All right. And it was McClain helping to
12 explain to Marquez how to conceal within ComEd the
13 renewal -- I'm sorry -- that this was going to be --
14 that this was a -- that doing this was a favor to
15 Speaker Madigan?

16 A. Yes.

17 Q. All right. And one of the benefits of
18 running all of these favors through Jay Doherty's
19 company is that fewer people then inside ComEd would
20 actually know about all of these political
21 associates of Speaker Madigan getting ComEd funds;
22 is that fair?

23 A. I think that's an -- that's an inference
24 that is going to be more appropriate for you to draw

1 than for me to comment upon.

2 **Q. Okay. Well, would ComEd dispute that**
3 **inference?**

4 A. You know, I think all that does is,
5 essentially, ask me to draw the inference but in a
6 different way, and I prefer to stick with the facts
7 that we have acknowledged and leave inferences for
8 the Committee.

9 **Q. All right. Well, were these payments to**
10 **Madigan's associates that are being referred to here**
11 **in pages A-6 and A-7, were they a favor or were they**
12 **a bribe to Speaker Madigan?**

13 A. Again, I would say the DPA speaks for
14 itself on that point. The DPA quotes language
15 from -- from an individual who was acting on behalf
16 of the company describing it as a favor.

17 **Q. Okay. Did ComEd have an understanding**
18 **that doing these types of favors for Public Official**
19 **A would influence Public Official A or dispose**
20 **Public Official A more favorably towards ComEd?**

21 A. Yes, ComEd has acknowledged that in the
22 DPA.

23 **Q. Okay. All right.**

24 **Let's jump to the conversation with John**

1 Hooker that took place in subparagraph (c) on page
2 A-7.

3 Says: On or about February 11, 2019,
4 Individual A, meaning McClain, had a conversation
5 with Lobbyist 1, meaning Hooker, who had by that
6 time retired -- had retired from ComEd, but had
7 continued to serve as a paid external lobbyist to
8 ComEd. In discussing how the renewal of Company 1's
9 contract, which included significant payments to
10 Company 1, meaning Doherty's company, to account for
11 indirect payments to Madigan's associates should be
12 communicated internally, McClain said, "We had to
13 hire these guys because Public Official A, Madigan,
14 came to us. It's just that simple." Lobbyist 1,
15 meaning Hooker, agreed and added, "It's clean for
16 all of us." Do you see that?

17 A. Yes.

18 Q. That statement is pretty close to the
19 truth, isn't it, that it's clean for all of us?

20 A. The statement speaks for itself. I
21 mean --

22 Q. All right. Well, it wasn't true actually
23 that it was a clean way of doing things, was it?

24 A. It certainly would not be my definition

1 of clean from an appropriate sensitive term.

2 Q. Yes. And maybe we can put it this way.
3 From a compliance perspective, it certainly wasn't
4 clean for ComEd or Michael McClain or Michael
5 Madigan to try to be structuring these payments
6 through Jay Doherty's company. Is that fair?

7 A. That would be a bad compliance
8 practice.

9 Q. All right. And why would it be -- so to
10 your understanding, why would it be a bad compliance
11 practice?

12 A. Well, in this particular context, the
13 speaker is indicating that he is structuring those
14 payments not for some business reason, but for some
15 other questionable motive.

16 Q. All right. Now, if we go to subpart (d)
17 on page A-7 of the Deferred Prosecution Agreement,
18 Statement of Facts, it says: On or about February
19 13, 2019, Consultant 1 advised Senior Executive 1
20 that Associate 1 and Associate 2 -- so those were
21 the Madigan precinct people, Ray Nice and Frank
22 Olivo -- had been made "subcontractors" of Jay
23 Doherty's company at the request of Lobbyist 1, and
24 Lobbyist 1 was Mr. Hooker, and that Associate 3,

1 **Zalewski Senior, was also currently being paid as a**
2 **"subcontractor".**

3 **Do you know why Consultant 1 advised**
4 **Mr. Marquez about Associate 1 and 2 and 3 being made**
5 **subcontractors?**

6 A. That is not a question that I can answer
7 under the limitations of my testimony.

8 **Q. All right. Now, it says here:**
9 **Consultant 1 emphasized that -- and meaning -- and I**
10 **believe that's Mr. Doherty -- emphasized that he had**
11 **told no one of the arrangement per instructions**
12 **previously given to Consultant 1. Do you see**
13 **that?**

14 A. Yes.

15 **Q. So do you know -- so when he says that he**
16 **had told no one of the arrangement per instructions**
17 **previously given to Consultant 1, do you know who**
18 **gave those instructions to Consultant 1?**

19 A. Not based on any -- I'm not sure I know
20 it at all, and I definitely don't know it based on
21 any source of information that I can use here
22 today.

23 **Q. All right. All right. It now says, if**
24 **we take a look at the third line from the bottom of**

1 the page -- actually, let me go back a step.

2 Consultant 1 -- actually -- so this is
3 the sixth line of subparagraph (d) on page A-7 of
4 the Deferred Prosecution Agreement. Consultant 1,
5 meaning Jay Doherty, emphasized that he had told no
6 one of the arrangement per instructions previously
7 given to him and cautioned Senior Executive 1,
8 Marquez, that ComEd should not tamper with the
9 arrangement because "your money comes from
10 Springfield" and that Doherty had "every reason to
11 believe" that Individual A, McClain, had spoken to
12 Madigan about the retention of Madigan's associates
13 and knew Lobbyist 1, Hooker, had done so. Is that
14 true?

15 A. Yes.

16 Q. Okay. And does this again start to --
17 the statement that Consultant 1 had every reason to
18 believe that Individual A, McClain, had spoken to
19 Public Official A about these retentions and that --
20 and that he wanted it, can you state how that
21 influenced ComEd?

22 A. I'm not sure I understand the question.

23 Q. Well, sure. You know, again, trying to
24 get back to Mr. Welch's -- I'm sorry -- to Chairman

1 Welch's questions to you earlier. This is now
2 multiple individuals who are informing Mr. Marquez
3 at ComEd that they had every reason to believe that
4 Mike McClain had spoken to Madigan about retaining
5 Madigan's associates and knew that Hooker had done
6 so.

7 So is it reasonable to infer that
8 Mr. Madigan had knowledge of the scheme from that,
9 from ComEd's perspective?

10 A. ComEd -- I think what I can say is that
11 ComEd acknowledges repeatedly through the agreement
12 that it believed or it intended to influence the
13 Speaker through its conduct. Whether it, in fact,
14 influenced the Speaker, whether the Speaker was
15 aware of its intent to influence, those are -- those
16 are questions that I don't think I'm in a position
17 to comment on.

18 Q. Okay. But certainly, ComEd believed that
19 when Mr. McClain, for example, was making these
20 demands on behalf of the Speaker, they didn't think
21 Mr. McClain was lying to them?

22 A. No.

23 Q. Right. They thought he was authorized to
24 make these statements by Mike Madigan?

1 A. They believed him, yes.

2 **Q. Okay. All right. And ComEd also had a**
3 **longstanding relationship with Mike McClain, right?**
4 **So there was no reason for them to doubt the**
5 **truthfulness of any representations he made to them**
6 **regarding the Speaker's wants and wishes?**

7 A. So I think there are kind of multiple
8 parts to that question. One part is the length of
9 the relationship, and I'm not certain as I sit here
10 how long that relationship was. And then in no
11 reason to doubt the accuracy of McClain's
12 statements, I think -- I think the two problems with
13 being responsive to that, one -- one is that, to the
14 extent that there is information that I can't speak
15 to that may bare on that in one direction or
16 another, I can't discuss that, and also, I'm just
17 not sure of how much information I have on that
18 point.

19 **Q. Sure. Let me see if I can try to break**
20 **it down a little bit more.**

21 **So it was Doherty's company that was**
22 **being used to funnel the money from ComEd to the**
23 **three Madigan associates referred to in the DPA,**
24 **true?**

1 A. Yes.

2 All right. And Doherty warned Marquez that
3 he shouldn't tamper with the arrangement because
4 "your money comes from Springfield," true?

5 A. Yes.

6 Q. All right. And Doherty said that he had
7 "every reason to believe" that McClain had spoken to
8 Madigan about funneling money to Madigan's associate
9 referred to in the DPA, right?

10 A. Yes.

11 Q. All right. And Doherty told Hooker that
12 he, Doherty, knew Hooker had talked to Madigan about
13 the retention and payment of Madigan's associates?

14 A. Yes.

15 Q. All right. Now, if we then take a look
16 at the bottom of page A-7, going over to the top of
17 page A-8: Consultant 1, meaning Doherty, added that
18 Public Official A, meaning Madigan's associates,
19 "keep their mouth shut and, you know, so. But do
20 they do anything for me on a day-to-day basis? No."

21 All right. So Doherty explained that the
22 payments to Madigan's associates -- I'm sorry. So
23 Doherty said to ComEd that Madigan's associates keep
24 their mouth shut, right?

1 A. Yes.

2 Q. All right. And Doherty -- if we take a
3 look at the next sentence: Consultant 1 explained
4 that these payments were made to keep Madigan happy.
5 And so Doherty said the payments to Madigan's
6 associates are being made "to keep Madigan happy. I
7 think it's worth it because you'd hear otherwise."
8 Right?

9 A. Yes.

10 Q. All right. Now, on March 5, 2019, and
11 according to subpart (b), page A-8: On or about
12 March 5, 2019, McClain and ComEd personnel
13 participated in a meeting during which they
14 discussed Jay Doherty's contract and why the
15 indirect payments to Madigan's associates made under
16 the guise of that contract should be continued for
17 another year.

18 So let's go into why that happened. So
19 during that meeting, McClain explained that, for
20 decades, Michael Madigan had named individuals to be
21 ComEd employees, such as meter readers; is that
22 true?

23 A. Yes.

24 Q. All right. Can you -- are you authorized

1 to say how you were able to validate that?

2 A. No. The --

3 And as Mr. Schar reminded me, what I can
4 say is that the -- what is true here is the fact
5 that the statement was made. I don't have knowledge
6 of the underlying truth of the statement.

7 Q. Okay. But in any event, during this
8 March 5, 2019 meeting, Mike McClain did explain that
9 Madigan naming -- that in this conversation, he
10 indicated that Madigan naming these individuals for
11 ComEd to hire through decades was, quote -- I'm
12 sorry -- was part of an "old-fashioned patronage
13 system"?

14 A. Yes.

15 Q. Okay. That's how McClain, at least, was
16 explaining the scheme to ComEd?

17 A. That's correct.

18 Q. All right. And then Commonwealth Edison,
19 if we take a look further down -- and that was part
20 of the reason, as well, why McClain was trying to
21 urge ComEd to renew Jay Doherty's lobbying contract,
22 right?

