



**STATE OF ILLINOIS
95TH GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES
SPECIAL INVESTIGATIVE COMMITTEE**

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**FINAL REPORT
OF THE
SPECIAL INVESTIGATIVE COMMITTEE**

Issued January 8, 2009

**REPORT OF THE SPECIAL INVESTIGATIVE COMMITTEE
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I. Introduction

On December 15, 2008, the Illinois House of Representatives (the “House”) unanimously adopted House Resolution 1650, which created the Special Investigative Committee (the “Committee”) to investigate allegations of misfeasance, malfeasance, nonfeasance, and other misconduct of Governor Rod R. Blagojevich and to make a recommendation as to whether cause exists for the Governor’s impeachment pursuant to Article IV, Section 14 of the Illinois Constitution. House Resolution 1650 called on the Committee to issue a report before the end of the 95th General Assembly.

The Committee consists of twenty-one members of the House, including the Chair, Barbara Flynn Currie, and the Minority Spokesman, Jim Durkin. The Committee convened on Tuesday, December 16, 2008 and conducted hearings on December 17, 18, 22, 29, and on January 7 and 8, 2009. This Report summarizes the pertinent findings from those hearings and includes a recommendation to the full House.

II. The Committee’s Rules, Procedure, and Policy

A. The Rules and Procedure.

On December 17, 2008, the Committee adopted rules to govern its fact-finding hearings (the “Rules”).¹ The Rules permitted the Governor to be present at all hearings, personally and through counsel. The Rules required that the Committee provide 24-hour notice of all public hearings. The Rules further permitted the Governor’s counsel to ask questions of witnesses called by the Committee and to present any evidence of his own, be it witnesses or documentary material.

The Governor and his counsel were given the opportunity to attend every hearing, to ask questions of witnesses in response to their testimony, and to provide any relevant evidence they wished to submit for the Committee’s consideration. The Governor requested, and was granted, seven days to gather evidence and present testimony.

B. The Policy Regarding the Federal Criminal Investigation of the Governor.

Recognizing the federal criminal investigation of the Governor, the Committee unanimously determined, at the outset, that it would not call any witnesses, nor pursue any lines of inquiry, that interfered with that investigation in the opinion of the United States Attorney for the Northern District of

¹ The vote of the Committee to adopt the Rules was 12 members voting aye, 9 members voting nay. (Tr. 70.)

Illinois. Thus, the Committee sent a letter to the U.S. Attorney requesting certain information from his investigation and informing him of areas of inquiry the Committee intended to pursue and witnesses the Committee wished to call. (Ex. 10.) The U.S. Attorney, in a written response, notified the Committee that, with one exception, he could not provide any materials obtained in the course of his criminal investigation.² He also notified the Committee of his request that the Committee “refrain from conducting any inquiry into the subjects” related to his criminal investigation and from “seeking information or testimony from the individuals” relevant to that investigation. (Ex. 30.)

As new avenues of inquiry have come to the Committee’s attention, the Committee has continued to correspond with the U.S. Attorney to obtain his approval before calling witnesses or presenting information. The Committee has respected the U.S. Attorney’s requests to the letter.

III. Overview of the Impeachment Process

Article IV, Section 14 of the Illinois Constitution provides:

The House of Representatives has the sole power to conduct legislative investigations to determine the existence of cause for impeachment and, by the vote of a majority of the members elected, to impeach Executive and Judicial officers. Impeachments shall be tried by the Senate. When sitting for that purpose, Senators shall be upon oath, or affirmation, to do justice according to law. If the Governor is tried, the Chief Justice of the Supreme Court shall preside. No person shall be convicted without the concurrence of two-thirds of the Senators elected. Judgment shall not extend beyond removal from office and disqualification to hold any public office of this State. An impeached officer, whether convicted or acquitted, shall be liable to prosecution, trial, judgment and punishment according to law.

Ill. Const. 1970, Art. IV, § 14.

Pursuant to this exclusive grant of authority, the House of Representatives has the sole power to conduct legislative investigations to determine whether “cause” exists to impeach an Executive or Judicial officer. Our previous Constitution, adopted in 1870, provided for impeachment of an Executive or Judicial officer for “any misdemeanor in office.” Ill. Const. 1870, Art. V, § 15. The framers of the current, 1970 Constitution deleted this phrase, primarily because the term “misdemeanor,” in modern times, is understood as a petty criminal offense such as a parking violation, whereas in 1870 the phrase referred more generally to “misconduct.” 6 Record of Proceedings, Sixth Illinois Constitutional Convention, 1310-1311. It is notable, however, that the framers did not replace this phrase with a

² At the time this report has been filed, the U.S. Attorney has sought court approval to disclose the contents of four intercepted conversations described in the Cain Affidavit. (Ex. 3.) The court action is still pending.

different one. They considered inserting the phrase “official misconduct,” *id.*, but did not do so. The framers could have placed impeachment proceedings in the judiciary, together with its evidentiary rules and burdens of proof, but chose to keep these proceedings with legislators. Ultimately, they left determinations regarding impeachment in legislators’ “exercise of their discretion.” *Id.* at 1311.

