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Oct. 7, 2009

Joseph Damelio, Esq.  
125 State St..  
Suite 200  
Rochester, NY 14604

Re: People v. James P. Smith  
Indictment #: 870/2009  
§ 710.30 Notice


Dear Mr. Damelio:

Pursuant to NYS CPL § 710.30, the People intend to offer at trial of the above referenced defendant evidence of statements made by the defendant to a public servant(s):

**Statements made on or about March 9, 2009 beginning at approximately 9:45 am and continuing at 1:30 pm at 39 West Main St., Rochester, NY to MCSO Inv. Crough and FBI SA's Yerdon and Black, the sum and substance of which is contained in the attached seven page report.**

Finally, please let this notice reflect that the People remain ready for trial in the above captioned matter pursuant to People v. Kendzia, 64 NY2d 331, 338 (1985).

Sincerely,

William T. Gargan  
Assistant District Attorney  


cc: Hon. Frank P. Geraci  
Monroe County Court  
Hall of Justice  
Rochester, NY 14614

*File Copy*

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## FEDERAL BUREAU OF INVESTIGATION

Date of transcription 03/10/2009

JAMES P. SMITH, the Deputy County Executive of Monroe County, work telephone number 585-753-1011, email address jsmith@monroecounty.gov, was interviewed at his place of employment, 39 West Main Street, Suite 110, Rochester, New York 14614. After being advised of the identity of the interviewing Agent and the Monroe County Sheriff Investigator, as well as the nature of the interview, he provided the following information:

SMITH was advised that the investigators wished to ask him questions regarding the ongoing investigation into former Monroe County employee ROBERT MORONE and the fourteen charged persons who previously worked under MORONE through ROBUTRAD. He was advised that the initial Monroe County Sheriff's Office investigation had expanded to include the Federal Bureau of Investigation and the United States Attorney's Office.

SMITH acknowledged that he was aware of the initial investigation and wished to provide any information that could be of assistance. SMITH advised that he serves directly under MAGGIE BROOKS, the current Monroe County Executive. He has been in his current position since approximately 2004-2005.

SMITH said that he first learned of specific wrong doings being committed by MORONE and the ROBUTRAD workers during his first meeting with JOHN NITTI, which took place on 05/22/2008, a Thursday. NITTI confided in SMITH that MORONE and the ROBUTRAD workers were involved in numerous types of misconduct, including going to strip clubs while being paid by the County. It was also during this meeting that NITTI told SMITH that he was afraid of retribution for reporting things about MORONE as he felt that he had some type of protection within Monroe County.

SMITH claimed that he told NITTI that MORONE and the ROBUTRAD crew did not have any type of protection, and to report any future activity directly to him. SMITH said later that same morning, he randomly saw NITTI, at which time NITTI advised that MORONE and some of the ROBUTRAD guys were going to the Classy Cat strip club later that afternoon.

SMITH informed that based on that tip, he decided to personally go to the Classy Cat to see if it was true. Instead of

Investigation on 03/09/2009 at Rochester, New York

Date dictated n/a

Investigator Patrick Crough  
SA Michael C. Yarden Jr. :mcy

inviting any of MORONE's direct supervisors or Department Head, SMITH brought along KEVIN FINNERTY, who is an assistant County Clerk in his office. SMITH and FINNERTY went to the Classy Cat on the afternoon of 05/22/2008 and located MORONE and an unidentified number of the ROBUTRAD workers.

As punishment for these actions, SMITH had MORONE report to his office the next day, 05/23/2008. At this time SMITH gave MORONE a significant verbal reprimand for his actions. SMITH advised MORONE that this type of behavior would not be tolerated, declaring that it would come to a stop immediately. As follow up, on the following Tuesday, SMITH invited MIKE GARLAND, the Deputy Director of Department of Environmental Services (D.E.S.), to accompany him to speak with MORONE and the group of ROBUTRAD workers. Once again as punishment, SMITH gave the men a five to ten minute verbal reprimand for their behavior. He again advised the crew as a whole that this type of activity would not be tolerated and declared it must stop or they would be fired. SMITH said he told the ROBUTRAD workers, and specifically MORONE, that they did not have any type of "protection" within the County if they were to engage in any misconduct. SMITH added that on 05/30/08, MORONE came back to his office and apologized for his actions.

Investigator Crough asked SMITH to explain why he did not fire MORONE and the ROBUTRAD workers who were located at the Classy Cat on the spot, he provided a couple of different answers. First SMITH claimed that the reason he did not fire them was because the Monroe County Sheriff's Office requested that he didn't so they could conduct an investigation. Investigator Crough reminded SMITH that this event happened at least one week prior to any type of referral to the Sheriff's Office. SMITH then offered that the reason he did not fire MORONE for this activity was he wanted to get a better understanding of what MORONE and the ROBUTRAD crew was up to in light of the information he had recently been provided. In addition, SMITH explained that this was the first time they had been caught doing anything wrong and the information from NITTI about other activity was still singular. He added that he did not feel it necessary to fire MORONE at that time because he was confident that MORONE would not be working for the County much longer based on what he was learning.

