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I N D E X

WITNESS	DX	CX	RDX	RCX
CHAPIN ROSE				
By Mr. Ellis	372			
VICKI THOMAS				
By Mr. Kasper	404		431	
ANDREW MORRISS				
By Ms. Wier	435			
WILLIAM G. HOLLAND				
By Mr. Kasper	455			

1 CHIEF JUSTICE FITZGERALD: Let the record
2 reflect that the House Prosecutor is present in the
3 Chamber. Is the Governor present? Is counsel
4 present on -- on behalf of the Governor?

5 The record will reflect that the Governor
6 has chosen not to appear either in person or by
7 Counsel. We will now resume the presentation
8 of live testimony, continuing with
9 the testimony of Representative Chapin Rose. The
10 Sergeant-at-Arms will please escort Representative
11 Rose to the podium.

12 President Cullerton?

13 PRESIDENT CULLERTON: Thank you, Mr. Chief
14 Justice. Your Honor, the Democratic Caucus does
15 not have any questions for Representative Rose
16 because the documents that he has testified to are
17 part of the House record and the record of this
18 proceeding. The Caucus and its Members have
19 reviewed these documents and, at this time, feel
20 that Representative Rose can add no more personal
21 knowledge to these documents than any Member of
22 the Caucus.

23 And we thank him for his summaries and his
24 time. We would, of course, request that

1 Representative Rose remain available to be recalled
2 for possible further questions by the Senate.

3 CHIEF JUSTICE FITZGERALD: Senator Radogno?
4 Excuse me. Madam Secretary, have there been
5 questions submitted?

6 MADAM SECRETARY: Yes. A question list has
7 been received from the Republican Caucus.

8 CHIEF JUSTICE FITZGERALD: Senator Radogno
9 seeking recognition.

10 SENATOR RADOGNO: Yes, Mr. Justice. I have an
11 inquiry for the Prosecutor.

12 CHIEF JUSTICE FITZGERALD: Very well.

13 SENATOR RADOGNO: Thank you. Question is, are
14 you intending to call all of the witnesses that we
15 discussed on the first day, or have you altered your
16 witness list at all, or who you intend to call?

17 HOUSE PROSECUTOR KASPER: Thank you, Mr. Chief
18 Justice, Senator Radogno. I believe that there has
19 been, as of the moment that we speak, one
20 alteration from the list for today that we provided
21 to you when we commenced, and that is
22 Representative Howard will not be called as a
23 witness. And in terms of any additional witnesses
24 for today, I can assure you that Vicki Thomas and

1 Professor Morriss and Auditor General Holland will
2 be called, and I believe that the final decision
3 regarding our last witness, Representative Lang,
4 has not yet been made.

5 SENATOR RADOGNO: I would just like to make the
6 observation that we started out with 13 witnesses.
7 We were down to eight after Monday. Now we're down
8 to seven, potentially down to six, and I think that
9 it's important, as we undertake one of the most
10 important and historic things that's gone on in
11 Illinois in a long time, that we all have as much
12 knowledge possible about all of the events that
13 went on and that we should have the opportunity to
14 hear the witnesses that were initially slated to
15 appear and have the opportunity to question those
16 individuals.

17 It's important to make sure that the
18 people of Illinois see that this proceeding is not
19 being rushed, that we're being thorough, that every
20 single Member has every opportunity to have their
21 questions answered. It's not only important to the
22 people of Illinois, but to the Governor as well.
23 And you know, what -- regardless of one's opinion
24 about him, he is entitled to a fair and thorough

1 process, and I think the only way to achieve that
2 is by having the witnesses appear that we've
3 talked about having to appear.

4 HOUSE PROSECUTOR KASPER: Thank you, Senator.
5 I can assure you that we, for the House Prosecutor,
6 are not in any way attempting to rush through this
7 matter. The elimination of some of the witnesses
8 resulted from the fact that the testimony that they
9 were going to give was covered by another witness,
10 particularly Special Agent Cain, who testified
11 yesterday. That -- in order to avoid duplication,
12 we eliminated some witnesses, and -- and we felt
13 that was important because the witness that actually
14 testified had personal knowledge of the events.
15 And we're trying to limit the witnesses as best we
16 can to people who have firsthand, personal
17 knowledge of exactly what happened.

18 The -- the House Members that have been
19 eliminated are people who were summarizing the
20 evidence, and we're sensitive to letting the
21 evidence speak for itself that we're presenting
22 before the Senate, whether it's contained in the
23 record or through a live witness. And we're trying
24 to have summary witness, such as Representative

1 Rose, only when it's absolutely necessary.

2 And so that was the purpose -- the purpose
3 of that. We're trying to limit our witnesses to
4 people who have actual firsthand knowledge of the
5 facts that are presented in the case.