23 A. So this -- the DPA places this
24 conversation in the context of discussions about

1 Mr. Doherty's contract.

2 Q. Right. Okay. And was it ComEd's
3 understanding that one of the reasons why Mr.
4 McClain was talking about how Madigan had been able
5 to name individuals to be ComEd employees as part of
6 a patronage system for years, was that being done to
7 try to perhaps minimize or otherwise incentivize
8 doing this bad compliance stuff with Mr. Doherty's
9 contract?

10 A. So I can't characterize why that
11 statement was made.

12 Q. Okay. Right. I'm trying to get ComEd's
13 response to that statement, though.

14 How did ComEd perceive it in terms of
15 influencing ComEd's behavior?

16 A. So I don't think I can speak to that
17 based on any information that's available for me to
18 share.

19 Q. Okay. Do you know whether ComEd was --
20 you know, as a result of some of Mr. McClain's
21 statements and some of those from Mr. Hooker and
22 Mr. Doherty and others, was ComEd induced to change
23 any of their positions or do things they wouldn't
24 have otherwise wanted to do based on Mr. McClain's

1 and other's representations that these are the kind
2 of things that the Speaker wants?

3 A. Yeah. I don't think I'm in a position to
4 answer that question.

5 Q. Okay. Continuing on then on page A-8,
6 where, you know, again, we're -- if we're looking at
7 the number on the bottom paragraph of page A-8, the
8 \$1,324,500, those indirect payments made to Public
9 Official A's associates, did those all go through
10 the Doherty contract?

11 A. So I don't believe that I can answer that
12 question on the basis of information that's
13 available for my use today.

14 Q. Okay. Is there any dollar amount that
15 you can identify for us here today that is
16 associated with a dollar amount that you can say
17 went through Jay Doherty's company to fund the
18 non-comEd work of Speaker Madigan's associates?

19 A. One moment.
20 I don't have that information.

21 Q. Okay.

22 CHAIRMAN WELCH: Representative, may I
23 just ask. I don't want to cut you off. I just want
24 to ask, because there are other Members that want

1 recognition, how much longer do you think you will
2 have?

3 REPRESENTATIVE MAZZOCHI: Probably
4 another 20 minutes.

5 CHAIRMAN WELCH: I also wanted everyone
6 to take a restroom break. I see people grimacing.

7 Would now be a time to take a break or
8 can you get through this?

9 REPRESENTATIVE MAZZOCHI: No, that's
10 fine. I'm happy to take a break for everybody, and
11 that will, hopefully, give me time to cut down
12 questions, as well.

13 CHAIRMAN WELCH: Let's take a five-minute
14 break and then she can conclude. We will stand at
15 ease for five minutes.

16 (Recess taken at 4:52 p.m.)

17 CHAIRMAN WELCH: Looks like everyone is
18 back. Thank you, Representative, for allowing us to
19 take that much needed break. She promises that she
20 has no more than 15 or 20 minutes left.

21 Representative, you have -- you may
22 resume.

23 REPRESENTATIVE MAZZOCHI: Thank you.

24 BY REPRESENTATIVE MAZZOCHI:

1 Q. If we could go to page A-9 of the
2 Deferred Prosecution Agreement Statement of Facts,
3 and I would like to focus on the sentence that
4 starts about the fourth line down. But the context
5 of what's going on is this -- this paragraph is
6 talking about the associates of Madigan were paid by
7 ComEd for doing little to no work. It says: Prior
8 to ComEd's discovery of the federal law enforcement
9 investigation, Public Official A, meaning Madigan,
10 and Individual A, meaning McClain's, approval was
11 sought by ComEd before payments to certain of
12 Madigan's associates were discontinued, even though
13 these individuals performed little to no work with
14 ComEd. Are you with me?

15 A. Yes.

16 Q. All right. So -- so number one, when
17 this is talking about Public Official A's associates
18 were discontinued, are these individuals who were
19 separate from the three associates referred to
20 elsewhere in the Deferred Prosecution Agreement?

21 A. So this is -- this is not a question I
22 can answer based on the information available to me
23 today.

24 Q. Okay. But to be clear, when it comes to

1 this particular paragraph, this is saying that, when
2 ComEd wanted to stop paying some of Speaker
3 Madigan's associates, who were doing little or no
4 work for ComEd, ComEd secured both Madigan and
5 McClain's approval before they discontinued those
6 payments?

7 A. So the -- the -- the -- in the DPA, it
8 says what it says on that point.

9 Q. Right. Right. It says and, not or,
10 right?

11 A. Right. I don't want to -- the DPA says
12 what we have said on these points, and I don't want
13 to characterize beyond those statements.

14 Q. Right. That's fair. And let me put it
15 this way: You have no reason to doubt today that
16 both Public Official A, Madigan's, and McClain's
17 approval was sought by ComEd before the payments to
18 Public Official A's associates were discontinued?

19 A. That's correct. We acknowledge that in
20 the DPA.

21 Q. All right. And by the way, when we were
22 talking about Speaker Madigan's associates, the
23 Frank Olivo, does ComEd know whether that's the
24 Frank Olivo who was the former 13th Ward Alderman?

1 A. I don't believe I can answer that on the
2 basis of the information available for my use at
3 this hearing.

4 Q. Okay. All right. Let's go ahead then
5 and keep on moving.

6 Let's talk about just the board member --
7 where board member -- let's see. Board Member 1,
8 can you just confirm that that is Juan -- and I'll
9 spell the last name -- O-c-h-o-a.

10 A. Yes.

11 Q. Okay. And can you confirm that, before
12 the request was made on -- by Mr. McClain,
13 ostensibly on behalf of Speaker Madigan to put Juan
14 Ochoa on the board, that ComEd did not have any open
15 board seats?

16 A. I'm not sure I can confirm that.

17 Q. Okay. Do you know whether ComEd created
18 a new board seat for Board Member 1 to -- so that
19 Board Member 1 could have a position or did he
20 replace an existing board member?

21 A. My understanding is that he was not a new
22 seat.

23 Q. Okay.

24 A. It was an existing seat.

1 Q. Okay. If we can take a look at page
2 A-10, this is the -- it's the top paragraph on the
3 page, the first full paragraph, but I do want to ask
4 about the statement that the CEO made. You take
5 good care of me and so does our friend, meaning
6 Madigan, and I will do the best that I can to
7 take -- to take care of you. So, again, our friend
8 is Michael Madigan, right?

9 A. Yes.

10 Q. All right. And part of -- at least part
11 of the reason why Juan Ochoa was put on ComEd's
12 board was to influence and reward Michael Madigan in
13 connection with his official duties?

14 A. So the -- the DPA acknowledges that this
15 was part of a -- part of a course of conduct --

16 Q. Right.

17 A. -- with the overall intent, and
18 specifically acknowledges that ComEd appointed Board
19 Member 1, in part, with the intent to influence and
20 reward Speaker Madigan in connection with his
21 official duties.

22 Q. Okay. Just in general, can you say,
23 sitting here today, that Anne Pramaggiore did not
24 speak to Mike Madigan about the events in the DPA to

1 confirm that they were authorized or that these were
2 things that he specifically wanted?

3 A. That's not a question that I can answer
4 on the basis of the information available.

5 Q. All right. That's fine.

6 All right. Let's just go to the
7 retention of the law firm, which is at the bottom of
8 page A-10.

9 So the -- the Law Firm A, was that Reyes
10 Kurson -- I'm sorry, Kurson?

11 A. Reyes Kurson.

12 Q. Kurson, sorry.

13 A. Can I have one moment?

14 Okay. Sorry for the interruption.

15 Q. Sure. Can you just confirm that?

16 CHAIRMAN WELCH: Mr. Glockner, we are
17 hearing the court reporter is having difficulty
18 hearing.

19 MR. GLOCKNER: Sorry.

20 CHAIRMAN WELCH: Do your best to try to
21 get as close to the mic as possible.

22 BY REPRESENTATIVE MAZZOCHI:

23 Q. Just to repeat, can you confirm that Law
24 Firm A referred to on page A-10 is Reyes Kurson?

1 A. Yes.

2 Q. Thank you. And was Lawyer A being
3 referred to Victor Reyes?

4 A. Is there a Lawyer A referred to here?

5 Q. Yes.

6 A. Yes. Yes, I believe so.

7 Q. Okay. All right. And again, the
8 retention of Law Firm A and, in particular, the 850
9 hours of attorney work per year, it was ComEd's
10 understanding, giving this contract to Reyes Kurson
11 was important to Speaker Madigan, right?

12 A. Yes. The DPA reflects the personnel
13 agents of ComEd understood that giving the contract
14 to Law Firm A was important to Speaker Madigan.

15 Q. All right. And if we go from page A-10
16 to A-11, it says: 2016, the Reyes Kurson contract
17 was up for renewal and people at ComEd actually
18 wanted to change his contract so that ComEd was
19 paying only for the hours that were actually worked;
20 is that right?

21 A. So the -- what the DPA acknowledges is
22 that the individuals within ComEd sought to reduce
23 the hours of work they provided to Reyes Kurson from
24 the 850 specified in the retention agreement because

1 ComEd paid only for hours worked and that there
2 wasn't enough work that was appropriate for the firm
3 to give them to fill up that 850 hours. I don't
4 believe that ComEd was paying for hours not
5 worked.

6 **Q. Okay. So under the 2011 Retention**
7 **Agreement, do you recall what the hourly rate was**
8 **for Mr. Reyes or his law firm?**

9 A. I do not.

10 **Q. Was there a minimum guaranteed payment**
11 **amount under that contract -- under that Retainer**
12 **Agreement?**

13 A. I don't have the contract in front of
14 me.

15 **Q. Okay. Would it -- would that -- do you**
16 **know whether that actually is in the Retainer**
17 **Agreement?**

18 A. I'm not aware of any such requirement.

19 **Q. Okay. Do you know whether, over the**
20 **course of the contract, between 2011 to 2016, ComEd**
21 **paid the law firm for 850 hours, even though the**
22 **firm had not worked the 850 hours?**

23 A. As I said before, I don't believe that
24 ComEd was paying for hours that were not worked.

1 Q. Okay. And then -- so if we look then on
2 page A-11, first full paragraph, it says:
3 Thereafter, an attorney associated with Law Firm A,
4 Lawyer A, meaning Victor Reyes, complained to
5 McClain about ComEd's effort to reduce the amount of
6 work provided to his law firm. And then on or about
7 January 20, 2016, McClain contacted Anne Pramaggiore
8 and wrote, "I am sure you know how valuable Lawyer
9 A, meaning Victor Reyes, is to our friend, meaning
10 Madigan" And then went on to write, "I know the
11 drill and so do you. If you do not get involved and
12 resolve this issue of 850 hours for his law firm per
13 year, then he will go to our friend, meaning
14 Madigan. Our friend, meaning Madigan, will call me
15 and then I will call you. Is this a drill we must
16 go through?" And Anne Pramaggiore replied in
17 writing, "Sorry. No one informed me. I am on
18 this." Is that true?

