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THE STATE EDUCATION DEPARTMENT  
THE UNIVERSITY OF THE STATE OF NEW YORK



In the Matter of

THE NEW YORK CITY DEPARTMENT OF EDUCATION

v

THEODORE SMITH

Section 3020-a Education Law Proceeding (File )

DATE: March 20, 2007

TIME: 10:45 a.m. to 11:32 a.m.

LOCATION: New York City Department of Education  
Office of Legal Services  
49-51 Chambers Street, 6th Floor  
New York, New York

BEFORE: JACK TILLEM, ESQ.  
Hearing Officer  
20 West Marie Street  
Hicksville, New York 11801

1 Theodore Smith - 3-20-2007  
 2 FOR THE DEPARTMENT:  
 3 SUSAN JALOWSKI, ESQ., Of counsel  
 4 MICHAEL BEST, ESQ., General Counsel  
 5 New York City Department of Education  
 6 Office of Legal Services  
 7 49-51 Chambers Street, 6th Floor  
 8 New York, New York  
 9 FOR THE RESPONDENT:  
 10 DAVID KEARNEY, ESQ.  
 11 317 Madison Avenue, 21st Floor  
 12 New York, New York 10017  
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1 Theodore Smith - 3-20-2007  
 2 INDEX OF PROCEEDINGS  
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1 Theodore Smith - 3-20-2007  
 2 EXHIBIT INDEX  
 3 Marked as Description  
 4 Respondent  
 5 Twenty-nine 627 - 09  
 6 Letter from the Respondent's personnel  
 7 file  
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1 Theodore Smith - 3-20-2007  
 2 THE HEARING OFFICER: Okay.  
 3 On the record. We'll note our appearances.  
 4 Jack Tillem is the Hearing Officer.  
 5 For the Complainant, the  
 6 Department?  
 7 MS. JALOWSKI: Susan  
 8 Jalowski, J-A-L-O-W-S-K-I.  
 9 THE HEARING OFFICER: For the  
 10 Respondent?  
 11 MR. KEARNEY: David Kearney,  
 12 K-E-A-R-N-E-Y.  
 13 THE HEARING OFFICER: And we  
 14 have the Respondent present, Theodore Smith.  
 15 We are going to be calling a witness on behalf  
 16 of the Respondent. The witness' name is  
 17 Marisa, M-A-R-I-S-A, Russo, R-U-S-S-O,  
 18 Aragonese, A-R-A-G-O-N-E-Z.  
 19 Ms. Russo Aragonese, would you  
 20 raise your right hand, please?  
 21 Do you affirm the testimony  
 22 you're about to give will be the truth, the  
 23 whole truth, and nothing but the truth?  
 24 MS. ARAGONEZ: Yes.

1 Aragonez - Direct - Kearney  
 2 MARISA RUSSO ARAGONEZ; Sworn.  
 3 THE HEARING OFFICER: They're  
 4 going to ask you questions.  
 5 Your witness.  
 6 DIRECT EXAMINATION  
 7 BY MR. KEARNEY:  
 8 Q. Ms. Russo Aragonez, are you  
 9 currently employed?  
 10 **A. Yes.**  
 11 Q. And by whom?  
 12 **A. By the New York City Board of**  
 13 **Education.**  
 14 Q. And what is your job?  
 15 **A. I'm a Spanish teacher at**  
 16 **Richmond Hill High School.**  
 17 Q. How long have you taught  
 18 Spanish?  
 19 **A. I've been teaching Spanish**  
 20 **for eleven years.**  
 21 Q. Do you know the Respondent in  
 22 this case, Mr. Smith?  
 23 **A. Yes, I do.**  
 24 Q. And how do you know him?