Investigator Crough asked SMITH to explain why he did not document in any way the Classy Cat incident or the verbal reprimands in any personnel files, which is a normal course of

action in Monroe County. SMITH explained that he felt a letter to the file was not necessary because a stern and direct reprimand from the Deputy County Executive was significant all on its own. SMITH denied that MORONE and the ROBUTRAD workers were shown any favorable treatment pertaining to this matter.

SMITH claimed that when NITTI gave him the information, this was the first time anyone had ever come to him with "specific" allegations of misconduct by MORONE and the ROBUTRAD workers. He explained that in the past he had heard unspecified allegations that MORONE and his ROBUTRAD crew were not good workers. SMITH added that there were no "overt" conversations with anyone, to include any of MORONE's supervisors, just passing allegations such as the workers taking long breaks (30 minutes vs. 15 minutes), talking with women in the sites, etc. SMITH felt that they were just taking a little bit of an advantage of the system, but understood that overall they were getting the jobs done that they were asked to do. SMITH was adamant that at no time prior to NITTI coming forward did anyone ever give him specific examples of misconduct.

To further clarify, SMITH informed that he had a few (five or less) conversations with JOHN GRAHAM, the former Head of the D.E.S., regarding MORONE and the ROBUTRAD crew prior to the Classy Cat incident. During these conversations GRAHAM would complain about MORONE and the ROBUTRAD workers, who he regarded to be lazy, offering to SMITH that he would like to get rid of them. SMITH indicated that he could not take any action because GRAHAM did not have any specific examples of wrong doing. SMITH advised GRAHAM that he needed to better manage his people if there was a problem. To this matter, SMITH said it was quite clear that GRAHAM and MORONE did not like each other at all. SMITH said this made it very difficult to discern if the issue was truly business or more of a personal matter between GRAHAM and MORONE.

Investigator Crough asked SMITH if he ever directed and/or implied in any way to GRAHAM to back off of MORONE and the ROBUTRAD workers, SMITH said "No". When Investigator Crough asked if he ever gave GRAHAM a vague directive to "make MORONE comfortable", SMITH said "No".

SMITH offered that after the Classy Cat incident he was given new information through LOU RIVERA that someone working at Monroe County wanted to speak with him to report worker misconduct. To be more efficient, SMITH wanted to remove RIVERA from the

[REDACTED]

information loop, so he could talk to his people (RIVERA was noted to be away from the county, living in Florida). Ultimately the "whistle blower" was identified as [REDACTED], who reported that one of the ROBUTRAD workers was receiving oral sex from a County employee while on company time in a Monroe County facility. Adding to the concern, the female was thought to have some type of mental disability.

To address this matter, SUSAN WALSH, who worked in the Monroe County Human Resource Department handling employee matters, was tasked to gather the details. SMITH subsequently spoke to [REDACTED] along with MIKE GARLAND, who she invited to attend. SMITH advised that WALSH handled issues with employee's for Human Resources, so he took direction from her regarding this matter. In the end, the oral sex allegation did not turn out to be very significant, but SMITH and GARLAND did report on another matter specific to employee misconduct.

SMITH was advised by WALSH and GARLAND that [REDACTED] gave them a significant amount of information regarding MORONE and the ROBUTRAD workers. The allegations included that MORONE and the ROBUTRAD crew were (1) getting paid for hours not working; (2) doing work on private jobs but getting paid by the County; (3) getting unauthorized vacation days paid; (4) stealing county materials and equipment for private jobs; (5) working on prominent Republican Party and Monroe County officials homes while on county time.

SMITH said that he was not angry with WALSH or GARLAND for bringing him this information despite the fact it was not the reason they went out to talk to [REDACTED]. Investigator Crough challenged SMITH on that statement, advising him that it contradicted testimony previously provided by both GARLAND and WALSH. SMITH again denied being upset with WALSH or GARLAND about looking into the matter without his direction. He claimed that he was surprised of their perception.

SMITH claimed that he listened to the information then called a meeting for later in the day to determine the best course of action. Subsequently, SMITH had a meeting with WALSH, GARLAND, BRAYTON CONNARD and perhaps the county attorney and/or others to discuss what the next step should be. During this meeting, the County Executive, MAGGIE BROOKS, passed by his office and joined the meeting.

SMITH advised that there were two distinct schools of thought on how to handle the matter. One was to handle the matter internally, either to follow MORONE and the ROBUTRAD crew around to see what they are doing, or just fire them immediately. The other option was to take the information to law enforcement as it appeared to be a criminal matter with all of the theft from the County. SMITH advised that he was very much in favor of handling the matter internally. He explained that he was open to other opinions, but it was incumbent on his subordinates to convince him that taking it to law enforcement was a good idea. SMITH explained that he appreciated differences of opinion.

SMITH advised that in the end, he advised BROOKS to handle it internally, while the head of Human Resources, BRAYTON CONNARD, advised her to take it to law enforcement. Ultimately BROOKS decided to take it to law enforcement. SMITH said that when that decision was made, he was fully supportive. In regards to the decision to have law enforcement fully investigate the matter, SMITH denied ever saying that "it would be the downfall of the Republican Party". When Investigator Crough asked him if he made such a statement at one of the aforementioned meetings, he recalled that he may have made a comment that it could get ugly or complicated, but was certain he did not say it would be the downfall.