19 A. Yes, those statements were made.

20 Q. Okay. And then when it -- and then if
21 you look at the bottom of page A-11, it says that
22 Law Firm A's contract was renewed because the work
23 provided to Law Firm A was, in part, designed to
24 influence and reward Public Official A, meaning

1 Madigan, in connection with Madigan's official
2 duties, including the promotion and passage of FEJA.
3 Do you see that?

4 A. Yes.

5 Q. All right. Now, it says ComEd agreed in
6 or around June 2016 to renew Law Firm A's contract
7 with substantially reduced annual hours. Do you see
8 that?

9 A. Yes.

10 Q. Do you know whether, even with that
11 reduced annual hours, the Reyes Kurson law firm
12 still wound up getting paid the same amount as under
13 the 2011 Retainer Agreements?

14 A. I don't know that and if the subsequent
15 agreement reduced the hours to 47.5 per month, of
16 which 15 would be administrative hearings, which
17 were expected to be about 570 hours per year, so
18 down from the 850.

19 Q. Okay. And then did the -- did the hourly
20 rates also go up?

21 A. I don't have that information with me,
22 but I'm not aware that they did.

23 Q. Okay. So to -- so let me ask you this:
24 So when it comes to -- I mean, what was the -- do

1 **you know how -- how much Kurson Reyes -- I'm sorry,**
2 **Reyes Kurson was paid in 2016 as compared to 2015?**

3 A. I'm sorry. I don't have that information
4 with me today.

5 Q. Okay. Is it information you would be
6 willing to share with the Committee?

7 A. Assuming the information is not
8 privileged, which is my guess, that we would be
9 willing to share it with the Committee.

10 Q. Yeah. I would just be interested to
11 seeing what the actual Retainer Agreements looked
12 like and if the hourly rates changed or if the
13 dollar amounts actually paid. I would not be
14 interested in the substance of any communications,
15 obviously.

16 A. Right. Right.

17 Q. All right. Now, would it be fair to say,
18 in your experience, Commonwealth is a pretty
19 sophisticated company?

20 A. Yeah, I -- I don't want to get into
21 characterizing the company. We're -- we are a
22 Fortune 500 -- I think, Fortune 100 company. It's a
23 company that does a lot of complicated things. But
24 sophisticated is a matter of judgment and, you know,

1 we -- the DPA sort of speaks for itself with respect
2 to its conduct in this matter.

3 **Q. All right. Would it be fair to say that**
4 **the executives that you have dealt with at ComEd,**
5 **they're not naive. They're sharp; they're smart**
6 **people?**

7 A. The executives that I have dealt with at
8 ComEd and Exelon have impressed me quite a bit. I
9 would also note that the executives who were
10 responsible for this conduct are no longer with the
11 firm.

12 **Q. Right. Does ComEd have a position that**
13 **it can share today regarding whether Anne**
14 **Pramaggiore was snickered -- snookered by Mike**
15 **McClain being boastful that he had connections and**
16 **authority to speak on behalf of the Speaker that he**
17 **didn't have?**

18 A. So I can't go beyond what ComEd has said
19 in the DPA, and the DPA reflects that ComEd, as an
20 entity at the time this conduct occurred, acted with
21 the intention to influence the Speaker.

22 **Q. And one of the reasons why Commonwealth**
23 **had that intention to influence the Speaker is**
24 **because Commonwealth Edison anticipated receiving**

1 over \$150 million worth of benefits as a result of
2 this scheme; is that fair?

3 A. I would not agree with that.

4 Q. Well, let's take a look at page A-12 of
5 the Deferred Prosecution Agreement, and I would like
6 to direct your attention to the section that says
7 Benefit to ComEd.

8 It says: Between in or around 2011 and
9 in or around 2019, during the same time frame that
10 ComEd was making payments to Public Official A,
11 Madigan's associates, and extending other benefits
12 for the purpose of influencing and rewarding Public
13 Official A, meaning Madigan, ComEd was also seeking
14 Public Official A, meaning Madigan's, support for
15 legislation that was beneficial to ComEd, including
16 EIMA and FEJA, that would ensure a continued
17 favorable rate structure for ComEd. ComEd
18 acknowledges that the reasonably foreseeable
19 anticipated benefits to ComEd of such legislation
20 exceeded \$150 million.

21 A. Yes, that I would agree with.

22 Q. All right. Now, when it came to
23 receiving these foreseeable anticipated benefits of
24 legislation that exceeded \$150 million, Mike McClain

1 **did not have the power to deliver any of those**
2 **benefits, did he?**

3 A. So I -- so when -- Mr. McClain at that
4 point was -- was not a public official.

5 **Q. Right. So Mike Madigan would be a public**
6 **official who potentially could have the power to**
7 **deliver the benefits of the EIMA and FEJA**
8 **legislation; is that fair?**

9 A. So I would, I think, take issue with your
10 use of the word deliver, which is not a word that is
11 used in the DPA. Both of these pieces of
12 legislation were supported by a wide range of
13 people. What ComEd has acknowledged in the DPA is
14 that it viewed Speaker Madigan as influential. It
15 sought to influence him, but there is a difference,
16 I think, between seeking to influence one individual
17 and stating, as I think the question may have
18 implied, that the Speaker was in a position by
19 himself to deliver a particular piece of
20 legislation.

21 **Q. Did ComEd have an understanding that**
22 **Speaker Madigan, under the House Rules, had the**
23 **authority to not call legislation to the floor,**
24 **which would effectively kill the legislation?**

1 A. In the -- the DPA, ComEd acknowledged
2 that Speaker Madigan was able to exercise control
3 over what measures were called for a vote in the
4 House of Representatives.

5 **Q. Right. And that's pretty influential,**
6 **right?**

7 A. I --

8 **Q. ComEd can't get legislation passed if the**
9 **Speaker won't call it, right?**

10 A. The -- your -- I don't want to take issue
11 with your characterizations, but I also -- the DPA
12 is very sort of carefully and tightly crafted, and I
13 don't want to add or agree to characterizations that
14 go beyond what we said in the DPA.

15 **Q. Sure. Well, maybe we can try to get at**
16 **some of these things this way: Mike McClain didn't**
17 **have any power to bring any legislation to the floor**
18 **or not allow legislation to come to the house floor;**
19 **is that fair?**

20 A. That is -- that is fair, based on my
21 understanding of Mike McClain's role as a private
22 citizen at that time.

23 **Q. Right. And Michael Madigan is the one**
24 **who actually held a public office to use and abuse;**

1 is that fair?

2 A. Speaker Madigan was a public official. I
3 don't want to -- I don't want to accept your -- the
4 remainder of the sentence, which is a
5 characterization.

6 Q. All right. Well, let's try to get at
7 this this way. Take a look at page 6 of the
8 Deferred Prosecution Agreement, and it's under the
9 heading Payment of Monetary Penalty. Item 9,
10 subpart (a), where the offense level is being
11 calculated under the sentencing guidelines. Page 6.

12 A. Sorry.

13 Q. That's okay.

14 A. Yes.

15 Q. All right. So do you see there, item (b)
16 (3), Involvement of an elected public official in a
17 high-level decision-making or sensitive position.

18 The elected public official in a
19 high-level decision-making or sensitive position was
20 Illinois Speaker Mike Madigan, right?

21 A. Yes. Although, I think there are some
22 legal issues relating to the -- the application of
23 the guideline.

24 Q. Yeah. I'm not trying to say whether the

1 guideline is accurate or not. It's just -- in terms
2 of the quantification of the calculation levels or
3 anything like that. Just that it says that the
4 elected public official in a high-level
5 decision-making or sensitive position that would be
6 referred to in the context of this DPA was Mike
7 Madigan?

8 A. So what I think is the accurate statement
9 here is that this particular language that you're
10 pointing to reflects our agreement that this section
11 of the sentencing guidelines, Section 2C1.1(b)(3),
12 was applicable. I don't -- I don't believe that
13 that was meant as a -- or should be read as a
14 statement of fact. It's -- it's an agreement as to
15 the legal applicability of that particular provision
16 of the United States Sentencing Guidelines.

17 Q. Sure. And the only factual -- and if you
18 look at the Deferred Prosecution Agreement, the only
19 elected public official in a high-level
20 decision-making or sensitive position that is
21 referred to in the Deferred Prosecution Agreement is
22 Illinois House Speaker Michael Madigan, right?

23 A. That's correct.

24 REPRESENTATIVE MAZZOCHI: Okay. All

1 right.

2 Chairman, I think I've gotten to my 15
3 minutes, so I'll see the floor. Thank you.

4 CHAIRMAN WELCH: Thank you,
5 Representative. I will say, you've been thorough.
6 Representative Hernandez.

7 REPRESENTATIVE HERNANDEZ: Thank you,
8 Mr. Chairman.

9 EXAMINATION

10 BY REPRESENTATIVE HERNANDEZ

11 **Q. Mr. Glockner, glad to have you here. I'm**
12 **going to start off because I noticed that there was**
13 **a repeated -- it was repeatedly said that ComEd's**
14 **intent. Does ComEd's intent, does that constitute**
15 **unbecoming of a lawmaker?**

16 A. I can't comment on matters relating to
17 the interpretation of the House Rules.

18 **Q. Okay. So okay. So Mr. Glockner, did**
19 **ComEd admit guilt in a bribery scheme lasting nine**
20 **years or did they enter a not guilty plea?**

21 A. ComEd has acknowledged facts in the DPA.
22 The -- the -- a criminal charge has been filed.
23 Pursuant to the terms of the DPA, if ComEd complies
24 with the DPA, after three years, the charge will be

1 dismissed with no conviction. ComEd has not pled
2 guilty.

3 Q. Okay. So for clarity's sake, ComEd has
4 agreed that it does not contest the facts laid out
5 in the DPA, right?

6 A. I -- yes, we agree to -- we affirmatively
7 have agreed to those facts.

8 Q. So from ComEd's perspective, even if we
9 accept all of the facts laid out in the DPA to be
10 accurate, ComEd believes it to be not guilty of any
11 federal crime? That is ComEd's position, as you
12 understand it?

13 A. So I would certainly not say that. I
14 would say that we have acknowledged facts. We -- we
15 have not pled guilty. We do not expect, at the end
16 of these proceedings, to be convicted, but I can't
17 and won't characterize ComEd's view of the legal
18 implications of those facts. We have not -- we have
19 not pled guilty.

20 Q. Okay. So moving to other questions.
21 Over the years, ComEd has likely received
22 recommendations from legislators for jobs,
23 contracts, charitable contributions, etcetera. To
24 your knowledge, is that a correct assumption?