1 Aragonez - Direct - Kearney  
 2 **A. He was my colleague at New**  
 3 **York City Museum School.**  
 4 Q. Did you have any interaction  
 5 with Mr. Smith while you taught at the Museum  
 6 School?  
 7 **A. Yes.**  
 8 Q. And what was the interaction?  
 9 **A. During professional**  
 10 **development.**  
 11 Q. And what can you tell me --  
 12 how often did you interact with him at  
 13 professional development?  
 14 **A. Once a week.**  
 15 THE HEARING OFFICER: Tell us  
 16 what professional development is, because I  
 17 don't know.  
 18 THE WITNESS: Professional  
 19 development are the hours that we -- we have  
 20 for preparing different teaching strategies.  
 21 It's --.  
 22 THE HEARING OFFICER: Is that  
 23 ten people meet -- three people meet?  
 24 THE WITNESS: No; all the

1 Aragonez - Direct - Kearney  
 2 teachers.  
 3 THE HEARING OFFICER: In the  
 4 school?  
 5 THE WITNESS: In the school.  
 6 THE HEARING OFFICER: Meet  
 7 for professional development.  
 8 THE WITNESS: For  
 9 professional --.  
 10 THE HEARING OFFICER: It's a  
 11 faculty meeting?  
 12 THE WITNESS: It's a faculty  
 13 meeting.  
 14 THE HEARING OFFICER: Ahh.  
 15 THE WITNESS: It's called  
 16 professional development now, correct.  
 17 THE HEARING OFFICER: And  
 18 it's done after school?  
 19 THE WITNESS: It's done after  
 20 school, yes. It's required --.  
 21 THE HEARING OFFICER: Once a  
 22 week?  
 23 THE WITNESS: It's once -- at  
 24 that time, it was once a week.

1 Aragonez - Direct - Kearney  
 2 THE HEARING OFFICER: Okay.  
 3 I'm sorry. Go ahead.  
 4 BY MR. KEARNEY: (Cont'g.)  
 5 Q. And did you attend all of the  
 6 professional development meetings?  
 7 **A. Yes. It was required.**  
 8 Q. And do you recall anything  
 9 about Mr. Smith's attendance at the  
 10 professional development meetings?  
 11 **A. We used to work in teams. He**  
 12 **was part of my team most of the time.**  
 13 Q. And did he show up?  
 14 **A. Yes.**  
 15 Q. All the time?  
 16 **A. That's what I remember, yes.**  
 17 Q. Can you tell me anything  
 18 about Mr. Smith's production of lesson plans?  
 19 **A. The only thing I can say is I**  
 20 **saw him submit them -- the lesson plans,**  
 21 **Monday, in the morning, for the entire week.**  
 22 Q. And why do you recall that?  
 23 **A. Because he was the only one**  
 24 **submitting the lesson plans on Monday.**

1 **Aragonez - Direct - Kearney**  
 2 Q. Can you explain?  
 3 **A. We were not supposed to**  
 4 **submit -- I mean, lesson plans, it wasn't a**  
 5 **requirement. Once, I asked him why he was in**  
 6 **the morning -- Monday morning, I asked him what**  
 7 **are you doing? And he said I was making**  
 8 **photocopies for -- what was her name -- Lindy.**  
 9 **I was making photocopies of my lesson plans for**  
 10 **the week.**  
 11 Q. And did you ever see Mr.  
 12 submit -- Mr. Smith submit those plans to  
 13 Lindy?  
 14 **A. I saw him make copies and**  
 15 **giving those copies to her, but I never saw the**  
 16 **actual procedure of the lesson plan. I just**  
 17 **saw him giving her the lesson plan.**  
 18 Q. And to the best of your  
 19 recollection, how often did you see him giving  
 20 lesson plans to Lindy on Monday morning?  
 21 **A. Monday morning. Monday**  
 22 **morning.**  
 23 Q. Every Monday?  
 24 **A. Pretty much, yes.**

1 **Aragonez - Direct - Kearney**  
 2 Q. Did there come a time when  
 3 you gave Mr. Smith a letter of reference?  
 4 **A. Yes.**  
 5 Q. And based on your eleven  
 6 years as -- as a Spanish teacher, would you --  
 7 is Mr. Smith, in your opinion, fit to teach?  
 8 **A. Yes.**  
 9 MS. JALOWSKI: Objection.  
 10 THE HEARING OFFICER: I'll  
 11 take it. Go ahead.  
 12 MS. JALOWSKI: How does she  
 13 know if he's fit to teach? She's just a --  
 14 she's just a, but her own testimony, that  
 15 she's -- she's not a gym teacher.  
 16 THE HEARING OFFICER: You can  
 17 cross examine her on that.  
 18 MR. KEARNEY: I have nothing  
 19 further for this witness.  
 20 CROSS EXAMINATION  
 21 BY MS. JALOWSKI:  
 22 Q. Good morning Ms. Russo --  
 23 **A. Hello.**  
 24 Q. -- I'm sorry -- Aragonnez?