Grounds for Impeachment. Thus, the framers made it clear that they did not consider minor and petty offenses to be grounds for impeachment, but neither did they wish to tie the hands of the Illinois House of Representatives in circumscribing what would, and would not, be grounds for impeachment. Instead, the framers simply left it to the discretion of the House members to determine whether “cause” exists for impeachment. The Committee, taking into account the change to the Impeachment Clause made by the framers in the 1970 Constitution, and recognizing that an impeachment, by definition, sets in motion the possible removal of a popularly-elected officer, does not take its task lightly. To the contrary, an impeachment inquiry is a time for grave and deep reflection. It should not be used to resolve policy disagreements. It should be reserved for serious abuses and misconduct. It should be, and in Illinois has been, rarely invoked.

It would be impossible to define the outer boundaries of what constitutes an impeachable offense. Then-Minority Leader of the U.S. House of Representatives, Gerald Ford, once famously said that an impeachable offense “is whatever a majority of the House of Representatives considers [it] to be at a given moment in history.”³ Supreme Court Justice Story remarked that impeachment applies to offenses of a “political character” and are “so various in their character, and so indefinable in their actual involutions, that it is almost impossible to provide systematically for them by positive law.”⁴ Alexander Hamilton, in an essay known as Federalist No. 65, wrote that impeachable offenses “are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself.”⁵ The Texas Supreme Court, in a comprehensive discussion of impeachment, wrote that impeachable offenses “cannot be defined, except in the most general way” and, therefore, “no attempt was usually made to define impeachable offenses, and the futility as well as the

³ 116 Cong. Rec. H3113-114 (1970) (statement of Rep. Gerald Ford). The comment was made during the debate over whether to initiate impeachment proceedings against Supreme Court Justice William O. Douglas.

⁴ J. Story, *Commentaries on the Constitution of the United States*, § 764, at 559 (5th ed. 1965), *quoted in* Report by the Staff of the Impeachment Inquiry, Committee on the Judiciary, House of Representatives, 93rd Congress, February, 1974, “Constitutional Grounds for Impeachment” (the “Watergate Report”), at p. 16.

⁵ *Federalist No. 65, The Federalist* 453-454 (1864) (capitalization in original), cited in Report of Special Counsel to the Select Committee of Inquiry on the Standards for Impeachment Under the Connecticut Constitution, March 5, 2004 (“Report of Conn. Spec. Counsel”), at p. 5.

unwisdom of attempting to do so has been commented upon.”⁶ Because the impeachment inquiry is a uniquely political exercise, courts have refrained from second-guessing the “sufficiency of charges”⁷ or the “delineation of the offense” by the House.⁸

There seems to be near universal agreement, however, that certain conduct comfortably falls *within* the boundaries of an impeachable offense. First and foremost, impeachable offenses are not limited to violations of criminal law: “The American experience with impeachment ... reflects the principle that impeachable conduct need not be criminal.”⁹ The respected Watergate Report noted that, historically, less than one-third of the articles of impeachment drawn up by the U.S. House of Representatives have explicitly charged the commission of a criminal statute.¹⁰ The Texas Supreme Court referred to impeachable offenses generally as “official wrongs” that “need not be statutory offenses or common-law offenses, or even offenses against any positive law.”¹¹

It would, in fact, be unreasonable to limit impeachable offenses to criminal conduct. An impeachment inquiry is not a criminal proceeding and its purpose is not punitive. Rather, impeachment is a remedial proceeding to *protect the public* from an officer who has abused his position of trust.¹² To limit the impeachment inquiry to criminal conduct would severely undermine its remedial purpose.

Under the English parliamentary experience, after which the U.S. Constitution’s impeachment provision was patterned, allegations of impeachable offenses generally fell into the categories of “abuse of official power; neglect of duty; encroachment on the legislature’s prerogatives; corruption; and betrayal of trust.”¹³ The Watergate Report’s summary of American federal impeachments, while noting the difficulty of fitting impeachment charges “neatly into categories,” essentially categorized impeachable offenses the same way: exceeding the constitutional bounds of office in derogation of another branch; behaving in a manner grossly incompatible with the powers of office; and employing the power of the office for an improper purpose or for personal gain.¹⁴

⁶ *Ferguson v. Maddox*, 263 S.W. 888, 892 (Tex. 1924).

⁷ *Kinsella v. Jaekle*, 475 A.2d 243, 253 (Conn. 1984) (quoting *People v. Hayes*, 143 N.Y.S. 325 (Sup. Ct. 1913)).

⁸ *Larsen v. Senate of the Commonwealth of Pennsylvania*, 152 F.3d 240, 251 (3rd Cir. 1998).

⁹ Watergate Report, p. 24.

¹⁰ *Id.* at p. 21.

¹¹ *Ferguson*, 263 S.W. at 96.