1 A. Yes.

2 **Q. Okay. For the record, in your opinion,**
3 **is it a crime for a legislator to make a job**
4 **recommendation to ComEd or recommendations?**

5 A. One moment here.

6 So any -- any specific instance of an
7 exchange between public officials and other people
8 requires its own kind of specific analysis, but one
9 thing that I think I can say is that in connection
10 with our compliance efforts, to sort of strengthen
11 our compliance program after this incident, we have
12 put into place a process that requires anyone in the
13 ComEd or broader Exelon organization who receives a
14 request, referral, recommendation from a public
15 official of any sort, not just a legislator, for
16 anything that is something of value and not, kind
17 of, ordinary course constituent service request or
18 part of their ordinary official duties, those
19 matters are now required to be reported to ComEd
20 through a tracking system that captures the
21 interaction, captures our analysis, and captures our
22 disposition of it. I think implicit in that is sort
23 of both that these interactions can be -- can
24 require close analysis, but also that they are not

1 inherently illegal.

2 Q. Okay. So that's -- that's what you are
3 implementing now. So prior, then, if a legislator
4 made a job recommendation to ComEd or any other
5 company with any threat or promises implicit or
6 explicit attached, is it simply not a crime? Is
7 it?

8 A. Yeah, I don't -- I'm really not -- my
9 role here is really not to be any kind of expert on
10 the law for the Committee. I can talk to you about
11 ComEd's practices and information that's sort of
12 within my knowledge in my role, but I -- I don't
13 think it's really appropriate for me to give some
14 broad legal advice.

15 Q. Okay. So just to make it clear, did I
16 hear you say that it is not inherently illegal for a
17 legislator to make a recommendation?

18 A. Yes, but I put that in the context of our
19 processes which, in the wake of this, there is a
20 clear recognition that these are interactions that
21 need to be handled with caution and great care and
22 carefully analyzed. The mere fact of an interaction
23 standing alone is not illegal, though, and that's
24 the -- we're -- in the training that we're doing

1 internally and our communications with public
2 officials, it's important that we be able to
3 continue to communicate with public officials.
4 That's not inherently illegal. But it's also
5 important that those communications not cross the
6 line and that we -- we make sure that in responding
7 to those communications, we act with the kind of
8 greatest care and most integrity in our own response
9 to those communications.

10 **Q. Okay. So in your opinion, would you say**
11 **then is it unethical for a legislator to make a job**
12 **recommendation?**

13 A. So I can't comment on legislative
14 ethics.

15 **Q. Okay. So ComEd has various lobbyists**
16 **that work for the company. Some work internally as**
17 **full-time employees of ComEd and some are**
18 **contractural workers. Many of these contractural**
19 **workers are lobbyists; is this accurate?**

20 A. That is my understanding.

21 **Q. How many are currently employed?**

22 A. I cannot -- I don't have that
23 information.

24 **Q. What is the reason that ComEd hires both**

1 **internal and contractural lobbyists?**

2 A. I can't speak to the -- the reasons for
3 the specific structure of how that's handled. It's
4 not a matter that I'm familiar with at this point.

5 **Q. Okay. Did ComEd hire lobbyists with ties**
6 **to all of the legislative caucuses or only those**
7 **with connections to Speaker Madigan?**

8 A. I think it's fair to say that -- that
9 ComEd has lobbyists with a variety of political
10 backgrounds and perspectives and sources of
11 expertise.

12 **Q. So would you say that ComEd hired**
13 **lobbyists with connections to Leader Durkin?**

14 A. One moment.

15 Unfortunately, I don't -- I don't know
16 enough at this point about the way our lobbying
17 operation is structured in terms of the segments and
18 relationship to be able to provide you with an
19 answer to that that I'm comfortable --

20 **Q. All right. So you wouldn't know about**
21 **President Cullerton or now President Harmon or even**
22 **Leader Brady?**

23 A. I wouldn't know about them.

24 **Q. You know, did ComEd hire lobbyists with**

1 **these connections? So you wouldn't know that?**

2 A. So what I -- what I think I can say is
3 that ComEd has had lobbyists with relationships with
4 many different political leaders from both
5 parties.

6 **Q. So would you say -- so the strategy of**
7 **hiring lobbyists to assist the company was not**
8 **solely aimed at Speaker Madigan, was it?**

9 A. So -- I'm not sure I would agree with
10 the -- with the use of the term aimed at. We -- the
11 company uses lobbyists to provide information to a
12 range of legislators and other people involved --

13 **Q. So it --**

14 A. -- in the policy process, and -- but I
15 think that is the probably the best way to describe
16 that.

17 **Q. So you would say it would be aimed to all**
18 **legislators, including Leader Durkin?**

19 A. I wouldn't use the use the word aimed,
20 but I would say that ComEd attempts to engage with
21 legislators across the political spectrum.

22 **Q. So to use the words that the government**
23 **uses to describe this everyday event, ComEd, through**
24 **its lobbyists, wanted to curry favor with the**

1 **legislative leaders; is that right?**

2 A. Sorry. Are you quoting from a document
3 or is this a characterization?

4 **Q. It's a quote. To us, the word of the**
5 **government or what the government uses to describe**
6 **this everyday event, does ComEd, through its**
7 **lobbyists, want to curry favor with legislative**
8 **leaders?**

9 A. So there are several layers in that
10 question, partly with the term currying favor. I
11 think if you -- if you look at the language in the
12 DPA and the specific admissions set out in the DPA,
13 we -- we have acknowledged that ComEd attempted to
14 influence Speaker Madigan. But I think I would
15 characterize the work of our lobbying team generally
16 as being to provide information and to advocate for
17 policy interests on the government -- with
18 government officials on the company's behalf.

19 **Q. So there are legislative leaders or**
20 **legislators who ask ComEd or Exelon to hire**
21 **particular lobbyists?**

22 A. One moment.

23 The answer to that is that I'm not aware
24 of requests directly from legislators to hire

1 specific lobbyists, but I also don't -- I can't
2 represent that I've got full information on that
3 point.

4 **Q. Okay. So are you aware then if any**
5 **recommendations that maybe Leader Durkin may have**
6 **made to ComEd?**

7 A. So when you say Leader Durkin may have
8 made --

9 **Q. Uh-huh.**

10 A. -- I'm not aware of any communication
11 from Leader Durkin to ComEd with respect to a
12 lobbyist. No direct communication.

13 **Q. Okay. So you are aware, are you not,**
14 **that ComEd, at the recommendation of Fidel Marquez,**
15 **hired former Republican legislator Tom Walsh, in**
16 **part, because Leader Durkin urged ComEd to do so?**
17 **Did you know that?**

18 A. So I'm aware of -- you're -- I'm trying
19 to make sure that I'm recalling this accurately.
20 But my recollection is that we have a communication
21 from a third party, I don't recall whether it was
22 Mr. Marquez or somebody else, indicating that Leader
23 Durkin had recommended Mr. Walsh.

24 **Q. And so when the FEJA bill was being**

1 debated in the Illinois House of Representatives,
2 Tom Walsh was among the army of lobbyists that ComEd
3 employed to help pass the bill. Are you aware of
4 that?

5 A. I'm not familiar with who lobbied on that
6 particular matter.

7 Q. And ultimately, Leader Durkin voted for
8 the FEJA bill, right?

9 A. I don't have individual's votes on that
10 legislation in front of me.

11 Q. Okay. And it is presumed that Tom Walsh
12 urged him to do so, right?

13 A. That's your presumption. I have no
14 information.

15 Q. So Governor Rauner and Leader Durkin took
16 credit for passing that bill, saying that they had
17 to move mountains to accomplish that. Are you aware
18 of that?

19 A. I have read that quote.

20 Q. And so the agreement to hire Leader
21 Durkin's recommended candidate, Tom Walsh, even if
22 done in part to curry favor with Durkin, was not --
23 this was not done in return for getting Leader
24 Durkin's support for a stream of benefits that

1 Durkin would bestow upon ComEd or Exelon, including
2 supporting FEJA, right?

3 A. So I'm not aware that that particular
4 hire was with an effort to curry favor with a --
5 with Leader Durkin. I think, really, the rest of
6 your question was really a characterization, which I
7 prefer not to respond to.

8 Q. Okay. So has ComEd ever actively
9 solicited job recommendations from public officials?
10 And, if you have, can you describe them?

11 A. I don't know the answer to that
12 question.

13 Q. For example, like, the smart meters,
14 there was a -- there was an effort to -- before the
15 grid came out, a hiring of smart meters. So ComEd
16 never asked for recommendations from public
17 officials that you're aware of?

18 A. So what I'm saying is, I don't know the
19 answer to that question. The -- that's not an area
20 that was -- that I'm familiar with in my six months
21 with the company.

22 REPRESENTATIVE HERNANDEZ: Okay. Thank
23 you.

24 CHAIRMAN WELCH: Representative Wehrli.

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EXAMINATION

BY REPRESENTATIVE WEHRLI

Q. Thank you, Chairman.

If I could return us back to the Deferred Prosecution Agreement, which is why I believe you were called here to testify; is that correct?

A. Just here to answer questions.

Q. Okay. Has -- in the Deferred Prosecution Agreement, can you point to anywhere in the document that either identifies or mentions Jim Durkin?

A. No.

Q. In the Deferred Prosecution Agreement, can you point -- can you identify or point to any area that mentions Bill Brady?

A. No.

Q. In the Deferred Prosecution Agreement, can you identify or point to any mentions of Senate President John Cullerton?

A. No.

Q. In the Deferred Prosecution Agreement, can you identify or point to any mentions of now Senate President Don Harmon?

A. No.

Q. I'm sorry?

1 A. No.

2 Q. In the Deferred Prosecution Agreement,
3 can you identify or point to any mentions of Tom
4 Walsh?

5 A. No.

6 Q. Can you point to, in the Deferred
7 Prosecution Agreement, 72 mentions of Public
8 Official A, Speaker Michael J. Madigan?

9 A. I have never counted.

10 Q. Can you explain multiple mentions of
11 Public Official A, Speaker Michael J. Madigan?

12 A. Yes. The focus of the Deferred
13 Prosecution Agreement was the -- the effort by ComEd
14 to influence Speaker Madigan.

15 Q. Okay. In your opening statement, you
16 mentioned that not only were you a U.S. Attorney for
17 the criminal division here in the Northern District
18 of Illinois, but you were also a Securities Exchange
19 lawyer. For how long were you in that role?

20 A. So just to correct, I was not the U.S.
21 Attorney.

22 Q. Okay.

23 A. I was an assistant U.S. Attorney and
24 served as chief of the criminal division.

1 Q. Okay. Thank you for that clarification.

2 And were you a lawyer for the Securities
3 and Exchange Commission?

4 A. I was the regional director for the
5 Securities and Exchange Commission for the Chicago
6 office.

7 Q. Okay. So in that role, are you familiar
8 with penalties being paid by public corporations in
9 both civil and criminal matters?

