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

Hearing held, pursuant to Notice, on the 27th day of
June, 2012, between the hours of 10:03 a.m. and 10:39 a.m.,
in Room C 600, Michael A. Bilandic Building, Chicago,
Illinois.

TRANSCRIPT OF PROCEEDINGS

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I N D E X

WITNESSES:

PAGE

(No witnesses testified)

E X H I B I T S

EXHIBITS	DESCRIPTION	PAGE
Exhibit No. 1	Report of Special Investigating Committee	8
Exhibit No. 2	SIC Exhibit 6 and 7	13

1 COMMITTEE REPRESENTATIVES PRESENT:

2 Representative Barbara Flynn Currie, Chairperson

Representative Chapin Rose, REPRESENTATIVE

3 Representative Edward J. Acevedo

Representative Michael G. Connelly

4 Representative Kimberly du Buclet

Representative Greg Harris

5 Representative Renee' Kosel

Representative Camille Y. Lilly

6 Representative David Harris

7 Representative Chris Nybo

8 Representative Al Riley

9 Representative Joe Sosnowski

10

11 ALSO PRESENT:

12 Mr. David Ellis, Committee Counsel

13

14 Mr. Victor P. Henderson,

15 Counsel for Representative Derrick Smith

16

17 COURT REPORTER:

18 Ms. Joyce Lawrence, RPR, CSR-IL, CCR-MO

19 Illinois CSR No. 084-1716

20 Missouri CCR No. 1329

21 Midwest Litigation Services

22 101 N. Neil

23 Champaign, Illinois 61820

24

1 (Hearing commenced at 10:03 a.m.)

2 CHAIRPERSON CURRIE: The House Select Committee on
3 Discipline will come to order.

4 We have a replacement letter from Leader Cross.
5 Representative David Harris will be here today instead of
6 Sid Mathias.

7 Clerk, please call the roll.

8 CLERK: Currie.

9 CHAIRPERSON CURRIE: Here.

10 CLERK: Rose.

11 REPRESENTATIVE ROSE: Yes.

12 CLERK: Acevedo.

13 REPRESENTATIVE ACEVEDO: Yes.

14 CLERK: Connelly.

15 REPRESENTATIVE CONNELLY: Here.

16 CLERK: Du Buclet.

17 REPRESENTATIVE DU BUCLET: Present.

18 CLERK: Harris.

19 REPRESENTATIVE HARRIS: Here.

20 CLERK: Kosel.

21 REPRESENTATIVE KOSEL: Here.

22 CLERK: Lilly.

23 REPRESENTATIVE LILLY: Present.

24 CLERK: David Harris.

1 REPRESENTATIVE DAVID HARRIS: Here.

2 CLERK: Nybo.

3 REPRESENTATIVE NYBO: Here.

4 CLERK: Riley.

5 REPRESENTATIVE RILEY: Here.

6 CLERK: Sosnowski.

7 REPRESENTATIVE SOSNOWSKI: Here.

8 CHAIRPERSON CURRIE: We have not only a quorum, but a
9 full complement and the Chair would note that
10 Representative Derrick Smith is not here today but his
11 attorney, Mr. Henderson, is present.

12 Mr. Henderson, could you confirm for us that you will
13 serve as counsel for Representative Smith before this
14 Committee?

15 MR. HENDERSON: Yes, so confirmed.

16 CHAIRPERSON CURRIE: Thank you very much.

17 The Select Committee on Discipline is created
18 pursuant to House Rule 94 following report of the House
19 Special Investigating Committee that thought there were
20 reasonable grounds to bring a charge for formal
21 disciplinary action against Representative Derrick Smith.
22 That Committee appointed Representatives Lou Lang and Jim
23 Durkin to present the case for disciplinary action before
24 the Select Committee.

1 I acknowledge the presence of the two House Managers
2 and I would ask at this time that you would formally
3 present the Charge and the Specifications against
4 Representative Smith.

5 HOUSE MANAGER DURKIN: Thank you, Madam Chair.

6 Representative Jim Durkin, Minority Caucus.

7 On June 5, 2012, the Special Investigative Committee
8 of the Illinois House found reasonable grounds exist to
9 bring a charge with specifications for formal disciplinary
10 action against State Representative Derrick Smith of the
11 10th District.