¹² *Id.* at 98; *Kinsella*, 475 A.2d at 252; Watergate Report, p. 24; Report of Conn. Spec. Counsel, p. 9.

¹³ Watergate Report, p. 7.

¹⁴ *Id.* at p. 18.

Pattern of Abuse as a Single Ground for Impeachment. Historically, many of the impeachment charges have explicitly rested on a “pattern” of abuse or “course of conduct” that combined disparate acts of abuse into a single article.¹⁵ Indeed, in the early American experience, articles of impeachment were drafted *after* the House had voted to impeach, thus making it “probable that the decision to impeach was made on the basis of all the allegations viewed as a whole, rather than each separate charge.”¹⁶ The Watergate Report noted that, historically, “the House appears to have considered the individual offense less significant than what they said together about the conduct of the official in the performance of his duties.”¹⁷

When one considers that the purpose of impeachment is to protect the public from official abuses, the notion of “pattern of abuse” as a ground for impeachment is very sensible. When an official commits a series of misdeeds, the injury to the public is not segregated into individual harms considered in isolation. It is the overall effect of the official’s misbehavior that a legislator must judge in protecting the interests of his or her constituents. Moreover, impeachment, by its very nature, tests the fitness of a person to continue in office, which is best measured by the overall pattern of that official’s conduct, not by segregating various acts of abuse and judging them without regard to the others.¹⁸

The Watergate Report noted that historically, some of the acts of misbehavior included in a charge of pattern of abuse would not, alone, constitute impeachable offenses.¹⁹ Indeed, the special counsel to a Connecticut impeachment inquiry regarding Judge James Kinsella, discussing the notion of a pattern of misconduct, concluded that “each element by itself need not justify impeachment.”²⁰ Moreover, in considering a pattern-of-abuse charge, it is not necessary that every single act of misconduct presented for consideration be established to the satisfaction of the House member; what is important is that each member be satisfied that *sufficient* acts of misconduct have been established to justify a pattern of abuse. If, for example, ten acts of abuse were presented for consideration, one House member might find that all ten acts have been established to his or her satisfaction; another might be satisfied that only eight have been established; another, two. Yet any of those members, if they believed that a sufficient number of acts were established to show a pattern of abuse, could vote for impeachment

¹⁵ *Id.* at 21.

¹⁶ *Id.*

¹⁷ Watergate Report, p. 21.

¹⁸ The Governor’s counsel, in a written submission, stated that he “agree[s] ... that this Committee should consider the totality of the evidence” in deciding whether to recommend impeachment and “advocate[s] a totality of the circumstances approach to the evidence presented.” (Ex. 35, January 2, 2009, at 2.)

¹⁹ Watergate Report, p. 21.

²⁰ Report of the Conn. Spec. Counsel at p. 9 (quoting Final Statement of Information, April 17, 1984, at p. 28).

in their discretion. The Constitution places no formulaic rule on the House members in making the determination as to “cause” for impeachment.²¹

Required Procedures. The Governor was given a fundamentally fair opportunity to present his position before the Committee. As previously noted, he was given notice of all hearings, the right to be present, copies of all documents, a copy of each day’s transcript, the right to question witnesses, the right to present relevant evidence, and the opportunity to testify on his own behalf. A recurring theme of the Governor’s counsel, however, was that he was denied “due process” before this Committee. The Committee believes that the Governor was given more than sufficient procedural safeguards.

The Committee afforded Governor all of the aforementioned rights, even though the Committee was not required to do so. The Arizona Supreme Court, during Governor Evan Mecham’s impeachment inquiry, held that the concept of “due process” “does not protect the right to hold office as Governor”²² and “the rights of a person [criminally] accused are not co-extensive” with the rights of a Governor facing impeachment.²³ The U.S. Supreme Court refused to “impose limitations on the Senate proceedings” considering an impeached judge because if it did so, “it is difficult to see how the Senate would be functioning ... independently and without assistance or interference.”²⁴ An impeachment proceeding “can never be tied down by ... strict rules”²⁵ because the courts “have no jurisdiction in impeachment proceedings, and no control over their conduct.”²⁶ The Connecticut Supreme Court, while refusing to even consider a claim that a judge standing impeachment was denied due process, nevertheless pointed favorably to a set of procedural safeguards in the House Select Committee that were virtually identical to those given the Governor before this Committee.²⁷

Thus, the Committee provided the Governor procedural rights and safeguards that far exceeded anything the Committee was required to give him. The Committee afforded the Governor these protections because of the gravity of the inquiry and because of the Committee’s desire to have a fair hearing of all relevant and available evidence.

²¹ Ill. Const. 1970, Art. IV, § 14; 6 Record of Proceedings, Sixth Constitutional Convention, 1311 (framers stated that they wished to leave the impeachment inquiry to the “exercise of [legislators’] discretion.”).

²² *Mecham v. Gordon*, 751 P.2d 957, 962 (Ariz. 1988).

²³ *Id.* at 963-64.