1 Aragonnez - Cross - Jalowski  
 2 Right?  
 3 All right. So now, you  
 4 never -- you're not a gym teacher, correct?  
 5 **A. No, I'm not.**  
 6 Q. And now, during the 2005-2000  
 7 school year, P.D. -- it wasn't after -- it  
 8 wasn't actually after the school. That was the  
 9 year that --  
 10 **A. Yes, it was.**  
 11 THE HEARING OFFICER: Wait  
 12 until -- wait until she finishes the question.  
 13 Otherwise, I don't know what --.  
 14 THE WITNESS: I'm sorry.  
 15 Sure.  
 16 BY MS. JALOWSKI: (Cont'g.)  
 17 Q. That was the year that it was  
 18 actually an extended day, correct?  
 19 **A. Yes.**  
 20 Q. So everybody had to be -- it  
 21 wouldn't -- the meetings were mandatory,  
 22 correct?  
 23 **A. Yes, you're correct. Now it**  
 24 **is after school. Yes.**

1 **Aragonez - Cross - Jalowski**  
 2 Q. And -- and -- and at the  
 3 time, it was actually part of the school day?  
 4 **A. Yes.**  
 5 Q. Now, it would be fair to say  
 6 that if Mr. Smith was absent, he would -- would  
 7 not be a part of the professional development,  
 8 correct?  
 9 **A. No.**  
 10 Q. And if he left early, he  
 11 would not be part of the professional  
 12 development?  
 13 **A. Correct.**  
 14 Q. All right. So would it  
 15 surprise you to know that there were eight  
 16 times that Mr. Smith did not -- was not present  
 17 at the school during professional development?  
 18 **A. I -- I don't recall. I only**  
 19 **recall the times that he participated in my**  
 20 **team.**  
 21 Q. But there were times that he  
 22 was not -- do you recall that there were times  
 23 that he was not there?  
 24 **A. I cannot remember that. I**

1 **Aragonez - Cross - Jalowski**  
 2 **just remember the days that he was on my team**  
 3 **and that we worked together in different**  
 4 **projects.**  
 5 Q. And how many people were on  
 6 your team?  
 7 **A. We were working like in**  
 8 **four -- four people group -- four or five**  
 9 **people group.**  
 10 Q. You don't recall him not  
 11 being there?  
 12 **A. No. I only remember the**  
 13 **times that he was there working with me in the**  
 14 **group and I recall specifically after this**  
 15 **year -- I recall specifically two professional**  
 16 **development that we worked together. I mean,**  
 17 **we worked -- most of the time, we worked**  
 18 **together, but I remember a specific project**  
 19 **that we worked together -- I recall two.**  
 20 Q. Okay. But during the school  
 21 year, it's fair to say that you had  
 22 approximately I would say about over thirty  
 23 professional developments?  
 24 **A. Yes.**

1 **Aragonez - Cross - Jalowski**  
 2 Q. Now -- now, your own  
 3 testimony is that -- you just told me -- you  
 4 said every Monday morning you were in the -- in  
 5 the office the same time as Mr. Smith?  
 6 **A. Pretty much everybody was**  
 7 **pretty much at the same time and I saw him. I**  
 8 **recall him doing that because it surprised me.**  
 9 **That's all.**  
 10 Q. Every Monday?  
 11 **A. Pretty much -- pretty much**  
 12 **every morning, he was there. We were like**  
 13 **close in the room together and I saw him**  
 14 **submitting the lesson plans and it -- it**  
 15 **shocked me and I asked him because I was**  
 16 **surprised.**  
 17 Q. My question was that you were  
 18 saying that every Monday --?  
 19 **A. Practically every Monday,**  
 20 **not -- no -- I can't imagine it had been two**  
 21 **years -- I don't remember every detail.**  
 22 Q. But pretty much -- when you  
 23 come into school, why would you come into the  
 24 office?