12 The Charge and Specifications reads as follows:

13 Charge: Representative Derrick Smith abused the
14 power of his office by participating in a scheme to obtain
15 a personal benefit in exchange for his official acts.

16 The Specifications are as follows:

17 Representative Smith, in his official capacity as a
18 State Representative, has an obligation to faithfully
19 discharge his duties in the best interests of the people of
20 the State of Illinois and not for his own benefit.

21 During the time period beginning on or about
22 December, 2011 through March, 2012, Representative Smith
23 agreed that, in exchange for a cash bribe, he would provide
24 an official letter of support of a daycare's Early

1 Childhood Construction Grant to the Illinois Capital
2 Development Board.

3 On or about March 1, 2012, Representative Smith did,
4 in fact, sign this official letter of support in his
5 official capacity as a State Representative and planned or
6 intended for that letter to be submitted to the Illinois
7 Capital Development Board.

8 On or about March 10, 2012, Representative Smith did,
9 in fact, receive a cash bribe in exchange for providing
10 this official letter of support.

11 Accepting a cash bribe in exchange for an official
12 act, or even plotting or attempting to do so, constitutes a
13 breach of Representative Smith's obligation as a public
14 official to faithfully discharge his duties in the best
15 interests of the people of the State of Illinois and
16 warrants disciplinary action by the House of
17 Representatives.

18 It is our intention, myself and Representative Lang's
19 intention, to work cooperatively with counsel for
20 Representative Smith, Counsel Victor Henderson, on matters
21 of evidence and procedure and we ask the same of him.

22 Representative Lang and I will stand ready to answer
23 any questions at the appropriate time.

24 Thank you.

1 CHAIRMAN CURRIE: Thank you very much.

2 Mr. Henderson, do you plan for your client to contest
3 the charges or to admit to them?

4 MR. HENDERSON: The charges are contested.

5 CHAIRPERSON CURRIE: Thank you very much.

6 All right. Unless there is objection, I will enter
7 into the record the Report of the Special Investigating
8 Committee as Select Committee on Discipline Exhibit 1. Any
9 objection?

10 Thank you. It will then be part of the record.

11 So with the formalities aside, I would like to make a
12 few opening remarks.

13 This is not a happy day for anyone. We are brought
14 together because one of our members has been accused by
15 federal prosecutors of a crime that, if true, is a breach
16 of the public trust, a trust members of the Illinois House
17 of Representatives have sworn to uphold.

18 We are brought together because the Special
19 Investigating Committee, after gathering whatever evidence
20 it could, concluded there was a reasonable basis for
21 bringing a disciplinary charge against Representative
22 Smith.

23 It is our job to listen carefully to the evidence, to
24 remain open-minded as we do so, and we must work hard to

1 reach a conclusion that is correct and is also just.

2 It is important to understand that we are not an
3 investigative body. The primary investigation and
4 fact-gathering function was undertaken by the Special
5 Investigating Committee. And while this Select Committee
6 is able to consider any additional information that comes
7 forward, our primary responsibility is to sit as an
8 impartial jury and judge the evidence and the arguments put
9 forth by each party.

10 I would also remind everyone that this Select
11 Committee is not the final word on this issue. The role of
12 the Select Committee on Discipline is to make a
13 recommendation to the full House, either to exonerate
14 Representative Smith, or find him at fault and then
15 recommend a specific penalty. The final decision lies with
16 the full House of Representatives.

17 The process needs to be fair to both parties and it
18 needs to be orderly. I will exercise my authority under
19 the House rules to establish procedural rules for this
20 Committee. I expect to have those rules filed with the
21 Clerk in very short order and all parties will be provided
22 a copy.

23 Finally, I want to emphasize to both the House
24 Managers and Mr. Henderson that stipulations of fact or

1 evidence is strongly encouraged both by the House rules and
2 by me. We hope that, in lieu of a protracted battle over
3 documents or other evidence, the parties could reach
4 agreement and so stipulate.

5 Representative Rose, I would be happy to turn the
6 chair over to you for further comments.

7 REPRESENTATIVE ROSE: Thank you, Madam Majority
8 Leader.

9 This Select Committee on Discipline has a weighty
10 responsibility to fairly, deliberately, and impartially
11 conduct proceedings related to the Charge and
12 Specifications brought forth by our colleagues on this
13 Special Investigative Committee against Representative
14 Derrick Smith.