²⁴ *U.S. v. Nixon*, 506 U.S. 224, 231 (1993); *see also id.* at 239 (White, Blackmun, JJ., concurring) (“the Senate has very wide discretion in specifying impeachment trial procedures”).

²⁵ *Larsen*, 152 F.3d at 251.

²⁶ *Kinsella*, 475 A.2d at 722 (quoting *Dauphin County Grand Jury Investigation Proceedings (No. 2)*, 332 Pa. 342, 345 (1938)).

²⁷ *Kinsella*, 475 A.2d at 256 n.15.

Burden of Proof. As already explained, the Illinois Constitution places no constraints on a House member's determination of whether "cause" exists to justify impeachment. The question of the burden of proof a House member employs, not answered by the Constitution, is thus left to the individual judgment of the member. In fact, if anything is clear on this issue, it is that the "appropriate" standard for proof is left to an individual member's determination. Speaking of the burden of proof applicable to impeachment trials in the *Senate*, the Congressional Research Service summarized that:

an examination of the constitutional language, history, and the work of legal scholars provides no definitive answer to the question of what standard is to be applied. In the final analysis, the question is one which historically has been answered by individual Senators guided by their own consciences.²⁸

This point is undoubtedly true for the House as well; the Constitutions of both Illinois and the United States are equally silent as to the Senate's and House's evidentiary burden.²⁹

Although it is beyond debate that the appropriate evidentiary burden is up to a member's own judgment, a few comments are appropriate here. First, as stated earlier, impeachment is not a criminal proceeding. An impeached official in Illinois does not lose his life or liberty. He does not even lose his office; at the point an officer is impeached, that officer merely stands accused by the House, awaiting trial in the Senate for possible removal. The official remains in office (barring resignation or some disqualification) unless and until the Senate votes to remove him. However unfavorable it may be to be impeached, there is no official sanction attached to it; its only constitutional effect is to trigger a trial in the Senate on the accusations leveled by the House.

Moreover, just as an individual member is not limited by the Constitution in determining what is necessary to convince him or her that "cause" exists to impeach, likewise the member is not bound by any prior decisions of individual House members. The Governor's counsel makes much of the fact that a Special Investigative Committee conducting an impeachment inquiry into Illinois Supreme Court Justice Heiple, 11 years ago, collectively decided on a standard of proof of "clear and convincing evidence," which is something more than a "preponderance of the evidence" (more likely than not) but less than "beyond a reasonable doubt." It is important to note, first, that this was a decision made only by a ten-person committee. The full House never considered articles of impeachment against Justice

²⁸ Congressional Research Service, Library of Congress, "Standard of Proof in Senate Impeachment Proceedings," Summary.

²⁹ The Governor's counsel agrees that the Constitution imposes no required burden of proof (Tr. 61-62) and that "each and every one" of the Committee members must decide "what's the standard you have to look at." (Tr. 185-186.)

Heiple. Those ten members were justified in reaching their individual judgments, just as each member of this Committee (and potentially each member of the full House) may make theirs. There is no constitutional, statutory, or House rule that governs this individual determination by each member. A member's individual determination is not controlled by another member's decision 11 years ago.

Whatever level of proof is necessary to satisfy a member that "cause" exists to impeach is a personal determination. Each member may consider all of the evidence, attach whatever weight he or she deems appropriate to that evidence, and ultimately reach a conclusion according to the member's individual judgment and conscience.

IV. Evidence Considered By the Committee

As a preliminary note, some of the evidence gathered by the Committee concerned allegations of criminal conduct brought by the United States Attorney for the Northern District of Illinois against Governor Blagojevich and his Chief of Staff, John Harris. On December 9, 2008, Governor Blagojevich was arrested by federal agents at his home on federal corruption charges. The Affidavit of Special Agent Daniel W. Cain, in support of the application for the arrest warrant ("Cain Affidavit"), outlined a number of acts of the Governor that are discussed herein. Based on those allegations, a federal magistrate judge found probable cause to arrest the Governor.³⁰

The allegations in the Cain Affidavit include information from cooperating witnesses, including but not necessarily limited to an individual identified as "Individual A," as well as named individuals who have pleaded guilty to federal criminal charges such as Stuart Levine, Ali Ata, and Joseph Cari. Other information was obtained from the interception of oral and wire communications from October to December, 2008, after the U.S. Attorney received court approval to plant eavesdropping devices in a conference room and in the Governor's office at his campaign headquarters, Friends of Blagojevich, as well as receiving court approval to wiretap the Governor's home telephone. (Ex. 3, Affidavit of Daniel W. Cain ("Aff."), ¶¶ 14-15.) The U.S. Attorney then received a second 30-day authorization to continue its surveillance.³¹ (*Id.*)

³⁰ The Criminal Complaint and Cain Affidavit are found at Exhibit 3 in the Committee Record.