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 2 **A. We had to sign in.**  
 3 MS. JALOWSKI: I just need a  
 4 moment.  
 5 THE HEARING OFFICER: Sure.  
 6 (Off-the-record discussion)  
 7 THE HEARING OFFICER: Let's  
 8 go off the record.  
 9 (Off the record)  
 10 THE HEARING OFFICER: Okay.  
 11 We're continuing with the cross examination.  
 12 MS. JALOWSKI: Yeah, I have  
 13 actually no further questions.  
 14 THE HEARING OFFICER: Any  
 15 redirect?  
 16 MR. KEARNEY: No.  
 17 THE HEARING OFFICER: We're  
 18 going to let you go.  
 19 THE WITNESS: Oh, okay.  
 20 THE HEARING OFFICER: Nice  
 21 meeting you.  
 22 THE WITNESS: Nice meeting  
 23 you.  
 24 THE HEARING OFFICER: Take

1 Theodore Smith - 3-20-2007  
 2 care. Thank you.  
 3 (Off-the-record discussion)  
 4 THE HEARING OFFICER: Okay.  
 5 We're ready to call another witness.  
 6 Off the record.  
 7 (Off the record)  
 8 THE HEARING OFFICER: Okay.  
 9 There's been an offer of a letter from the  
 10 Respondent's personnel file offered by the  
 11 Respondent as R --  
 12 MR. KEARNEY: R Twenty-nine.  
 13 THE HEARING OFFICER: -- R  
 14 Twenty-nine.  
 15 And are you objecting?  
 16 MS. JALOWSKI: Yes.  
 17 THE HEARING OFFICER: Over  
 18 the objection, the R Twenty-nine is admitted  
 19 into evidence.  
 20 What else do we have?  
 21 MR. KEARNEY: Can I just have  
 22 a moment?  
 23 THE HEARING OFFICER: Yes.  
 24 Off the record.

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1 Theodore Smith - 3-20-2007  
 2 (Off the record)  
 3 THE HEARING OFFICER: Okay.  
 4 In in-camera discussion, Mr. Kearney,  
 5 Respondent's attorney, has requested another  
 6 date for the hearings to continue given that  
 7 his witness who was supposed to come today  
 8 hasn't shown up, a Mr. Leachy. And he's asked  
 9 if another date can be given for the -- Mr.  
 10 Leachy, hopefully, to show up. And in any  
 11 event, the Respondent may have some other  
 12 witnesses. So he would like another day for  
 13 the hearings to continue.  
 14 What saith, Ms. Jalowski?  
 15 MS. JALOWSKI: One, they did  
 16 not say they have witnesses. They may have  
 17 witnesses so I'm objecting to them having  
 18 anymore witnesses. I mean, this is -- I think  
 19 day three of them being able to bring  
 20 witnesses.  
 21 And I'm also objecting to  
 22 having another day for Mr. Leachy since he was  
 23 supposed to be here on the last date and we  
 24 adjourned for today to have him and he's not

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1 Theodore Smith - 3-20-2007  
 2 going to be character witnesses, I'm presuming,  
 3 testifying that during the time he was  
 4 supervisor, Mr. Smith, he would find him to be,  
 5 you know --.  
 6 THE HEARING OFFICER: She has  
 7 a point. If his testimony is going to be  
 8 rather expeditiously handled, couldn't we have  
 9 the closings that day if you don't have any  
 10 more witnesses then?  
 11 MR. KEARNEY: We can  
 12 absolutely have the closings that day. I think  
 13 that your request is sensible and Mr. Smith has  
 14 identified at least four other witnesses. I  
 15 have not spoken to them. Mr. Smith,  
 16 apparently, has and they have things to say.  
 17 MS. JALOWSKI: Who are these  
 18 witnesses?  
 19 MR. KEARNEY: These witnesses  
 20 are Lynn Fernandez, apparently a basketball  
 21 coach that coached with Mr. Smith, a Dr. Durban  
 22 in Long Island, who treated Mr. Smith during  
 23 his period for fibrillation and related  
 24 symptoms, Hope Eisman, former Principal at the