10 A. Yes. And the SEC doesn't have criminal
11 authority, but it has civil authority.

12 Q. In that role, is it -- all right.

13 Are you -- do you agree that, on page 7
14 of the DPA, the government and ComEd agree, based on
15 the application of the guidelines, that the
16 appropriate total criminal penalty, criminal
17 penalty, is \$200 million? Is that correct?

18 A. So I would not characterize the -- the --
19 so I would not -- sorry. I'm looking for the page
20 here.

21 Q. Page 7.

22 A. So the -- the total criminal penalty,
23 based on the application of the guidelines, is \$200
24 million. So if the guidelines apply, which they

1 would if this were a criminal case in which the
2 guidelines applied, because there was a conviction,
3 then the penalty -- the applicable penalty under the
4 sentencing guidelines would be \$200 million.

5 **Q. Has ComEd agreed to pay a penalty of \$200**
6 **million?**

7 A. So we have agreed to make a payment to
8 the Treasury of \$200 million, yes.

9 **Q. And that is part of this Deferred**
10 **Prosecution Agreement, correct?**

11 A. Yes.

12 **Q. Okay. Are you aware of any lobbyists on**
13 **the Republican side of the aisle who subverted the**
14 **ComEd vendor payment system?**

15 A. No.

16 **Q. Who hired people who did little or no**
17 **work for Commonwealth Edison?**

18 A. Commonwealth Edison did.

19 **Q. Has any Republican member of the General**
20 **Assembly placed into position with ComEd anyone that**
21 **did precinct or political work?**

22 A. One moment.

23 So the challenge of your question is --
24 it is a very broad question that goes considerably

1 beyond the DPA.

2 Q. So I will rephrase it.

3 Does the DPA, Deferred Prosecution
4 Agreement, delineate any Republican members of the
5 General Assembly seeking jobs with Commonwealth
6 Edison?

7 A. No.

8 REPRESENTATIVE WEHRLI: No further
9 questions.

10 CHAIRMAN WELCH: Thank you,
11 Representative.

12 Representative Manley, seeking
13 recognition of the Leader.

14 EXAMINATION

15 BY REPRESENTATIVE MANLEY

16 Q. Hi, Mr. Glockner. How are you doing?

17 A. Fine.

18 Q. This is fun, isn't it? You need some
19 coffee?

20 A. I'm good.

21 Q. Okay. So I'm going to kind of jump
22 around a little bit here.

23 Did anyone, other than McClain or
24 Madigan, refer Mr. Ochoa to the open existing seat

1 on ComEd's board?

2 A. Could you repeat the question, please? I
3 want to make sure I understand it.

4 Q. Did anyone -- to your knowledge, did
5 anyone, other than Mike McClain or Michael Madigan,
6 refer Mr. Ochoa to the open existing seat on ComEd's
7 board?

8 A. Sorry for the delay. So I am aware of --
9 make sure I'm correctly -- so I'm aware of an email
10 from an office manager for Speaker Madigan's Pulaski
11 Street office which sent Mr. Ochoa's resume' to
12 Ms. Pramaggiore. And the email said Speaker Madigan
13 asked me to send this to you. I can't go --

14 Q. I said anybody other than McClain or
15 Madigan recommend --

16 A. Right. This was from Speaker Madigan's
17 assistant. So -- so --

18 Q. Recommended or referred is what I am
19 looking for. Do you know anybody that recommended,
20 not forwarded a resume', but recommended or
21 referred?

22 A. Right. I was trying to be literally
23 careful in responding to that. So I think that
24 answer was in a literally correct -- the information

1 I provided was responsive to that answer. I can't
2 go beyond that without getting into information that
3 I'm -- I can't speak to because of either privilege
4 or other considerations.

5 **Q. Do you have knowledge of other**
6 **legislators making recommendations through third**
7 **parties for any type of job or contract? Not**
8 **looking for names, just a yes or no.**

9 A. Knowledge of other legislators --

10 **Q. Making recommendations through third**
11 **parties for any job or contract?**

12 A. Again, I'm trying to think about what
13 information I might have that I would be in a
14 position to share versus the areas where I'm not in
15 a position to speak to. I can't, as I sit here, say
16 definitively one way or the other just because it's
17 the -- ComEd had lots of contacts with lots of
18 legislators, and I -- I want to be very careful to
19 be accurate and --

20 **Q. I appreciate that.**

21 A. -- and precise in comments here, and I
22 don't want to speculate.

23 **Q. I'm going to loop back because I just**
24 **want some understanding.**

1 **Representative Hernandez asked you if you**
2 **were aware that ComEd, at the recommendation of**
3 **Fidel Marquez, hired former Republican legislator**
4 **Tom Walsh, in part, because Leader Durkin urged**
5 **ComEd to do so. And you said you are aware of some**
6 **communication from a third party that said Leader**
7 **Durkin recommended. I want to be clear.**

8 A. Yes. I appreciate that and -- and that
9 is my recollection. I don't believe I have that
10 particular communication with me.

11 **Q. So did you believe that person was**
12 **speaking on behalf of Leader Durkin?**

13 A. So I can't say what ComEd believed. What
14 I can say is that there was a communication that
15 referred to a relationship between speaker Durkin --
16 sorry -- Leader Durkin and this lobbyist.

17 **Q. So this person was speaking on Leader**
18 **Durkin's behalf?**

19 A. I'm not sure that's accurate. There is a
20 distinction between speaking on someone's behalf and
21 passing on information. And without having --

22 **Q. It's important. That's important.**

23 **Okay. So let's talk about lobbyists, you**
24 **know, the dreaded lobbyists. In my time here,**

1 lobbyists, although sometimes it evokes a negative
2 connotation they are up to some nefarious things,
3 but they are critical to the process because we
4 handle complicated things and a good lobbyist will
5 tell you not only why you should support what they
6 are there to talk to you about, but they would, in
7 turn, also tell you what the nay sayers would say.
8 So you kind of get both sides of it. And they won't
9 lie to you, by the way. So you get the truth and
10 you build relationships, and this is how we learn
11 things. And so when a big company, like ComEd, or
12 some other big issue comes up, they hire armies of
13 lobbyists to come and see us. And it's pretty much
14 based on relationships over time, through other
15 work, things like that. Is there anything illegal
16 about hiring a lobbyist for those reasons?

17 A. No.

18 Q. Has it ever been a crime to do that?

19 A. No. But I will say lobbyists, at various
20 points, have gotten into trouble. But the act of
21 lobbying, done appropriately, as you described --

22 Q. Is vital to the process?

23 A. -- is a well-established part of the
24 process and is not illegal.

1 Q. Okay. I told you I was going to jump
2 around a little bit. I have notes everywhere.

3 Would you say it's inappropriate or
4 illegal to recommend people for jobs?

5 A. Again, it's a -- it's a broad
6 characterization and -- and in -- there may be
7 contexts where the answer to that is yes. There are
8 certainly contexts where the answer to that is no.

9 Q. So you're saying, sometimes it is illegal
10 to recommend people for jobs or inappropriate?

11 Let's say there's somebody that worked
12 for you that was excellent in whatever capacity and
13 you supervised them and they were young and up and
14 coming and you -- you -- do you think that's
15 inappropriate or illegal to recommend that person to
16 another person who was looking for somebody that
17 really could benefit?

18 A. No. I certainly wouldn't suggest that
19 the mere act of recommending somebody with
20 absolutely no kind of other context around is
21 unlawful.

22 Q. And so let me ask you this: If -- if you
23 were an employer -- so you are the duly chosen
24 person here representing ComEd. Do you think, as an

1 employer, you have the responsibility to ensure that
2 the people that you hire work?

3 A. Yes.

4 Q. And is it the employer's job to monitor
5 and keep employees accountable?

6 A. Absolutely.

7 Q. Is it the recommender's job?

8 A. No.

9 Q. Would you accept recommendations from
10 someone whose previous recommendations ended up
11 doing little or no work?

12 A. I certainly wouldn't.

13 Q. So there's nothing really inappropriate
14 by making job recommendations, but why was ComEd not
15 monitoring their employees?

16 A. So I can't speak to why. I can speak to
17 a number of things that were done to make sure that
18 there is very active supervision of our lobbying and
19 public affairs teams going forward in both -- in
20 terms of a much more rigorous vetting process to get
21 them in the door, process that requires detailed
22 invoices, setting up the work they have done, twice
23 annual reviews of their activities with
24 documentation associated with that, involvement of

1 senior business leadership, as well as compliance
2 team in that review process, and contracts that have
3 much more extensive language with respect to the
4 obligations of lobbyists and the scope of their
5 work, their compliance with various ethics and legal
6 requirements. So those are -- those are some of the
7 things that we have done in response to -- to
8 looking at what happened here, to make sure that
9 this doesn't happen again and going forward, and
10 we're not going to have issues with what we want and
11 need to be a first-class and responsible public
12 policy operation.

13 **Q. ComEd's position is that there is nothing**
14 **in the facts of the DPA that constitutes a violation**
15 **of federal law because there was no quid pro-quo; is**
16 **that right?**

17 A. I would not say that. What I have said
18 is that the DPA speaks for itself. We acknowledge
19 the facts in the DPA. We -- we acknowledge the
20 seriousness of that conduct. We have characterized
21 it publicly as misconduct, our officers, and we have
22 apologized for the conduct and taken significant
23 steps to make sure that it never happens again,
24 including, in part, by bringing me into a role of

1 compliance and audit program for the corporation.
2 But the Deferred Prosecution Agreement is not a
3 guilty plea document. It is just, as a legal
4 matter, distinct. And I -- I really want to be very
5 careful not to characterize, one way or the other,
6 our view of the legalities here.

7 **Q. I have more questions, but I'm going to**
8 **wrap it up here. I want to clarify something.**

9 **Many of your comments today referred to**
10 **what ComEd believed or intended. I think**
11 **Representative Hernandez tried to get to that**
12 **earlier. You are not presenting first-hand**
13 **observations about Speaker Madigan's conduct,**
14 **correct?**

15 **A. Correct. I am not presenting first-hand**
16 **observations about anything.**

17 **REPRESENTATIVE MANLEY: Thank you for**
18 **your patience.**

19 **CHAIRMAN WELCH: For our last speaker**
20 **tonight, Minority Spokesperson Demmer.**

21 **REPUBLICAN SPOKESPERSON DEMMER: Thank**
22 **you, Mr. Chairman, and thank you both for your**
23 **detailed answers.**

24 **EXAMINATION**

1 BY REPUBLICAN SPOKESPERSON DEMMER

2 Q. I don't have many questions. I would
3 just like to ask a few follow-ups based upon the
4 conversations today.

5 There has been discussion about the
6 difference or the practices that ComEd has engaged
7 in as it relates to lobbying, to hiring lobbyists,
8 what those lobbyists do, and with whom they have
9 relationships. But would you agree there is a
10 difference between hiring a lobbyist in order to do
11 lobbying work and hiring lobbyists with the intent
12 to reward and influence a public official?