³¹ On December 22, 2008, the Committee heard testimony from John Scully, a former Assistant U.S. Attorney, regarding the rigorous requirements to intercept oral or wire communications. To obtain permission, an Assistant U.S. Attorney and FBI agents must put together an affidavit establishing probable cause that there is evidence that various felonies are being committed. (Tr. 564-567.) This affidavit, along with an application for intercepting oral or wire communications and proposed orders, is reviewed by local FBI attorneys to ensure statutory requirements are met and sufficient facts for probable cause are alleged. Then the same form of review is conducted by FBI headquarters, and then to the Office of Enforcement

A. Attempt to Obtain Benefits in Exchange for Appointment to U.S. Senate Seat.

Senator Barack Obama's election to the presidency left a vacancy in the office of U.S. Senator in the State of Illinois. Under state law, the Governor has the authority to make a temporary appointment to that office. 10 ILCS 5/25-8. The United States alleges that Governor Blagojevich misused this authority by attempting to trade an appointment to the U.S. Senate seat in exchange for personal benefits for himself and his wife, including an appointment to the President-Elect's cabinet or an ambassadorship; his wife's placement on corporate boards or a lucrative position in the private sector; his own placement at a private foundation for a significant salary; or thousands of dollars in campaign contributions. (Aff., ¶ 13(c).) The following information comes from the Cain Affidavit.

On November 3, 2008, the day before the presidential election, the Governor had a conversation regarding the possibility of a U.S. Senate seat vacancy. The Governor told an individual identified as "Deputy Governor A" that if he could not get anything of value for the open Senate seat, then the Governor might appoint himself: "if . . . they're not going to offer anything of any value, then I might just take it." (Aff., ¶ 89.) He later spoke by phone with "Advisor A" about "Senate Candidate 1," an individual who was believed to be supported by the President-Elect for the open seat. The Governor stated that "unless I get something real good for [Senate Candidate 1], s---, I'll just send myself, you know what I'm saying." (Aff., ¶ 90.) The Governor later stated, "I'm going to keep this Senate option for me a real possibility, you know, and therefore I can drive a hard bargain. You hear what I'm saying. And if I don't get what I want and I'm not satisfied with it, then I'll just take the Senate seat myself." Later, the Governor stated that the Senate seat "is a f---ing valuable thing, you just don't give it away for nothing." (*Id.*)

On the day of the election, November 4, 2008, the United States intercepted two conversations, in one of which the Governor agreed that he should start putting together a list of items the Governor would demand in exchange for the Senate appointment, including an ambassadorship, though the

Operation (OEO) of the Criminal Division of the Department of Justice. (Tr. 568-569.) Likewise, the affidavit, application, and proposed order move on a dual track for approval through Assistant U.S. Attorneys and then up to the head of the Criminal Division or even the U.S. Attorney. (Tr. 570.) Thereafter, similar to the FBI process, the documents are sent to the OEO of the Criminal Division of the Department of Justice. The head of OEO must approve the application. (*Id.*) After going through OEO, it is sent to the Deputy Assistant United States Attorney General for their approval. (Tr. 571.) Finally the approved application, affidavit, and proposed order are sent to the Chief Federal Judge of the District. The Chief Judge must enter an order approving the interception. (Tr. 572-573.) Every order grants the government to monitor communications for a 30-day period. To receive another 30-day approval, the process must, once again, start with the U.S. Attorney and FBI offices, then through OEO, then to the Deputy Assistant United States Attorney General, and finally back to the Chief Federal Judge for a ruling. (Tr. 577-579.)

Governor instructed Deputy Governor A that the list “can’t be in writing.” (Aff., ¶ 91.) In a conversation with John Harris later that day, the Governor stated that the “trick ... is how do you conduct indirectly ... a negotiation” for the Senate seat. (Aff., ¶ 92.) Thereafter, the Governor analogized his situation to that of a sports agent shopping a potential free agent to various teams, stating “how much are you offering, [President-Elect]? What are you offering, [Senate Candidate 2]? ... Can always go to ... [Senate Candidate 3].” Later, the Governor stated that he will make a decision on the Senate seat “in good faith . . . but it is not coming for free . . . It’s got to be good stuff for the people of Illinois and good for me.” The Governor stated that his position should be, “[President-Elect], you want it? Fine. But, it’s got to be good or I could always take [the Senate seat].” (*Id.*)

On November 5, 2008, in a series of intercepted conversations, the Governor discussed ambassadorships and an appointment as U.S. Secretary of Health and Human Services, as well as various other federal positions he could obtain in a trade for the Senate appointment. (Aff., ¶¶ 93-94.) The Governor also asked about “the private sector” and whether the President-Elect might be able to “put something together there ... something big.” (Aff., ¶ 94.) When John Harris suggested the Governor might be named the head of a private foundation under the influence or control of the President-Elect, the Governor directed Harris to do “homework” on private foundations “right away” and to “look into all of those.” (*Id.*) The Governor later told Advisor A that “I’ve got this thing and it’s f---ing golden, and, uh, uh, I’m just not giving it up for f---in’ nothing. I’m not gonna do it. And, and I can always use it. I can parachute me there.” (Aff., ¶ 96.)