15 I believe it is fair to say that we will commit to
16 being very deliberate in our consideration of the Charge
17 and Specifications and in our evaluation of the information
18 presented by the Managers.

19 The role of this Committee is directly linked to the
20 Illinois Constitution. Article IV, Section 6 grants the
21 Illinois House the authority to determine the
22 qualifications of its members. After the Special
23 Investigatory Committee found a reasonable basis for
24 bringing these disciplinary charges, our Committee was

1 formed pursuant to House rule.

2 As the Majority Leader noted, we are not an
3 investigatory body nor are we a court of law. We are an
4 internal body of the House that is here to review the
5 charge and information presented by the House Managers and
6 by Representative Smith or his attorney.

7 To restate and conclude, we will strive to conduct
8 ourselves in this proceeding in a manner befitting the
9 seriousness of the charge pursuant to the rules that I
10 believe, as the Majority Leader just indicated, will be
11 established shortly and conclude as expeditiously as
12 possible.

13 Thank you.

14 CHAIRPERSON CURRIE: Thank you, Representative Rose.

15 Anybody else like to add any comments at this point?

16 If not, then the next order of business is our role
17 in relation to the role of the United States Attorney for
18 the Northern District of Illinois and his ongoing federal
19 investigation about Representative Smith and any related
20 areas.

21 This is a road down which some of us have traveled
22 before. During the House Impeachment Investigation of
23 former Governor Blagojevich, that committee decided as a
24 body that it would respect the directives of the United

1 States Attorney with respect to any information he was
2 willing to turn over to the committee and any independent
3 investigation that the committee undertook to gather
4 information.

5 Simply put, that impeachment committee agreed not to
6 look for additional information or consider any evidence
7 that the United States Attorney thought would jeopardize
8 his ongoing federal investigation into Governor Blagojevich
9 and related matters.

10 At the impeachment trial of former Governor
11 Blagojevich before the Illinois Senate, the Illinois Senate
12 adopted the same rule as part of its procedural rules. The
13 Senate ruled out of order any evidence or testimony of any
14 kind if the United States Attorney deemed it to be an
15 interference with his ongoing federal investigation.

16 Our Special Investigating Committee impaneled this
17 year to consider the evidence against Representative Smith
18 adopted the same rule. Written documentation of the U. S.
19 Attorney's position was entered into the Special
20 Investigating Committee record as Exhibit 6 and 7 taken
21 together.

22 Finally, I would note that the court overseeing the
23 federal prosecution of Representative Smith has entered a
24 protective order that, essentially, seals from public view

1 the evidence provided by the U. S. Attorney to
2 Representative Smith. Unless there is any objection, I
3 would plan to enter into the record a copy of that
4 protective order as Select Committee Exhibit 2.

5 Any objection?

6 Hearing none, we will do exactly that.

7 Given this long line of precedent and, in fact, it is
8 a precedent with which I agree, I would suggest that this
9 Committee follow this lead and adhere to the directives of
10 the United States Attorney. Stated simply, the Committee
11 will refrain from pursuing or hearing any evidence that, in
12 the opinion of the U. S. Attorney, would interfere with
13 this pending case or his ongoing investigation of
14 Representative Smith.

15 Representative Rose, do you so move?

16 REPRESENTATIVE ROSE: I do.

17 CHAIRPERSON CURRIE: So, Representative Rose so
18 moves. Is there any discussion?

19 Hearing none, Clerk, please take the roll.

20 CLERK: Currie.

21 CHAIRPERSON CURRIE: Aye.

22 CLERK: Rose.

23 REPRESENTATIVE ROSE: Yes.

24 CLERK: Acevedo.

1 REPRESENTATIVE ACEVEDO: Aye.
2 CLERK: Connelly.
3 REPRESENTATIVE CONNELLY: Aye.
4 CLERK: du Buclet.
5 REPRESENTATIVE DU BUCLET: Aye.
6 CLERK: Greg Harris.
7 REPRESENTATIVE GREG HARRIS: Yes.
8 CLERK: Kosel.
9 REPRESENTATIVE KOSEL: Aye.
10 CLERK: Lilly.
11 REPRESENTATIVE LILLY: Aye.
12 CLERK: Davis Harris.
13 REPRESENTATIVE DAVID HARRIS: Yes.
14 CLERK: Nybo.
15 REPRESENTATIVE NYBO: Aye.
16 CLERK: Riley.
17 REPRESENTATIVE RILEY: Aye.
18 CLERK: Sosnowski.
19 REPRESENTATIVE SOSNOWSKI: Aye.
20 CHAIRPERSON CURRIE: On a vote of 12 yes, unanimous
21 vote, the motion is adopted.
22 For our final issue today is scheduling, the
23 scheduling of the final hearing and any interim dates. I
24 would like each side, the House Managers and Mr. Robinson,