13 A. Yes.

14 Q. You, in the Deferred Prosecution
15 Agreement, have admitted to having hired individuals
16 in order to reward and influence Speaker Madigan?

17 A. Yes. I don't recall whether it says in
18 part or just without any qualification; but, yes,
19 that's part of the DPA.

20 Q. Okay. Separately, on page A-8 of the
21 additional information, there's a statement that
22 says: During a certain meeting, Mike McClain
23 explained that, for decades, Michael Madigan had
24 named individuals to be ComEd employees, such as

1 meter readers, as a part of an old-fashioned
2 patronage system. In response, a ComEd employee
3 acknowledged that such hires could be used as a chip
4 by ComEd.

5 So ComEd employees acknowledged that such
6 hires existed. Do you affirm that such hires
7 existed where Mike Madigan, for decades, had named
8 individuals to be ComEd employees?

9 A. So this -- the -- what I can affirm is
10 that these statements were made. Based on the --
11 the restrictions that I'm operating under today with
12 respect to the sources of my information, I don't
13 think I can go beyond that.

14 Q. But it would be fair to say that, at this
15 time, at the time this conversation took place, a
16 ComEd employee acknowledged that such hires
17 existed?

18 A. So the -- the -- the DPA says what it
19 says here, and I would really rather not
20 characterize further the communication that is set
21 out in the DPA.

22 Q. Okay. And those -- the DPA indicates
23 that those ComEd employees, such as meter readers,
24 one would assume that that was a legitimate job as a

1 meter reader, someone who is working as a meter
2 reader?

3 A. Again, I think it's sort of a slippery
4 slope here in terms of starting to characterize
5 parts of this and not others and --

6 Q. So I would distinguish or I would draw a
7 contrast between that section discussing the
8 recommendations for jobs, like meter readers, with
9 the information that's contained on page A-4, which
10 would be hiring of Public Official A's, Madigan's,
11 associates as vendor subcontractors who performed
12 little or no work for ComEd, that there is a
13 distinction between making a job recommendation for
14 a job that the person works in versus making a job
15 recommendation for a job that requires little or no
16 work.

17 A. There is a distinction, although, I think
18 what -- what the DPA does not address in the factual
19 summary is whether the recommendation was -- whether
20 a part of the recommendation was that they do no
21 work or whether ComEd simply did not ask them to
22 work.

23 Q. And so that is sort of the question I
24 wanted to get to. Because in the second paragraph

1 of that section on page A-4, as previous
2 Representatives pointed out, acknowledges that
3 Madigan sought to obtain from ComEd jobs, vendor
4 subcontracts, and monetary payments. Can you
5 identify those jobs, subcontracts, or monetary
6 payments that Mike Madigan sought from ComEd?

7 A. So I don't think I can do so beyond what
8 is set out in the DPA.

9 Q. And what is set out in the DPA is that
10 section regarding the solicitation of jobs,
11 contracts, and monetary payments is in a section
12 which is about vendor subcontractors who performed
13 little or no work for ComEd?

14 A. Yes. That is the title of the section
15 and the particular subcontractor is addressed in
16 this section up here, performed little or no work.

17 Q. And those individuals identified in the
18 section, at least some of them, their employment or
19 monetary payment or contract was sought by Mike
20 Madigan?

21 A. The -- the DPA speaks for itself on that
22 point, and I don't want to characterize the DPA
23 further.

24 Q. We also had a discussion at the beginning

1 of this hearing about direct involvement by Speaker
2 Madigan in this process, and we have had a few
3 examples of that that have come out through the
4 testimony you have given today.

5 First, that Mike Madigan sought to obtain
6 from ComEd jobs, vendor contracts, and monetary
7 payments.

8 Second, that ComEd sought the approval of
9 Mike Madigan when discontinuing a contract.

10 Third, that ComEd agreed that Mike
11 Madigan would be the individual who notified former
12 Alderman Zalewski that he was being hired to a
13 subcontract position.

14 And fourth, something not contained in
15 the DPA, but a statement that you made, that Speaker
16 Madigan instructed his office director to forward
17 the resume' of Mr. Ochoa for consideration on the
18 board.

19 Would all four of those --

20 A. So I don't believe that was my testimony.
21 My testimony was that the -- there was an email from
22 his office assistant to the fact.

23 Q. That said Speaker Madigan, something to
24 the effect, asked me to send this to you?

1 A. Yes. But I can't speak to anything
2 beyond the text of that statement.

3 **Q. Okay. Would one or all of those examples**
4 **show that there was direct knowledge of and**
5 **participation in these activities by Speaker**
6 **Madigan?**

7 A. So again, you're asking for a
8 characterization by me, and I'm really not prepared
9 to characterize the evidence beyond what is set out
10 in the DPA. I think the inferences to be drawn from
11 that are -- are for others.

12 **Q. But we have -- as we discussed, we have**
13 **specific references to not Mike Madigan through an**
14 **intermediary or via a third party, but Public**
15 **Official A, Mike Madigan, being directly involved in**
16 **that action?**

17 A. So what the DPA acknowledges is that, as
18 far as ComEd believed in the paragraph that you
19 pointed to on page A-4, that -- that ComEd was
20 attempting to influence Speaker Madigan and believed
21 that Speaker Madigan was -- was associated with
22 certainly these requests.

23 **Q. Let's look at page A-8, as well, to**
24 **ask -- in the final paragraph, that indicates that**

1 the indirect payments were made not only through
2 Company 1, Jay Doherty's company, but through other
3 additional third-party vendors. Can you identify
4 any additional third-party vendors?

5 A. So I want to try to get this right,
6 because this is a little complicated. There were --
7 Hang on one second.

8 So sorry. Just want to make sure that
9 I'm precise here. Could you repeat that question?

10 Q. Yes. So on page A-8, it is indicated
11 that indirect payments were made not only through
12 Company 1, but through other additional third-party
13 vendors. I would like to know who those other
14 additional third-party vendors are.

15 A. So there were four additional third-party
16 vendors that I'm aware of through whom certain
17 lobbyists/subcontractors were paid. What those
18 subcontractors did or what they may have done, I
19 can't speak to that without going into -- I can't
20 speak to that without going into areas that I can't
21 go. But the four other entities that employ
22 lobbyists as subcontractors were Averkamp and
23 McClain, A-w-e-r-k-a-m-p and McClain, the Roosevelt
24 Group, Shaw Decreamer Consulting, and the John

1 Bradley Law Firm.

2 Q. Thank you.

3 We had an earlier question about the plea
4 that has currently been entered by ComEd, plea of
5 not guilty. Could I clarify that, on page 2 of the
6 Deferred Prosecution Agreement, it says: Should the
7 government pursue the prosecution that is deferred
8 by this agreement, ComEd agrees that it will neither
9 contest the admissibility of nor contradict the
10 Statement of Facts in any such proceeding, including
11 any trial, guilty plea, or sentencing proceeding.

12 So if the -- if ComEd were to not comply
13 with its side of the Deferred Prosecution Agreement,
14 the government would be free to bring those charges,
15 and there's a potential that ComEd would enter a
16 guilty plea at that time; is that true? Not saying
17 that you would enter a guilty plea. However, the
18 possibility of a guilty plea for the charges
19 identified is not a foreclosed conclusion?

20 A. So I don't think that's really a question
21 that is appropriate for me to answer. So first, I
22 would say that we have every expectation of
23 complying with the terms of the DPA. That's
24 extraordinarily important to our board, to our

1 senior officers, and to me in my role. But what
2 the -- what the DPA makes clear is that, should
3 we -- should we violate the DPA, should we then be
4 prosecuted by the government, this particular
5 document could be offered into evidence against us,
6 essentially, in its entirety and treated as
7 admissions in sort of any form of proceeding that
8 would follow. And there are a variety of forms of
9 proceedings that could follow.

10 **Q. Now, would it be fair to say that the**
11 **penalty or the fine that was -- you agreed to pay**
12 **here of \$200 million is the largest fine that ComEd**
13 **has agreed to pay in its history?**

14 A. I -- although I don't have knowledge of
15 every fine the company has paid in its history, I am
16 quite confident that is far and away the largest.

17 **Q. And this is not a Deferred Prosecution**
18 **Agreement that -- because of the size of the fine**
19 **and the significant admissions contained within**
20 **this, this is not an agreement that ComEd has**
21 **entered into lightly or without great introspection**
22 **and thought?**

23 A. That -- that's correct. This has been
24 something that has been very carefully considered at

1 the highest levels of the company.

2 **Q. For how long did ComEd investigate the**
3 **facts that were set forth here prior to agreeing to**
4 **a Deferred Prosecution Agreement?**

5 A. So I don't think there is much I can say
6 about that without going into matters that are
7 attorney-client privilege, but I think ComEd has
8 publicly said that, shortly after the receipt of the
9 initial subpoena, that there's a special committee
10 the board created and ComEd began an internal
11 investigation.

12 **Q. Thank you.**

13 **Can you talk about some of the -- you**
14 **talked about some of the compliance steps you have**
15 **taken with regard to recommendations from**
16 **legislators and requests from legislators for**
17 **various things. Could you talk about any additional**
18 **compliance steps that have been imposed as it**
19 **relates to political consulting work or law firm**
20 **work?**

21 A. Sure. So we really treat lobbyists and
22 political consultants, essentially, as
23 interchangeable for purposes of our policies. We
24 have four policies that we put into effect in early

1 July. One of them is a high-level policy that --
2 that addresses, as a general matter, interactions
3 between public officials and employees and
4 representatives of all Exelon companies, including
5 ComEd. Other -- another policy relates specifically
6 to relationships between lobbyists and consultants
7 and ComEd and how we manage those relationships.
8 And we have a separate policy that relates to
9 requests, recommendations, and referrals from public
10 officials relating to employment. And another
11 policy relating to requests, recommendations, and
12 referrals from public officials relating to the
13 selection and use of vendors. So all of those are
14 kind of part of a series of things that we have done
15 to kind of strengthen the controls around
16 interactions with public officials to provide much
17 clearer guidance to our employees on these issues
18 and also to make sure that we have stronger
19 oversight of these activities so that -- that you
20 can't have a situation anymore where a relatively
21 small number of people could engage in activity like
22 this without the ability of the compliance team or
23 senior officials in separate parts of the
24 organization having given the ability to intervene

1 and provide a check.