On November 7, 2008, in two separate conversations, the Governor told various individuals that he was willing to trade the Senate seat to Senate Candidate 1 in exchange for the Health and Human Services cabinet post. (Aff., ¶¶ 98-99.) In a phone conversation with the Governor and “Advisor B,” John Harris explained that “we wanted our ask to be reasonable and rather than ... make it look like some sort of selfish grab for a quid pro quo.” (Aff., ¶ 99.) The Governor noted he was “financially” hurting and “want[ed] to make money.” The three individuals discussed the idea of working a three-way deal for the open Senate seat. Harris noted that the Governor was interested in taking a high-paying position with an organization called “Change to Win,” which was connected to Service Employees International Union (“SEIU”). Harris proposed the “three-way deal,” whereby “SEIU Official” would make the Governor the head of Change to Win, the President-Elect would support that organization’s agenda, and Senate Candidate 1 would be appointed to the open Senate seat. Harris stated that the benefit of this transaction was to create a “buffer so there is no obvious quid pro quo for [Senate

Candidate 1].” The Governor indicated he wanted a salary of \$250,000 to \$300,000. (Aff., ¶ 99.) The following day, the Governor spoke with Harris about getting his wife a position where she could use her “Series 7” securities license, or if SEIU Official could get his wife a position at Change to Win until the Governor’s term ended. (Aff., ¶ 100.)

Over subsequent days, the Governor was overheard discussing many different options for a trade for the U.S. Senate seat. Aside from the options discussed above, the Governor also considered appointing Senate Candidate 1 to the seat in exchange for starting up a new 501(c)(4) organization (a nonprofit organization that engages in political activity) that could be funded by friends of the President-Elect (Aff., ¶¶ 104-114), as well as simply trading the appointment for a sizeable campaign contribution. (Aff., ¶ 115.)

Throughout all of these allegations and intercepted phone conversations, several things are worth noting. First, the Governor repeatedly demonstrated that his decision to appoint a Senator would not be based on the merits of the candidate or on public policy, but rather on how that appointment could benefit him personally. Second, the Governor directed various individuals to conduct inquiries on his behalf to negotiate deals for the Senate appointment, affirmatively setting into action a plot to trade the Senate appointment for something of value to the Governor. Finally, the Governor is overheard making many statements that indicated he was aware that his plan to trade the Senate appointment in return for something of value to him was an illegal endeavor.

Refusal to Appoint an Individual to the Senate Seat Without Consideration in Return. In many intercepted conversations, the Governor is overheard refusing to appoint anyone to the position of Senator without receiving something of value in return. His comments also demonstrate that his decision would be based primarily on his personal benefit, not the interests of the people of this State:

- The Governor stated that his appointment to the Senate seat would be based on three criteria in this order of importance: “our legal situation, our personal situation, my political situation. This decision, like every other one, needs to be based upon on that. Legal. Personal. Political.” (Aff., ¶ 111, Nov. 12, 2008.)
- Referring to an appointment of Senate Candidate 1, believed to be supported by the President-Elect, the Governor said: “For nothing? F--- him [the President-Elect].” The Governor stated, later in that conversation, that absent getting something back, he would not pick Senate Candidate 1. (Aff., ¶ 101(c), Nov. 10, 2008.)
- The Governor said he would appoint “Senate Candidate 4” to the seat “before I just give f---ing [Senate Candidate 1] a f---ing Senate seat and I don’t get anything.” (*Id.*)

- The Governor stated that he would appoint “[Senate Candidate 1] . . . but if they feel like they can do this and not f---ing give me anything . . . then I’ll f---ing go [Senate Candidate 5].” (Aff., ¶ 102, Nov. 10, 2008.)
- The Governor stated he knew the President-Elect wanted “Senate Candidate 1” for the appointment but “they’re not willing to give me anything except appreciation. F--- them.” (Aff., ¶ 104, Nov. 11, 2008.)
- The Governor said of the Senate appointment, “if . . . they’re not going to offer anything of any value, then I might just take it” (Aff., ¶ 89, Nov. 3, 2008) and “unless I get something real good for [Senate Candidate 1], s---, I’ll just send myself.” (Aff., ¶ 90, Nov. 3, 2008.)
- The Governor said his decision on the Senate seat “is not coming for free . . . It’s got to be good stuff for the people of Illinois and good for me.” (Aff., ¶ 92, Nov. 4, 2008.)
- The Governor told “Advisor A” that “I’ve got this thing and it’s f---ing golden, and, uh, uh, I’m just not giving it up for f---in’ nothing. I’m not gonna do it. And, and I can always use it. I can parachute me there.” (Aff., ¶ 96, Nov. 5, 2008.)