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1 Theodore Smith - 3-20-2007  
 2 here again. You know, obviously Mr. Leachy  
 3 does not want to testify. Mr. Kearney has, you  
 4 know, an opportunity to go -- to bring forth  
 5 and compel him to testify, which I doubt he's  
 6 going to do, but the point. I don't think we  
 7 have enough days going through the --.  
 8 THE HEARING OFFICER: Wait --  
 9 wait. Let me just ask you a question. At some  
 10 point, you should be able discern before that  
 11 day whether Mr. Leachy is going to show up. So  
 12 is it possible we can give you that day, but if  
 13 you know he doesn't show up or we don't have  
 14 any more witnesses, we can use that day to --  
 15 for closing. Why don't you prepare your  
 16 closings for that date and that way it'll take  
 17 care of both problems? And if indeed, your  
 18 witnesses take the whole day, then we'll give  
 19 another day for closings. How's that? Can we  
 20 do that? A day of closing.  
 21 MS. JALOWSKI: All right.  
 22 That -- that -- I wouldn't necessarily object  
 23 to that, but even Mr. Leachy does come in,  
 24 it'll be -- we should go forward. It's just

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1 Theodore Smith - 3-20-2007  
 2 School of Art and Design, Jonathan Lessick,  
 3 who's the Union President, who will present  
 4 testimony as to the illegality of the lunch  
 5 program at the Museum School. That's it.  
 6 THE HEARING OFFICER: Okay.  
 7 So you will know whether they are going to come  
 8 in which case if it takes the whole day, we'll  
 9 set another date for the closing. Otherwise,  
 10 if we only have one or two witnesses and we  
 11 have the whole afternoon looming ahead of us,  
 12 let's do the closings and finish up the case.  
 13 Okay?  
 14 MR. KEARNEY: Thank you.  
 15 One -- one more -- there are actually two more  
 16 issues. I have been directed to -- to state  
 17 for the record that it is unacceptable that we  
 18 have not received the transcripts -- the  
 19 complete set of transcripts. We do need them  
 20 in order to present our defense to these  
 21 charges. We have some of them. We have some  
 22 of them at later dates, where there were  
 23 earlier hearings. And I just want to state for  
 24 the record that we need those transcripts and

6 (Pages 628 to 631)

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1 Theodore Smith - 3-20-2007  
 2 we're making every effort to obtain them. And  
 3 anything that the Arbitrator can say today to  
 4 the Associated Reporting service would be most  
 5 appreciated.

6 THE HEARING OFFICER: Well,  
 7 I -- they did say they are going to get them to  
 8 you. If you don't have them in the next few  
 9 days, might I ask Ms. Jalowski if you call Ms.  
 10 Jalowski, why don't you send him --?

11 You don't have them, either?

12 MS. JALOWSKI: No, I don't  
 13 have them either. They -- they said you know,  
 14 we're not -- you know, obviously, Associated  
 15 Reporters is not an employee of the Department  
 16 of Education.

17 THE HEARING OFFICER: But  
 18 didn't you get transcripts for all the hearing?

19 MS. JALOWSKI: No -- no, I  
 20 haven't seen them since -- I think that there  
 21 were some that Mr. Kearney didn't have that I  
 22 might have had because there was the problem  
 23 where they were being sent to him, but he has  
 24 those now. I don't have every transcript.

1 Theodore Smith - 3-20-2007  
 2 THE HEARING OFFICER: Oh,  
 3 okay. All right. It's noted for the record.  
 4 To the extent we can ask the Associated  
 5 Reporters please to see what you can do to make  
 6 sure the Respondent gets the transcripts and  
 7 the Department for those that have not been  
 8 sent.

9 MS. JALOWSKI: What don't you  
 10 have, yet?

11 MR. KEARNEY: I don't -- as I  
 12 said to Associated, I don't have the 11th of  
 13 January. I only have February the 8th. I  
 14 don't have anything after that.