2 Q. Thank you.

3 And just to wrap up, the -- your
4 disclosure of the existence of an email from an
5 office manager of Speaker Madigan related to the
6 appointment of Mr. Ochoa, I think, is of interest to
7 this Committee. Our charge is to better understand
8 the circumstances that are set forth in the Deferred
9 Prosecution Agreement.

10 So without making an overly broad request
11 that may interfere with the internal investigation
12 that you've done, the internal attorney privileged
13 communications that you have, are there other --
14 existence of other e-mails or messages or
15 communications of any form from Speaker Madigan or
16 someone who is identified with Speaker Madigan
17 related to the conduct set forth in the Deferred
18 Prosecution Agreement?

19 A. So I think the answer is that there
20 are -- there are certain communications that do fit
21 within that kind of broadly defined parameter. I
22 don't have them all with me today.

23 Q. Would you be willing to provide the
24 Committee with that information?

1 A. Yes. And I think we -- we would want to
2 have kind of a clear understanding of what the
3 specific request is so that we can make sure that
4 we're complying. But to the extent that the
5 Committee has requests of us for documents that are
6 not privileged and we can appropriately provide, we
7 will -- we will respond.

8 REPUBLICAN SPOKESPERSON DEMMER: Thank
9 you.

10 CHAIRMAN WELCH: Thank you, Leader
11 Demmer.

12 Mr. Glockner, Mr. Schar, on behalf of the
13 Special Investigating Committee II, I want to extend
14 my sincere thanks for you traveling here today, for
15 you being here and answering, to the best of your
16 ability, the questions before the Committee.

17 I don't see any other Members seeking
18 recognition in questioning, so you are free to go.

19 Mr. Glockner and Mr. Schar, thank you so
20 much.

21 MR. GLOCKNER: Thank you very much.

22 CHAIRMAN WELCH: I want to also note that
23 the Chair is in receipt of a note of apology from
24 Mr. Safer, and Mr. Safer is being recognized for the

1 limited purpose to address the note that was sent to
2 the Chair.

3 MR. SAFER: Thank you, Mr. Chairman.

4 I wanted to, while Mr. Schar is here, as
5 well, because I feel very badly that I told him that
6 he could communicate through us to the Chair about
7 his attendance. I feel that that was disrespectful
8 of the Chairman and the Committee, and I have great
9 respect for both, and I regret doing that and put
10 Mr. Schar in a bad position, as well. So I
11 apologize for doing that.

12 Thank you for recognizing me.

13 CHAIRMAN WELCH: Thank you, Mr. Safer,
14 and I do appreciate the note, and apology accepted.

15 We're going to take just another
16 five-minute recess and we will reconvene shortly.
17 Just another break, quick break.

18 (Recess at 6:29 p.m. until 6:40 p.m.)

19 CHAIRMAN WELCH: Okay. We're back.

20 Thank you all again for the second break.

21 I want to put something on the record
22 regarding what happened today in Chicago. We became
23 aware that today in Chicago that -- strike that.

24 Let me say this: On September 4, 2020,

1 Fidel Marquez was charged by Information for
2 violating 18 USC 371, conspiracy to commit the
3 offense or defraud the United States.

4 We learned that today, before this
5 Committee began its work at two o'clock, that he was
6 arraigned in Chicago and he entered a plea of guilty
7 just before our Committee began.

8 This Committee had reached out to
9 Mr. Marquez to see if he would be here today to
10 testify. And on Saturday, we did receive a
11 communication from his attorney requesting that we
12 delay our request for him to appear. And so we have
13 to reach out to Mr. Marquez's attorney now, based on
14 the information that came out today, to determine
15 what our next steps should be with regard to
16 Mr. Marquez.

17 I also want to mention that, at the end,
18 the very end, of this hearing, we learned that he
19 now is residing in Arizona. And so as a part of
20 determining what the next steps will be, we also
21 have to determine what the logistics will be. So I
22 think that is extremely important to put on the
23 record.

24 Now, earlier today, my colleague in the

1 front made a motion regarding subpoenas. I just
2 want to put some statements on the record and then
3 I'll open it up for discussion of the full
4 Committee.

5 Now, there is a question whether the
6 Committee should issue subpoenas. And I want to say
7 that a subpoena compelling testimony or documents
8 related to the DPA could put this Committee directly
9 in conflict with the expressed direction of the U.S.
10 Attorney's office. It could. Should the Committee
11 seek to compel testimony and documents beyond the
12 scope of the Petition and is later at a charge, such
13 subpoena would very likely be outside the authority
14 of our Committee to issue beyond the authority
15 delegated through us through the House Rules and
16 invoked by Leader Durkin's Petition.

17 Even if a subpoena has met every legal
18 requirement and there was no objection from the U.S.
19 Attorney's office, it is most likely that any
20 individual to whom a subpoena is issued will go to
21 court to quash it, leaving us in no better position
22 to assess the merits of Leader Durkin's charges than
23 we are now. Even if enforced, the subpoena would be
24 quite useless because, under state law,

1 attorney-client privileges are usually upheld under
2 subpoena; whereas, at the federal level, they are
3 not. The Committee would still not have access to
4 the -- to nearly the same material as the federal
5 government in its investigation.

6 We have to determine whether or not -- or
7 really, I have to determine, as the Chair of this
8 Committee, whether invoking the power of subpoena at
9 this time is premature or ripe.

10 There are many factors the Committee
11 should take into consideration as laid out by the
12 National Conference of State Legislators when it
13 comes to whether or not subpoenas should be issued.

14 Some of those factors include whether a
15 legislative purpose of pertinence exists, whether we
16 have followed procedural requirements for the
17 issuance, form, and service, and whether we have the
18 proper authority for it, whether all or part of the
19 subpoena is constitutionally prohibited, depending
20 upon who or what is being sought, whether the
21 subpoena is overbroad and vague or unreasonable, and
22 what is being sought or seeks information relevant
23 to the legislative purpose.

24 We have to also determine whether

1 testimonial or evidentiary privileges or other
2 confidentiality requirements are privileged,
3 prohibited or limit the testimony for materials
4 sought.

5 In response to these challenges, the
6 legislative entity can seek judicial enforcement of
7 our subpoenas and offer defenses pursuant to broad
8 investigative powers, including potential claims of
9 lack of judiciability by the judicial branch and
10 prematurity.

11 I think, in terms of timing, to avoid
12 potential claims of waiver or default, most
13 challenges to a subpoena will usually be made prior
14 to any testimony being given or due date for the
15 production of materials. However, issues or
16 challenges at the hearing may still arise.

17 I think when it comes to the issue of
18 subpoenas, prudence is required. Legislative staff
19 must exercise prudence and preventative maintenance.
20 Potential challenges and related concerns must be
21 considered in advance when deciding whether, who,
22 and what to subpoena, and also in preparing for a
23 specific hearing, including, if necessary, the
24 seeking of subpoena compliance or enforcement or the

1 seeking of contempt and penalties for noncompliance.

2 There has been guidance provided by the
3 National Conference of State Legislators.

4 So although my colleague withdrew her
5 motion earlier at my request, I do believe that any
6 motions to send subpoenas would be out of order,
7 especially right now when the entire Committee
8 hasn't seen any subpoenas. And under our rules,
9 subpoenas are at the discretion of the Chair. I
10 think any issue of subpoenas would have to be taken
11 into advisement and dealt with when we return, and
12 we know we're going to have to return at a minimum
13 to address Mr. Marquez.

14 So at this time, I'm willing to open up
15 for discussion regarding subpoenas and anyone
16 seeking recognition will be recognized.

17 Leader Demmer.

18 REPUBLICAN SPOKESPERSON DEMMER: Thank
19 you, Mr. Chairman.

20 I would like to make a couple of points
21 that I think are very relevant to this discussion.

22 The first is that the power of subpoena
23 is a power that any committee of the House can
24 technically exercise. However, this Committee of

1 the House is not a substantive committee where we
2 are seeking to get input on a legislative matter.
3 Instead, this is a special investigating committee.
4 By its nature, this Committee is established to
5 conduct an investigation. Investigations in a
6 legislative body or in any other setting are not
7 typically done simply with those who would like to
8 voluntarily participate. Investigations need to be
9 conducted in which -- in a setting which an
10 investigator asks what information do we need in
11 order to be able to make a qualified judgment about
12 the charge that is before us. Investigations are
13 not conducted by saying who is willing to share
14 information with us, and will we use only that
15 information to make a decision that we have.

16 You have also indicated that the issuance
17 of these subpoenas is likely to cause issues with
18 the United States Attorney's ongoing investigation.
19 I am surprised that we have to have this
20 conversation again. We had a phone call. We have
21 had multiple letters from the United States Attorney
22 in which they have specifically stated multiple
23 times, we do not object generally to the Special
24 Investigative Committee's pursuit of testimony or

1 the production of documents on those topics, even if
2 the party previously shared the same underlying
3 factual information with federal prosecutors or law
4 enforcement agents. And again, if a witness
5 explains certain facts to prosecutors or federal law
6 enforcement agents, we do not object generally to
7 the witness explaining those same facts to the
8 Special Investigative Committee.

9 In further correspondence, they indicated
10 that the Committee -- the office has not objected
11 generally to a witness providing nonpublic
12 information, and such an understanding of an
13 objection in our office's September 17 letter would
14 be incorrect. Additionally in that letter, from the
15 U.S. Attorney dated September 23, they specifically
16 said, we are not taking a position on how the
17 Special Investigative Committee may call witnesses.

18 I believe that those statements and the
19 conversation that we had with the U.S. Attorney and
20 today's example of the amount of valuable and
21 relevant information that individuals who are
22 identified in the Deferred Prosecution Agreement can
23 provide to this Committee are essential to this
24 Committee being able to have the information we need

1 to make a qualified judgment on the charge that has
2 been brought by the Petition.

3 Further, I would say -- and you've cited
4 that the National Conference of State Legislators
5 has guidance on the issuance of subpoenas, and I
6 would say that the majority of their guidance
7 evolves around the use of those subpoenas in typical
8 legislative settings. But they say specifically
9 that subpoenas are an essential tool for securing
10 information in the course of an investigation. They
11 say a legislative body cannot legislate wisely or
12 effectively in the absence of information,
13 respecting the conditions which the legislation is
14 intended to affect or change, or whether the
15 legislative body does not itself possess the
16 requisite information, which infrequently is true --
17 which not infrequently is true. Recourse must be
18 had to others who do possess it. Experience has
19 taught that mere requests for such information often
20 are unavailable. And also, that information which
21 is volunteered is not always accurate or complete.
22 So some means of compulsion are essential to obtain
23 what is needed.