Affirmative Direction to Subordinates or Advisors to Put the Plan in Motion. The Governor, at times, gave positive direction to individuals to move forward with a plan to trade the Senate appointment for something of value to the Governor:

- Stating that he might be able to make a deal to appoint “Senate Candidate 5” to the Senate in exchange for contributions to the Governor’s campaign fund, the Governor directed Fundraiser A to contact “Individual D” (whom the Governor believed to be close to Senate Candidate 5). The Governor told Fundraiser A to tell Individual D that before Senate Candidate 5 were chosen, “some of this stuff’s gotta start happening now . . . right now . . . and we gotta see it.” The Governor directed Fundraiser A to tell Individual D if there is “tangible political support (campaign contributions) like you’ve said, start showing us now.” The Governor told Fundraiser A to communicate the “urgency” of the situation to Individual D. (Aff., ¶ 115(b), Dec. 4, 2008.)
- In a phone conversation with SEIU Official—whom the Governor believed to be an emissary for Senate Candidate 1—the Governor and SEIU Official agreed that SEIU Official would talk to Senate Candidate 1 about the possibility of creating a 501(c)(4) organization as part of a deal to appoint Senate Candidate 1 to the vacant seat. SEIU Official agreed to “put that flag up and see where it goes.” (Aff., ¶ 109, Nov. 12, 2008.) Talking later that day with Advisor B, the Governor described the aforementioned conversation with SEIU Official thusly: “I said go back to [Senate Candidate 1], and, and say hey, look, if you still want to be a Senator don’t rule this out and then broach the idea of this 501(c)(4) with her.” (Aff., ¶ 110, Nov. 12, 2008.)
- The Governor directed Advisor A to call Individual A and have Individual A pitch the idea of the 501(c)(4) organization to “President-Elect Advisor.” Advisor A said, “While it’s not said, this is a play to put in play other things.” The Governor responded, “Correct.” (Aff., ¶ 114, Nov. 13, 2008.)
- The Governor and Advisor A agreed that Advisor A would find out who had a close relationship with “Senate Candidate 6” to discuss whether Senate Candidate 6 could help raise money for the

501(c)(4) nonprofit organization that the Governor might head in the future. (Aff., ¶ 105, Nov. 11, 2008.)

- The Governor directed Deputy Governor A to create a list of items the Governor might demand in exchange for a Senate appointment. (Aff., ¶ 91, Nov. 5, 2008.)

The Governor’s Knowledge that his Conduct was Unethical and Illegal. Many statements on intercepted oral and wire communications indicate that the Governor was aware that the plans he was considering with regard to the Senate vacancy were illegal and improper:

- As previously detailed, on December 4, 2008, the Governor directed Fundraiser A to contact Individual D (believed to be a friend of Senate Candidate 5) about appointing Senate Candidate 5 in exchange for campaign contributions. When the Governor directed Fundraiser A to tell Individual D that he wanted to see the campaign contributions made immediately, the Governor instructed Fundraiser A that “you gotta be careful how you express that and assume everybody’s listening, the whole world is listening. You hear me?” When Fundraiser A said that he would contact Individual D by phone, the Governor replied, “I would do it in person. I would not do it on the phone.” (Aff., ¶ 115(b), Dec. 4, 2008.)
- The day after that conversation directing Fundraiser A to talk to Individual D about getting campaign contributions up front in exchange for appointing Senate Candidate 5, the *Chicago Tribune* reported that the Governor had been covertly recorded by federal agents in an ongoing criminal investigation. The Governor spoke that day with Fundraiser A about the *Chicago Tribune* story and directed Fundraiser A to “undo your [Individual D] thing.” Fundraiser A said he would do so. (Aff., ¶ 115(c), Dec. 5, 2008.)
- The Governor informed Advisor B that he would be giving Senate Candidate 5 greater consideration because if he ran for re-election, Senate Candidate 5 would help raise money. The Governor also said that he might “get some (money) up front, maybe” to insure that Senate Candidate 5 would keep his promise. In another conversation, Governor Blagojevich further detailed an approach by an associate of Senate Candidate 5 stating, “We were approached ‘pay to play.’ That, you know, he’d raise me 500 grand. An emissary came. Then the other guy would raise a million, if I made him (Senate Candidate 5) a Senator.” (Aff., ¶ 115(a), Oct. 31, 2008.)
- The Governor noted the delicacy of entering into negotiations to trade a benefit for the vacant Senate seat, stating the “trick ... is how do you conduct indirectly ... a negotiation” for the Senate seat. (Aff., ¶ 92, Nov. 4, 2008.)
- Early on in the timeline, when the Governor directed Deputy Governor A to create a list of items the Governor might demand in exchange for a Senate appointment, he cautioned that the list “can’t be in writing.” (Aff., ¶ 91, Nov. 5, 2008.)
- In discussing the proposed “three-way deal,” whereby SEIU Official would make the Governor the head of Change to Win, the President-Elect would support that organization’s agenda, and Senate Candidate 1 would be appointed to the open Senate seat, John Harris stated he liked this idea because it created a “buffer so there is no obvious quid pro quo for [Senate Candidate 1].” (Aff., ¶ 99, Nov. 7, 2008.)