1 to provide the Committee with some idea as to how much time
2 they believe they will need before the final hearing. And
3 I would ask the parties to keep in mind that the principle
4 investigative work has already taken place under the
5 Special Investigating Committee.

6 So first, may we hear from the House Managers on the
7 scheduling issue.

8 HOUSE MANAGER LANG: Madam Chairman, ladies and
9 gentlemen of the Committee, the House Managers believe we
10 can put into the Chairman's hands, or Mr. Ellis' hands as
11 the attorney for the Committee, all of the information the
12 Committee would want from us by the end of business this
13 Friday.

14 CHAIRPERSON CURRIE: And I am sorry. I apologize,
15 Mr. Henderson. I called you Mr. Robinson, but I will call
16 you Mr. Henderson now and ask you, please, to give us your
17 sense of the timetable.

18 MR. HENDERSON: Well, if the Chairwoman would indulge
19 me for a more extensive response.

20 CHAIRPERSON CURRIE: The Chair will, but not very
21 extensive because you will have every opportunity to deal
22 with the substantive issues when we come to that point in
23 our proceedings. So really, scheduling is the issue.

24 MR. HENDERSON: Well, in response there, and I am

1 going to echo some of the words that were used by both the
2 Chairwoman and some of the other members in terms of fair,
3 which is in the record, evidence, and being deliberate.

4 And it is painful sometimes to be honest, but it is
5 also important to be honest because that is why we are here
6 from a democratic standpoint. It is impossible to be fair
7 and to be deliberate and to hear evidence and to do these
8 things by Friday.

9 As you know, the Representative has been vigorous in
10 asking the judge in this matter to release all information.
11 The U.S. Attorney has vigorously fought releasing
12 information. And from the Representative's perspective,
13 you cannot have a fair and deliberate process that will
14 result in the right outcome any time soon.

15 I don't want to put a date on it. I certainly would
16 think that -- and, clearly, and again, I also have to, you
17 know, make this clear for the record, that if there is an
18 attempt to expedite the process prior to the time of the
19 November elections, then that undermines any attempt to
20 present the proceeding as being one that is being fair or
21 deliberate.

22 So with that statement, again, I don't perceive that
23 the information can move or that this process can move that
24 quickly, even with the submission of evidence, as the House

1 Manager suggests, by Friday.

2 HOUSE MANAGER LANG: Madam Chairman.

3 CHAIRPERSON CURRIE: Representative Lang.

4 HOUSE MANAGER LANG: I would respond to Mr. Henderson
5 by saying that there were emotions in federal district
6 court relative to the protective order. The judge has
7 ruled on that protective order.

8 The people of the State of Illinois and the integrity
9 of the House of Representatives demands that we move on
10 this fairly but expeditiously. The election should not
11 have anything whatsoever to do with the final decision of
12 this Committee, nor with our schedule, because we are here
13 to seek a just result, but we are here to seek it on behalf
14 of the taxpayers and the citizens of our state who demand
15 and expect that the members of the House of Representatives
16 act every day for the people of the State of Illinois with
17 integrity. And one of the things this Committee will
18 determine is to whether Mr. Smith has conducted himself
19 that way.

20 And so, we can be ready -- we will be ready by Friday
21 to provide to the Committee all of the information the
22 Committee seeks as to where we are going in this matter,
23 what witnesses we will call, if any, what documents we will
24 provide, if any. We are prepared.

1 This matter has been before this Committee -- while
2 the Committee has not convened, it is almost 30 days since
3 the Committee was formed. There was a former committee,
4 the one chaired by Representative Nekritz, that provided
5 the impetus for this Committee.

6 So I think, Mr. Henderson and Representative Smith
7 are both well apprised of the charges, well apprised of the
8 case, and it seems to me that they should be ready to
9 proceed.