15 THE HEARING OFFICER: You  
 16 only have one transcript?

17 MR. KEARNEY: I have --  
 18 sorry -- I have the -- I said this to  
 19 Associates -- I have December 5th. I have  
 20 January 3rd, and those are just sort of brief  
 21 appearances. Then I've got January -- I don't  
 22 have January 11th. Then I have February 8th.  
 23 And I don't have any dates before or after  
 24 that.

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1 Theodore Smith - 3-20-2007  
 2 MS. JALOWSKI: I mean I'll  
 3 try to give you what I have. Obviously, if I  
 4 have some that Mr. Kearney doesn't have, I  
 5 certainly can provide copies.

6 THE HEARING OFFICER: Please.

7 MS. JALOWSKI: But I -- I  
 8 believe that -- that we have the same.

9 THE HEARING OFFICER: Okay.  
 10 Anything else? Did you have something else you  
 11 wanted to say?

12 MR. KEARNEY: Mr. Smith would  
 13 like to make a statement for the record.

14 MS. JALOWSKI: I'm going to  
 15 object. He testified.

16 THE HEARING OFFICER: He  
 17 already testified already. Application is  
 18 denied. You can submit a closing brief if you  
 19 wish. I'll grant that request and make the  
 20 points you wish, but insofar as Mr. Smith has  
 21 already testified and the process is one in  
 22 which is done by examination and cross  
 23 examination not by making statements drafted by  
 24 the Respondent prior to his appearance here.

1 Theodore Smith - 3-20-2007  
 2 Okay?

3 MS. JALOWSKI: I want to put  
 4 on the record, on our last date when -- I'm  
 5 sorry; I don't remember the witness' -- when  
 6 Mr. Ragusa testified, you, on your own accord,  
 7 Mr. Tillem, deemed him to be an expert witness.  
 8 That being -- and at the time, of course, I did  
 9 not object, but in retrospect, if you are  
 10 deeming him an expert, I am going to ask you  
 11 then to deem Lindy Uehling an expert, Susan  
 12 Shron an expert, and Victor Ramsey an expert or  
 13 else take away the expert status away from Mr.  
 14 Ragusa.

15 THE HEARING OFFICER: I don't  
 16 recall what exactly the reason I ruled Mr.  
 17 Ragusa --.

18 MS. JALOWSKI: I think he  
 19 said he had thirty years experience.

20 MR. KEARNEY: I attempted to  
 21 qualify him as an expert and to give an expert  
 22 opinion based on his thirty years of experience  
 23 and Mr. Tillem said that he's got thirty years

7 (Pages 632 to 635)

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1 Theodore Smith - 3-20-2007  
 2 with the Department and on that basis --.  
 3 THE HEARING OFFICER: I'll  
 4 stand on that and to the extent that your  
 5 witnesses have that type of experience and I  
 6 believe I recall he's a very -- a veteran  
 7 professional -- pedagogues, I would deem are  
 8 experts also.  
 9 MS. JALOWSKI: Thank you.  
 10 THE HEARING OFFICER: Okay.  
 11 MR. SMITH: Can I say  
 12 something off the record?  
 13 THE HEARING OFFICER: You  
 14 want to go off the record? Only if your  
 15 attorney says you -- I have --.  
 16 MS. JALOWSKI: No. Mr. Smith  
 17 is going to make a statement to you. I'm  
 18 objecting to there being any statement to you.  
 19 THE HEARING OFFICER: Yeah,  
 20 it's inappropriate. It's inappropriate.  
 21 Anything else?  
 22 Okay. We're going to  
 23 reconvene on -- well, I'm showing Thursday. I  
 24 don't know if that's right.