- In a conversation with the Governor, Advisor B stated that he liked the idea of a new 501(c)(4) organization but preferred that the Governor take a position with Change to Win, because there would be fewer “fingerprints” on Change to Win, given that it already had an existing revenue stream and “you won’t have stories in four years that they bought you off.” (Aff., ¶ 107, Nov. 12, 2008.)
- In a phone conversation including the Governor and “Governor General Counsel,” Governor General Counsel asked, “can [the President-Elect] help in the private sector ... where it wouldn’t be tied to him? ... I mean, so it wouldn’t necessarily look like one for the other.” (Aff., ¶ 101(b), Nov. 10, 2008.)

Finally, it is worth noting that the Governor was overheard on four different occasions stating that he no longer wished to serve in office. He indicated in one conversation that he did not want to be Governor for the next two years. (Aff., ¶ 101(b), Nov. 10, 2008.) He later referred to remaining in office as Governor as having to “suck it up” for two years. (Aff., ¶ 101(c), Nov. 10, 2008.) In an undated conversation, the Governor was overheard expressing frustration at being “stuck” as Governor. (Aff., ¶ 116.) He stated that was also considering appointing himself Senator as a means of avoiding impeachment by the Illinois legislature.³² (Aff., ¶101(a), 116.)

The Committee finds the information contained in Special Agent Cain’s sworn Affidavit, detailed above, to be shocking. This information, largely taken from the Governor’s own words, reveals that the Governor was selling his appointment of a United States Senate seat to the highest bidder. His many statements over the numerous intercepted conversations show that his principal concern in making an appointment to the Senate seat was not the People of the State of Illinois, but rather his own personal agenda.

In response to these allegations, the Governor’s counsel put into evidence a report prepared by President-Elect Obama’s Transition Team. (Ex. 26.) In that report, the President-Elect’s counsel prepared a summary of interactions between members of the President-Elect’s staff and the Governor’s staff regarding the vacant Senate seat. The President-Elect’s counsel concluded that, in his opinion, there were no inappropriate conversations with the Governor or the Governor’s staff. In addition, the Governor’s counsel introduced a DVD and partial written excerpt of a press conference held by

³² Several newspapers had called for the Governor’s impeachment or supported efforts to amend the Constitution to permit recall of elected officials. *See* Tom Houlihan, “Lame Duck Blagojevich Keeps State Paralyzed”, *Southtown Star*, June 22, 2008; Editorial, “Indict or Impeach?”, *Chicago Tribune*, September 29, 2008; Editorial, “Impeach Blagojevich?”, *Chicago Tribune*, June 15, 2008; Editorial, “Impeachment and the Guv”, *Northwest Herald*, June 13, 2008; Editorial, “Removing a Governor”, *Chicago Tribune*, October 28, 2007.

Congressman Jesse Jackson, Jr., in which Congressman Jackson, Jr. indicated that he had not been a part of any attempts to trade an appointment to the U.S. Senate seat for campaign contributions. (Ex. 27.)

In the Committee's opinion, the unsworn information the Governor's counsel introduced does not refute the notion that the Governor was scheming to obtain a personal benefit for the Senate appointment or that he was dispatching individuals to negotiate on his behalf. Whether those subordinates succeeded in their endeavor, or whether they even carried out their directives, does not change the fact that the Governor asked them to negotiate on his behalf.

Moreover, the Governor's counsel does not deny that the Governor made the statements contained in the Cain Affidavit. Instead, counsel repeatedly stated that the contents of the intercepted communications were nothing but "talk" (Tr. 765), and that no action had been taken: "But the fact of the matter is with regard to all of these things and with regard to the Tribune specifically, there is nothing that was done. It's just people jabbering." (Tr. 183.) "That's what it is, unfortunate talk. Talk that was—shouldn't have been made perhaps, but not—not actions." (Tr. 765.) Attempting to characterize the Governor's words, however, is far different from denying that they were, in fact, the Governor's words. Neither the Governor nor his lawyer denied that the Governor said the words attributed to him in the Cain Affidavit.

In any event, these intercepted conversations reveal far more than mere idle "talk." The Governor, on many occasions, put his "words" into action—he directed many individuals to conduct inquiries and negotiations with interested parties, setting in motion (or at least attempting to set in motion) his plan to sell the U.S. Senate seat. When a governor issues a directive to others to act, his words translate into actions. The Committee refuses to write off a myriad of conversations and directives as nothing more than harmless chatter.

Finally, the recorded words of both the Governor and other parties to these conversations reveal that the Governor and others were aware that the plans they were discussing were, at the very least, clearly improper, and quite probably illegal. When the Governor told a fundraiser to contact an individual about getting contributions up front in exchange for a Senate appointment, only to reverse that directive the next day after learning that federal agents were eavesdropping on his conversations, it is hard to reach any conclusion other than the Governor knew his directive was illegal and he was trying to avoid being caught. When the Governor directed that certain action be taken, but that nothing be put