10 CHAIRPERSON CURRIE: Thank you very much.

11 Do members of the Committee have questions?

12 Oh, I'm sorry, Mr. Henderson.

13 MR. HENDERSON: Yes. I would like to correct the
14 record, so all of the members understand what the judge's
15 protective order means.

16 In effect, there is evidence that Representative
17 Smith does not yet have access to. The government provided
18 quite a bit of information to Representative Smith just a
19 day or two ago, within the past 24 to 48 hours that is A.

20 B. What the protective order requires is that each
21 and every time the Representative would like to get
22 information to make available to you, that the
23 Representative is required to go and ask the judge for
24 permission.

1 So it is not the prosecutor's office that determines
2 whether or not Representative Smith gets to take
3 information that would exonerate him and present it to you.
4 Rather, it is the judge that makes that determination. And
5 so, that process is one that is ongoing. And so, each and
6 every time there is information that we want of the
7 thousands, if not tens of thousands, if not hundreds of
8 thousands of pages of information, as well as other
9 evidence that is there, there is a process by which we have
10 to go in front of a judge to ask her permission in order to
11 present it to you. So that is not something that can
12 happen by Friday. So by definition, the Representative is
13 not in the position to present to you the information that
14 will exonerate him because there just isn't time.

15 So again, to the extent that the process is supposed
16 to be fair and deliberate, that fairness and deliberateness
17 cannot take place by Friday. Among other reasons, because
18 the judge does not entertain such motions every day. Among
19 other reasons, because, based on the amount of information
20 that has been provided, including information many of you
21 have heard on the con man, who is at the center of this
22 investigation, that has not all been provided. So there is
23 a lot of information that, just by definition, again, if
24 the process is going to be fair and deliberate, cannot be

1 done by Friday.

2 CHAIRPERSON CURRIE: Is there a response from the
3 House Managers?

4 HOUSE MANAGER LANG: My response, Madam Chairman,
5 would be the same.

6 Whatever is going on in the federal district court is
7 of interest to the taxpayers, is of interest to the federal
8 prosecutor. But the House must maintain the House's
9 integrity and this matter has been underway for some time,
10 since the time Representative Smith was arrested. And I
11 believe that Mr. Henderson and Representative Smith have
12 had ample time to request specific items of the federal
13 government.

14 Now, it may be that they just received some
15 information. But, neither the election nor the federal
16 prosecution should hold up the proceeding of the House of
17 Representatives to determine whether there is a member
18 among us who has, A, either violated the law or, B,
19 violated his public trust.

20 CHAIRPERSON CURRIE: Questions of the Committee.

21 Representative Riley.

22 REPRESENTATIVE RILEY: Thank you, Madam Chair.

23 And this question, well, goes to all of you,
24 essentially, the House Managers and Mr. Henderson.

1 We are sort of having a little bone of contention
2 here with regard to scheduling and it has to do with the
3 information under the protective order and some other kinds
4 of considerations.

5 I would like a little clarification. Maybe this is
6 sort of a rhetorical question. These issues and this
7 information was not part of what the Special Investigative
8 Committee was privy to, is that correct?

9 MR. HENDERSON: I would like to respond to that.

10 The Special Investigating Committee has seen nothing
11 other than the allegations that were advanced by the
12 prosecutor. So other than, again, the allegations or the
13 complaint, there has been no evidence bearing on this
14 matter that anyone has seen. The government just turned it
15 over to us, meaning the lawyers for Mr. Smith, within the
16 past 24 to 48 hours.

17 REPRESENTATIVE RILEY: Well, this is true and this is
18 my point. And a lot of what we are dealing with are the
19 information that the Special Investigative Committee had
20 and the decisions that they made. So isn't it that some of
21 these kinds of issues, like the protective order, isn't
22 that something that really is more important to the
23 impending federal trial and not necessarily what we are
24 here to do?

1 MR. HENDERSON: Again, I would like to respond.

2 I think the answer to that is no. I think there is a
3 procedural aspect of this proceeding and then there is a
4 substantive aspect, you know.

5 And I think the analogy is, would any of us want to
6 have a school teacher give us our grade before they even
7 look at the test. Or would any of us want to lose our jobs
8 because we are accused of wrongdoing without having our
9 employer do an investigation.