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1 Theodore Smith - 3-20-2007  
 2 but --  
 3 THE HEARING OFFICER: Okay.  
 4 MR. KEARNEY: April 12th,  
 5 closing for --.  
 6 THE HEARING OFFICER:  
 7 Right -- right. So we're not going to convene  
 8 on the 22nd for this case, but the 12th for any  
 9 further witnesses and the closing. Is that  
 10 right?  
 11 MS. JALOWSKI: Yes, but  
 12 there's one more thing, though, that I do want  
 13 to submit. I want to submit a doctor's note.  
 14 THE HEARING OFFICER: And  
 15 this would be D what?  
 16 MS. JALOWSKI: Seven.  
 17 THE HEARING OFFICER: Seven  
 18 for identification.  
 19 MR. KEARNEY: I have no  
 20 objection at any rate. Whatever --.  
 21 THE HEARING OFFICER: Let me  
 22 see if I can read it. Is excused -- I got it.  
 23 What is it? D what?  
 24 MS. JALOWSKI: I'm not -- I

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1 Theodore Smith - 3-20-2007  
 2 MS. JALOWSKI: That might be  
 3 a little too --.  
 4 THE HEARING OFFICER: I think  
 5 that's too quick for you guys to put your  
 6 closing statements together.  
 7 MS. JALOWSKI: What do you  
 8 have in April?  
 9 THE HEARING OFFICER: When do  
 10 we want to do the closing statements?  
 11 MS. JALOWSKI: No -- no;  
 12 let's say we go as far as --  
 13 THE HEARING OFFICER: Why  
 14 don't we figure that we'll come back here --  
 15 excuse me -- for Mr. Smith, the next one I have  
 16 is April 17th. Does that sound right? I can  
 17 give you April 12th. You want it?  
 18 MS. JALOWSKI: Yes.  
 19 MR. KEARNEY: I'd rather take  
 20 the 12th. What day is it?  
 21 THE HEARING OFFICER: The  
 22 12th is a Thursday.  
 23 MS. JALOWSKI: So yes, we  
 24 need dates anyway, so I'll keep the 17th also,

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1 Theodore Smith - 3-20-2007  
 2 don't have --.  
 3 THE HEARING OFFICER: All  
 4 right. I'll mark it next time. I'll put it --  
 5 it's in evidence.  
 6 MS. JALOWSKI: Then I also --  
 7 I also don't believe that Mr. -- Dr. -- I'm  
 8 sorry -- Ament is available for my cross  
 9 examination so that would deem -- that I would  
 10 ask you to strike his testimony --his direct  
 11 from the record.  
 12 THE HEARING OFFICER: All  
 13 right. I'll reserve on that application. Let  
 14 me also state for the record that Mr. -- the  
 15 witness that you expected to call who didn't  
 16 show up yet?  
 17 MR. KEARNEY: Mr. Leachy.  
 18 THE HEARING OFFICER: Mr.  
 19 Leachy. We're going to mark that final, if he  
 20 does not show up the next time, we will not  
 21 permit another adjournment for that. Okay?  
 22 All right. So we'll see you  
 23 all on April 12th. Home safe and thank you for  
 24 your cooperation.

8 (Pages 636 to 639)



1 Theodore Smith - 3-20-2007  
 2 April 12th, ten o'clock here  
 3 at Chambers.  
 4 (The hearing adjourned.)  
 5 Pkic  
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1 Theodore Smith - 3-20-2007  
 2 STATE OF NEW YORK  
 3 I, Amy Douglas, do hereby certify that the  
 4 foregoing was reported by me, in the cause, at  
 5 the time and place, and in the presence of  
 6 counsel, as stated in the caption hereto, at  
 7 Page 611 hereof; that the foregoing  
 8 typewritten transcription, consisting of pages  
 9 number 611 through 640, inclusive, was prepared  
 10 under my supervision and is a true record of  
 11 all proceedings had at the hearing.  
 12 IN WITNESS WHEREOF, I have  
 13 hereunto subscribed my name, this the 3rd day  
 14 of April, 2007.  
 15  
 16 \_\_\_\_\_  
 17 Amy Douglas, Reporter  
 18  
 19  
 20  
 21  
 22  
 23  
 24

1 Theodore Smith - 3-20-2007  
 2 ERRATA SHEET  
 3 Case: Theodore Smith  
 4 Date: March 20, 2007  
 5 CORRECTIONS:  
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