24 I don't believe that this Committee could

1 hold ourselves out to our colleagues in the House of
2 Representatives or to the Illinoisans across the
3 state who are asking that we do our job and
4 investigate the very troubling facts that
5 Commonwealth Edison has admitted to in the federal
6 court filing if we only hear from Commonwealth
7 Edison, if we don't hear from the other witnesses,
8 the other individuals who are identified in that
9 document and surely possess information that would
10 be useful and relevant to this Committee's charge.

11 Further, I would say that the reading of
12 the rules, in House Rule 91E, first provides, before
13 giving the discretion to the chairperson, it first
14 provides that the Committee may, in the discretion
15 of the chairperson, administer oaths. The Committee
16 may first take action and then that action would be
17 to the discretion of the chairperson.

18 So I believe, because House Rules state
19 that the Committee may administer the oaths, compel
20 by subpoena any person to appear and give testimony,
21 that a motion by a Member of this Committee to issue
22 such subpoenas should first be acted upon with a
23 roll call vote prior to the Chair exercising any
24 sort of discretion that the Chair has.

1 I would further note that, in the reading
2 of House Rules and in Robert's Rules of Order and in
3 typical parliamentary exercises, discretion is read
4 in a very narrow way. That discretion gives the
5 Chair ability to control the specific timing of the
6 method in which the subpoenas are issued, the
7 individual who it's directed to, the convening of a
8 future Committee meeting where those individuals
9 would be directed to appear. But that -- that
10 issuance of discretion to a chairperson does not
11 negate the underlying rule that says the Committee
12 may administer those oaths and compel individuals by
13 subpoena. The only way to determine the will of the
14 Committee is to take a vote of the Committee. And I
15 believe that a motion to issue a subpoena is in
16 order because it is a power delegated to the
17 Committee.

18 CHAIRMAN WELCH: Any other Members
19 seeking recognition?

20 Representative Mazzochi.

21 REPRESENTATIVE MAZZOCHI: Thank you,
22 Mr. Chairman.

23 What I would say is, you know, I,
24 obviously, echo Representative Demmer's comments. I

1 would also state that, to the extent the Chairman is
2 reading and construing the House Rules as giving him
3 unilateral authority over whether a subpoena motion
4 can even be heard is, itself, an abuse of
5 discretion.

6 We are here. We are convened. The
7 goal -- if there is going to be any stonewalling of
8 the taking of relevant evidence, and our Rules are
9 very clear that the -- that the testimony we can
10 elicit with regard to a subpoena must be relevant to
11 the charge or charges, so these are not untethered.
12 This is not unlimited. This is not, you know, a
13 fishing expedition. That we can absolutely and
14 should proceed. If you don't, you will be
15 validating the accusations that have been made
16 against this Committee to date, that it is little
17 more than a kangaroo court and that it is there to
18 try to protect the Speaker.

19 Our charge is to investigate the Speaker.
20 To say we are going to not investigate anything
21 but -- unless you personally, Chairman, say so is to
22 completely undermine the work of this Committee.

23 And consequently, that is why I hereby
24 move that this Committee issue a subpoena to Michael

1 McClain for testimony to appear before this
2 Committee on or prior to October 15, 2020.

3 I likewise move that this Committee issue
4 a subpoena to Michael J. Madigan for testimony to
5 appear before this Committee on or prior to October
6 15, 2020.

7 I hereby move that this Committee issue a
8 subpoena to Jay Doherty for testimony to appear
9 before this Committee on or prior to October 15,
10 2020.

11 I hereby move that this Committee issue a
12 subpoena to John Hooker for testimony to appear
13 before this Committee on or prior to October 15,
14 2020.

15 I hereby move that this Committee issue a
16 subpoena to Anne Pramaggiore for testimony to appear
17 before this Committee on or prior to October 15,
18 2020.

19 And I hereby move that this Committee
20 issue a subpoena to Michael Zalewski, Senior for
21 testimony to appear before this Committee on or
22 prior to October 15, 2020.

23 REPRESENTATIVE WEHRLI: Second.
24 Wehrli.

1 CHAIRMAN WELCH: The motion and the
2 second are both out of order. The motion and second
3 are both out of order.

4 Anyone else seeking recognition on this
5 issue?

6 Representative Demmer.

7 Well, hold on a second. Representative
8 Wehrli is seeking recognition. He hasn't spoken on
9 the issue yet.

10 REPRESENTATIVE WEHRLI: Motion to appeal
11 the ruling of the Chair.

12 CHAIRMAN WELCH: This issue is not
13 appealable.

14 Anyone else seeking recognition?

15 Representative Demmer.

16 REPUBLICAN SPOKESPERSON DEMMER: Yes.
17 Mr. Chairman, I would like a ruling from the
18 Committee counsel or a parliamentarian, or who is
19 acting in the role of a parliamentarian, on what
20 basis are you ruling that a motion to issue a
21 subpoena is out of order?

22 CHAIRMAN WELCH: Under House Rule 92
23 Section -- I'm sorry. House Rule 91 Section E: The
24 Chairperson may establish procedural rules subject

1 to the approval of the Speaker. The Committee may,
2 in the discretion of the Chairperson, administer
3 oaths and compel by subpoena. Subject to Rule
4 4(c)(9), any person to appear and give testimony as
5 a witness or produce papers, documents, or other
6 materials relevant to the charge or charges.

7 The order -- the motion was ruled out of
8 order. It's not appealable. And let me also say --

9 REPUBLICAN SPOKESPERSON DEMMER: Why is
10 the motion not appealable? Why is that not
11 appealable? Why is the ruling of the Chair not
12 appealable? Have you established rules of procedure
13 for this Committee?

14 CHAIRMAN WELCH: The Rule clearly states
15 that it is within the discretion of the Chair.

16 REPUBLICAN SPOKESPERSON DEMMER: It's not
17 an appealable --

18 CHAIRMAN WELCH: This Committee is also
19 governed by House Rule 57.

20 REPUBLICAN SPOKESPERSON DEMMER: Yes.
21 House Rule 57 says that any appeal that is taken
22 from a ruling of the Committee Chairperson shall be
23 sustained on its 3/5 appointed vote to overrule the
24 Chairperson.

1 As Mr. Wehrli has done, we appeal the
2 ruling of the Chair that an Investigative Committee
3 issue no subpoenas.

4 CHAIRMAN WELCH: Let me say this: I'm
5 trying to be kind of a -- I think we're having a
6 genuine discussion and we have a genuine
7 disagreement and disagreements are going to happen,
8 as we know.

9 I also think the issuance of subpoenas is
10 premature. You're asking this Committee to vote to
11 approve subpoenas that we haven't even seen, we
12 haven't even discussed. No one has called me --

13 You want to give me subpoenas tonight?
14 That's not very professional. I am the Chair of the
15 Committee and no one is calling me in advance and
16 saying, hey, can you take a look at these subpoenas.
17 Can we agree on what is on them, what is not in
18 them. Can we get opinions from our counsels to
19 determine if it's appropriate, not appropriate.

20 REPUBLICAN SPOKESPERSON DEMMER: Can I
21 understand, following up on that, on that question?

22 Is it your interpretation of these Rules
23 that you, and you alone, control whether or not this
24 Committee issues subpoenas?

1 CHAIRMAN WELCH: That was not my
2 interpretation.

3 REPUBLICAN SPOKESPERSON DEMMER: What is
4 it?

5 CHAIRMAN WELCH: What I'm saying to you
6 is, it is in the discretion of the Chair to issue
7 them and I think it's premature to issue subpoenas
8 without even giving us the courtesy of having them
9 in advance and having our counsel to look at them to
10 make a determination of what should be in them, what
11 should not be in them. I think that would have been
12 the right, courteous, decent thing to do, instead of
13 springing that on us here today. I think it's
14 appropriate, especially knowing that we have to
15 return to deal with Mr. Marquez's testimony, that
16 this matter be taken under advisement and we, Tom,
17 actually do the work in a nonpartisan, bipartisan
18 way.

19 REPUBLICAN SPOKESPERSON DEMMER: Can we
20 have a clarification on the method by which a
21 decision will be made about the issuance of
22 subpoenas?

23 CHAIRMAN WELCH: Well, first of all, I
24 think our two counsels should get together and talk

1 about these issues, and that doesn't happen here in
2 Committee when it is being sprung on you.

3 We have done everything that you all have
4 asked us to do. We convened an organizational
5 meeting shortly after the holiday. We had the
6 conversation with Mr. Lausch. Reasonable minds
7 disagree. We issued letters to the witnesses the
8 day after Mr. Lausch's written opinion came. And
9 what I'm saying is, we -- these things you have to
10 deal with procedurally, pragmatically, not springing
11 things on folks. And in the past, that is how this
12 Committee has operated.

13 REPUBLICAN SPOKESPERSON DEMMER: To be
14 fair, this Committee has only operated one time in
15 the past.

16 And secondly, I would ask you, you have
17 indicated that you believe the Rules give the Chair
18 discretion about whether or not subpoenas will be
19 issued. So my question is, is there a procedure --

20 CHAIRMAN WELCH: And the Rule says
21 subject to the approval of the Speaker. And in this
22 case, Leader Harris. You can't pick and choose
23 which parts of the Rule you like.

24 REPUBLICAN SPOKESPERSON DEMMER: So we

1 would like to issue the subpoenas, because the
2 Committee is empowered to do so, and then allow the
3 discretion of the Chair, or the approval of the
4 Speaker's designee, to make a decision on whether
5 those subpoenas will be issued.

6 CHAIRMAN WELCH: I think that is a
7 premature decision. Let's take it under advisement.
8 Your counsel get with our counsel and we will deal
9 with it at the next meeting.

10 REPUBLICAN SPOKESPERSON DEMMER:
11 Representative -- Chairman, I don't disagree that
12 when we come to points like this, we may have
13 reasonable people disagreeing on the interpretation
14 of the Rules on whether it's the appropriate time
15 for the Committee to take an action or whether the
16 Committee should indeed undertake the action at all.
17 My response is the same response we had at the
18 beginning of this Committee and that is, when a
19 disagreement arises, we, as a legislative body, have
20 a procedure of voting to determine whether or not
21 the Committee should or should not take certain
22 actions. The motion that was made here was a motion
23 to extend those -- to send those subpoenas, for the
24 Committee to issue those subpoenas. You may

1 disagree with that. You may think that it's either
2 an inappropriate action to take or the timing is not
3 right. Either way, the method of resolving disputes
4 in a legislative body is to vote.

5 CHAIRMAN WELCH: Seeing no other Members
6 seeking recognition, the Special Investigative
7 Committee II will stand in recess.

8 REPUBLICAN SPOKESPERSON DEMMER:
9 Mr. Chairman, the Committee is recessed or
10 adjourned?

11 CHAIRMAN WELCH: We are recessed.
12 (Hearing recessed at 7:03 p.m.)

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