10 As of this point in time, the body doesn't have any
11 information. All you have is an allegation and a charge.
12 And so when you talk about protecting the integrity of the
13 House, I would like to make a side comment. I had the
14 privilege of serving as staff counsel for the United States
15 House of Representatives Ethics Committee in Washington
16 D.C. So it is not just about the outcome. It is about the
17 process. And so if all of us had been to school, if you
18 are comfortable with your teacher giving you a grade
19 without looking at the test, people are not going to be
20 comfortable with the grade. All of us could relate to
21 that. Or even in a very clear terms, if any of us were
22 charged with wrongdoing at our jobs and our employer just
23 said, well, you are out, without hearing what you have to
24 say, without looking at the evidence, we would all be

1 concerned about -- we wouldn't mind the outcome because the
2 process is flawed. And what I am representing to you as of
3 this point in time, you have no information.

4 REPRESENTATIVE RILEY: Well, that is a nice analogy,
5 but this is a special body, we here in the House, and so I
6 am not so sure that, you know, that really rises to what
7 our responsibilities are. I mean, I suppose we could say
8 we had enough because we have the information that came
9 from the Special Investigative Committee, and that is all
10 that we had at the time.

11 I would like -- is there an opinion from the House
12 Managers on my point?

13 HOUSE MANAGER LANG: I think --

14 CHAIRPERSON CURRIE: Representative Lang.

15 HOUSE MANAGER LANG: Thank you.

16 I think your point, Mr. Riley, is well taken. The
17 fact is that, because the House rules require that actual
18 evidence in this matter be presented under the rules of
19 criminal evidence, much of what Mr. Henderson may have
20 received, and I don't know what it is, may not be
21 admissible here at all. The -- for instance, the federal
22 agent who signed the affidavit that was attached to the
23 federal complaint is not going to be made available to this
24 Committee by the U.S. Attorney. And therefore, he can't be

1 cross-examined. The confidential informant is not going to
2 be made available to this Committee. So that person cannot
3 be cross-examined. Many of the documents cannot be
4 properly -- foundation cannot be properly laid under the
5 rules of criminal procedure. So those documents will not
6 be admissible into evidence. And so my guess is that much
7 of what Mr. Henderson is referring to may be helpful to him
8 in the criminal case, but under our rules and under the
9 rules we are using, but most likely, not be entered into
10 evidence in this proceeding.

11 REPRESENTATIVE RILEY: Thank you.

12 CHAIRPERSON CURRIE: Thank you.

13 I guess I have a real quick question for Mr.
14 Henderson. One way in which we might be able to hear the
15 other side of the story would be that if your client would
16 be prepared to testify before this Committee. Do you have
17 any plan to bring him before us?

18 MR. HENDERSON: There is a plan to bring him before
19 the body. However, we would not make that final
20 determination until we have had an opportunity to review
21 all of the information.

22 You know, for example, and again, I don't need to
23 remind all of you about some things you know, but this
24 government, for example, brought charges against Roger

1 Clemens. Just a week or two ago and he was exonerated.

2 This same government brought charges against former
3 presidential candidate John Edwards. He was exonerated.

4 What I am encouraging you to do is to allow the
5 process to play itself out and to get the information and
6 then make a decision as opposed to make a decision and then
7 get the evidence. And that is the sum and substance. So,
8 getting the evidence is a process that has just started and
9 you can go on record and see that Representative Smith
10 asked for all of the information to be released to this
11 body. The judge denied that request. The government,
12 conversely, not only did it deny this body's request or the
13 request from the Special Investigating Committee to get all
14 the information so you all asked for the information as
15 well, your request was denied.

16 So, it would be different, I think, that the body
17 should look at this proceeding differently if
18 Representative Smith was the one who was trying to hide the
19 information or to try to keep the information secret or to
20 try to keep the information from you. No, conversely,
21 Representative Smith is the one who has asked for all of
22 the information to come out so the body can have access to
23 it. You have asked for it. You have been denied it.

24 CHAIRPERSON CURRIE: We appreciate that. But let me

1 just point out, we have adopted a motion that says that we
2 are not prepared to use this Committee to interfere with
3 the ongoing criminal investigation before the United States
4 Attorney. And I appreciate your point that it was
5 Representative Smith that wanted all of this information to
6 be available. I would just reiterate the point that, if
7 Mr. Smith wants to come before this Committee, he had every
8 opportunity to appear today and tell his side of the story.