SMITH said that he was very angry when he found out the full extent of the misconduct being carried out by MORONE and the ROBUTRAD crew. He stated that he was fully supportive of firing them immediately. SMITH denied that his true concern was for the Republican Party, claiming that he is loyal to the county first. He claimed that his wish to fire MORONE immediately was not to protect the Republican Party's interest.

SMITH was asked what he knew about MORONE and the ROBUTRAD crew working/volunteering for the Republican Party. SMITH acknowledged that they were active in party events, as many people were. He knew them to participate in parades, blitz's and other political events. It was his understanding that they were doing it on their own time, adding that he did not have any inclination that they were being paid by the county for the time spent at these events. SMITH stated that in no way did he ever endorse MORONE and/or the ROBUTRAD workers to engage in illegal activity on behalf of the Republican Party. SMITH described MORONE and the ROBUTRAD crew as merely "ass kissers". SMITH expressed his opinion that

MORONE and the ROBUTRAD workers did not have very much value to the Republican Party, adding that he did not consider them an asset.

SMITH was asked if he was aware of MORONE and/or the ROBUTRAD crew working on any Republican Party officials personal residences? SMITH thought they may have worked on the home of IRENE MATICHYN, the Republican Party fund raiser, but it was his understanding that she paid them for their work. He had heard rumors that they did work for STEVE MINARIK, the former head of the Republican Party in Monroe County, but he did not have any direct knowledge one way or the other.

SMITH was advised that the investigation was currently looking into how it was possible for MORONE and the ROBUTRAD workers to carry out such egregious activity for such a long period of time without discovery. It was further explained to SMITH that the investigation will explore if any elected officials were providing any type of protection for MORONE and the ROBUTRAD workers.

SMITH indicated that he in no way ever protected MORONE or the ROBUTRAD crew. He denied ever making any special calls or inquires as to how MORONE was doing or to make sure that things were going well for him. SMITH explained that MORONE had some type of "perceived" protection due to his political involvement, but it was all in his own head. SMITH felt that MORONE believed that due to his involvement in political events, such as parades and fund raisers, he could get away with whatever he wanted. SMITH recalled MORONE attempting to drop names to deflect attention if he was in trouble, such as STEVE MINARIK. SMITH said he rebuked those names saying, "they do not sign your checks". To corroborate that widespread belief, SMITH reiterated that when NITTI first came to him, one of NITTI's concerns was that the protection for MORONE and the ROBUTRAD guys was true.

Again, Investigator Crough challenged SMITH in regards to SMITH's denial that MORONE and his subordinates were given protection from being held accountable for their lack of productivity by D.E.S. Management due to their political connections and distorted value to the Republican Party. Investigator Crough told SMITH, in sum and substance, that (1) his lack of appropriate disciplinary action against MORONE and his accomplices in the strip club matter, which included MORONE's attempt to change/falsify his time card entry after being caught at the club while on county time, (2) his refusal to allow D.E.S.

[REDACTED]

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upper level management to further investigate the incident and take appropriate disciplinary action for such a gross violation of trust by a person who holds the title of "Superintendent", not only corroborated, but epitomized the belief held by other upper level county administrators that MORONE and the ROBUTRAD workers were afforded special treatment at the direction of SMITH. This belief ultimately provided MORONE and the ROBUTRAD workers the environment to get away with unchecked activity and criminal behavior for such a protracted period of time.

Investigator Crough told SMITH that his refusal to follow proper protocol in his response to the strip club incident (which Investigator Crough said should have included (1) documenting the disclosed allegations made by JOHN NITTI that MORONE and his workers were frequently strip clubs while on county time; (2) actually catching MORONE and some of the ROBUTRAD crew in the act; (3) personally commencing an official internal investigation; and (4) taking disciplinary action against MORONE) was not the result of being told to "hold off" by the Monroe County Sheriff's Office, as SMITH asserted earlier in the interview. He reminded SMITH that the Sheriff's commenced their investigation during the last week of June 2008. Investigator Crough pointed out that nearly four weeks had elapsed between the strip club incident and when the Sheriff's Office was first consulted about the illegal activities of MORONE and the ROBUTRAD workers.

Around the time Investigator Crough challenged SMITH with this information, SMITH stated that he was troubled by the conversation/interview and the fact that people would think he was protecting MORONE. Investigator Crough responded by telling SMITH that he should be concerned based on what other members of the county administration have told investigators. Again, SMITH stated that he was troubled that anyone was given the impression that he was providing MORONE and his people any kind of protection or favoritism.

When asked if he had any contact with MORONE since the arrests, SMITH said "No". When asked if he had any work done by MORONE and/or the ROBUTRAD workers, SMITH said "No".

At the end of the interview SA Yerdon advised SMITH that the interview would be documented and become an official part of the investigative file. As such, he was asked if he needed to change any of the answers he gave the investigators, to which he said "No".