9 Representative Greg Harris.

10 REPRESENTATIVE GREG HARRIS: Thank you, Madam
11 Chairman.

12 And this is a question of Mr. Henderson, here.

13 I am not an attorney, so if I ask, sir, silly legal
14 questions, please, bear with me and you will have to help
15 enlighten me on this.

16 So I am looking at the -- Judge Coleman's protective
17 order regarding discovery here that we have been provided.
18 And I assume this is the order that you are referring to
19 that allowed you to have access to certain documents that
20 you say you got within the last couple of days.

21 MR. HENDERSON: Yes.

22 REPRESENTATIVE GREG HARRIS: So, that order was
23 entered two weeks ago?

24 MR. HENDERSON: I don't know that it was two weeks

1 ago, but relatively recently.

2 REPRESENTATIVE GREG HARRIS: The 14th of June is what
3 the order says. So you got some documents. We don't know
4 whether it is 100 pages or 500 pages or a thousand pages.
5 Obviously, if you read the order, that information is made
6 available to you and only to you.

7 In using your analogy about, you know, well, you have
8 to take a test and you have to study before you take the
9 test. At some point, you do have to take the test. So how
10 long would you need to study, I mean, given the volume of
11 documents that you have. You have used the election, which
12 I don't think is relevant to our particular inquiry, as an
13 end point. But in your -- from your point of view, just
14 looking at the actual number of documents, how long will it
15 take you to read through those, study them, and formulate a
16 response?

17 MR. HENDERSON: I don't know the full universe of
18 documents as of this point in time. Again, we just got
19 them 12 to 24 hours ago. We sent them to a IT company to
20 help us access them. So, we are in the process now of
21 trying to access the information to find out how much there
22 is. So I don't know right now how much there is. So
23 therefore, I can't tell you how long it will take us. I
24 should be able to give you an answer to that in a week or

1 two, as soon as the IT people get back to us. But I can't
2 give you that information right now.

3 REPRESENTATIVE GREG HARRIS: So, you don't even know
4 how many documents you have?

5 MR. HENDERSON: We have disks and the disks we have
6 are computer disks and the disks contain documents. We
7 have IT people who will take, you know, 20 or 30 or 40
8 disks and let us know how much evidence or how much
9 information is stored on those disks.

10 REPRESENTATIVE GREG HARRIS: Okay.

11 MR. HENDERSON: I would also like to refute an
12 earlier point or, at least, clarify an earlier point.

13 The statement has been made on more than one occasion
14 that Representative Smith has had an opportunity to come
15 and tell his side of the story. I don't think that is
16 quite accurate.

17 In this preamble and in the document, you indicate
18 that the Representative has a constitutional right and you
19 acknowledge that he has a constitutional right to remain
20 silent. And so to suggest or imply that by exercising his
21 constitutional rights that are guaranteed to all of us and
22 that his failure to discuss with this body thus far means
23 that he has not taken advantage of an opportunity to speak,
24 I think, is not completely accurate. Because if that is

1 the case, then, the right that the constitution guarantees
2 all of us becomes meaningless. And what we have indicated
3 is that the Representative would like an opportunity to
4 review all of the information and then be able to present
5 facts and evidence to you in a process that you earlier
6 said was going to be fair and deliberate. So he would like
7 that opportunity.

8 CHAIRPERSON CURRIE: Since I was the one who
9 mentioned that, I was in no way suggesting that he could
10 not, should not, exercise his right, as you point out, that
11 he has under the constitution to remain silent. I was only
12 trying in the shorthand kind of way to say if you and he
13 want the other side of the story to be available to this
14 Committee, that would have been one avenue.

15 Mr. Durkin.

16 HOUSE MANAGER DURKIN: Thank you, Madam Chair.

17 I think we are getting a little bit off of track.
18 Let's be very clear about this. This Committee is not here
19 to determine whether or not Representative Derrick Smith is
20 guilty of a federal crime. You are here as an internal
21 function of the House of Representatives to determine
22 whether or not he has impugned the integrity of the House.

23 So I think that Representative Lang and I will, in
24 short order, have our case and our documents prepared

1 within the next two days. There will be no secrets. We
2 are not going to try this hearing or trial by ambush. And
3 most of the information which we will proceed with is
4 already in the public domain. I would suggest if there is
5 a defense, it can only come from the mouth of one person.
6 And I would ask that he present his case. We can go
7 through months of document review by the U. S. Attorney's
8 office. It really does have no relevance to what we are
9 here to determine today and also sometime down the road.

10 I also will just make this comment, that if Counsel
11 is dissatisfied with Judge Coleman's protective order, I
12 would like to know whether or not he intends to file a
13 notice of appeal and take that up to the Appellate Court.

14 Secondly, I just want to add, even though this
15 government was responsible for trying Roger Clemens and
16 also John Edwards, this government was also responsible
17 with trying Rob Blagojevich about a year ago.

18 CHAIRPERSON CURRIE: Thank you, Mr. Durkin.

19 Are there further questions, comments from members of
20 the Committee?

21 HOUSE MANAGER LANG: I have one additional.

22 CHAIRPERSON CURRIE: Representative Lang.

23 HOUSE MANAGER LANG: Madam Chairman.

24 You've eluded to this in your comments, but I want to

1 make sure this is a part of the record. That I would make
2 a formal request of Mr. Henderson to present his client
3 before this Committee and before the House Managers for our
4 questioning.

5 CHAIRPERSON CURRIE: Thank you.

6 Further comments or questions?

7 Representative Rose.

8 REPRESENTATIVE ROSE: Mr. Henderson, do you have a
9 response to Representative Durkin's question about the
10 attending of -- whether you intend to file an appeal of the
11 protective order or not?

12 MR. HENDERSON: As -- we are still looking at the
13 protective order. However, as a general rule, the
14 protective order deals with issues of discovery. It would
15 be highly unlikely that an Appellate Court would reverse a
16 decision of a district court judge in the context of
17 discovery. And that is even before we make a determination
18 that we are dissatisfied with the protective order, which
19 we have not done. I mean, some of this delves into legal
20 strategy of the Representative, which I don't want to
21 disclose. But I am fairly comfortable that we will be able
22 to get access to the information that we want to get access
23 to to present before this body. The only issue is timing.
24 So I am not -- my issue is not with the protective order.

1 Rather, the issue, again, is with the speed within which
2 these proceedings appear to be going, which undermines, at
3 least from the Representative's standpoint, again, I have
4 to speak on his behalf, the representation that proceeding
5 was going to be fair and that the proceeding was also going
6 to take into account evidence.

7 I would also like to make one response to what
8 Mr. Durkin said. I think, from our perspective, I think --
9 and again, as it relates to the reputation of the House,
10 because I recognize that this proceeding does not take
11 place in the context of a federal criminal trial. Rather,
12 it is about protecting the reputation and institution of
13 this House as a body. And so I don't think it is just
14 about Representative Smith. I think it is also about the
15 process on whether people will perceive that it was fair.
16 Because I think that is -- the much greater issue is
17 Representative Smith is the person that brings us here
18 today. However, the process and democracy is much bigger
19 than Representative Smith. So all eyes will be watching as
20 to whether or not people perceive that the process has been
21 fair and whether or not the body has reviewed evidence.
22 Because I think the reputation of the House will linger far
23 longer than this issue with Representative Smith. He just
24 happens to be the one who is here today.

1 CHAIRPERSON CURRIE: Any further questions or
2 comments from the Managers or from members of the
3 Committee?

4 If not, a reminder that the issue before us is the
5 issue of a schedule. And I will take the matter of
6 scheduling under advisement. And I plan to release a
7 schedule soon, possibly as soon as the end of this week,
8 possibly even earlier.

9 And if there is nothing further to come before the
10 Committee -- and I remind Mr. Henderson and the House
11 Managers, that if you have any questions or need any
12 additional information, please, feel free to talk to our
13 counsel, David Ellis.

14 And I want to remind all of you that you are not
15 allowed to talk to us, members of the Committee.

16 And Representative Rose.

17 REPRESENTATIVE ROSE: I do have one last thing and it
18 is really just to thank Mr. Ellis and Mr. Freiheit, our
19 staff attorneys on both sides, as well as all of the staff
20 that have put in countless hours. I know I was reading
21 e-mails sent at 3:43 a.m. the other morning. So while we
22 are all here, we want to say a very appreciative thanks to
23 the staff, as well.

24 CHAIRPERSON CURRIE: And I will second that motion.

1 So, with no further business to come before the
2 Committee, the Select Committee on Discipline will recess
3 to the call of the Chair.

4 Thank you all very much.

5 (Hearing concluded at 10:39 a.m.)

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