6 SENATOR RADOGNO: My final question for you is,
7 what was the subject matter of Representative
8 Howard's testimony and who should we ask if we have
9 questions about that?

10 HOUSE PROSECUTOR KASPER: Thank you, Senator.
11 I believe that it's fair to characterize
12 Representative Howard's testimony would have been
13 along the lines of what our perceived and her
14 perceived and the House Committee's perceived
15 injury to the State as a result of the actions and
16 the facts that have come forth in this case. So in
17 other words, she was going to testify about
18 evidence that's already in the record, documents
19 that stand for the proposition about our -- as
20 Mr. Ellis mentioned in his opening, the fact that
21 our credit rating has been reduced, the legislation
22 pending in Washington, the security revocation of
23 the Governor's status by the federal government,
24 things of that nature.

1 Those documents are in the record, and so,
2 again, rather than have someone give you their
3 characterization of that evidence, we thought it
4 was more appropriate for you to look at that
5 evidence yourselves and form your own
6 characterizations.

7 SENATOR RADOGNO: Well, the concern is, you did
8 mention that part of it will be her perception,
9 which would be firsthand knowledge, but if we have
10 questions and we are not able to have, for example,
11 the bond houses as we talked about earlier that
12 actually said the credit rating was lowered due to
13 the Governor's legal troubles, where do we go with
14 those questions?

15 HOUSE PROSECUTOR KASPER: I think that probably
16 the best and really the only place that you can go
17 for those answers is in the documents that are
18 contained in the record. Why the bond houses
19 reduced our credit rating is set forth in those
20 documents, and Representative Howard's testimony
21 would have only given you her opinion about that
22 fact, whereas, we thought it was more appropriate
23 for you to form your own opinions individually
24 about those facts rather than have her opinions

1 influence your decisions.

2 CHIEF JUSTICE FITZGERALD: The Chair recognizes
3 President Cullerton.

4 PRESIDENT CULLERTON: Thank you, Mr. Chief
5 Justice. I wanted to just remind the Senate about
6 some of the rules that we are operating under
7 because there seems to be a little bit of
8 confusion, specifically Rule 8(b). This rule says
9 that a party cannot seek to take out evidence found
10 in the House Impeachment Record. The House
11 Impeachment Record are the materials that the House
12 relied upon to adopt its Article of Impeachment
13 against the Governor.

14 The rule does not require Senators to
15 accept that evidence as believable. Senators are
16 free to disregard it unless the House Prosecutor
17 proves otherwise to the satisfaction of each
18 Senator. Rule 14 specifically allows the Governor
19 to attack the sufficiency of the Article of
20 Impeachment and the weight and credibility that
21 should be given that evidence against him. He has
22 chosen not do that.

23 And we should also clarify Rule 15(f) that
24 says the Senate will not issue subpoenas to compel

1 testimony from persons identified by the U.S.
2 Attorney so as not to interfere with his criminal
3 investigation. The rule does not prevent the
4 Governor from calling witnesses who would
5 voluntarily testify on his behalf, especially
6 himself. So I think it's helpful to remind
7 ourselves of these rules and how they apply to the
8 fairness of this trial.

9 CHIEF JUSTICE FITZGERALD: Senator Radogno?

10 SENATOR RADOGNO: Thank you, President
11 Cullerton. I think you made the point, though,
12 when you talked about the rule that we're not
13 required to accept the House record. And the
14 question is, if we have questions about it, where
15 do we go? I mean, we had the witnesses here so
16 that they could potentially answer questions, and
17 now we are not going to have that opportunity.

18 CHIEF JUSTICE FITZGERALD: President Cullerton?

19 PRESIDENT CULLERTON: Well, I would just point
20 out that the -- we sit as judges and jurors. It's
21 the obligation of the House Prosecutor to present
22 their case. The materials are online. They're
23 available for you to read and for us to read, and
24 they've been a public record for some time. If the

1 Prosecutor chooses to highlight certain evidence,
2 that's up to them. They put on their case. We
3 do not control that.

4 CHIEF JUSTICE FITZGERALD: Senator Radogno?

5 SENATOR RADOGNO: Thank you. I appreciate the
6 explanation, but then I would go back to the House
7 Prosecutor and ask you are you going to present
8 evidence? And if we have questions about it, who
9 do we go to since we're not required to accept the
10 record on its face?

11 HOUSE PROSECUTOR KASPER: Senator, I suppose
12 the best answer that I can give you is that each of
13 the witnesses that we are presenting, you're free
14 to submit as many questions as you'd like as you've
15 done with this witness and all the others and all
16 the others that will come throughout the case.
17 If you have questions about matters that are not
18 covered by one of the witnesses, I suppose that you
19 could ask one of the witnesses that question if they
20 haven't answered it. It may be beyond the scope of
21 their own personal knowledge, which is the risk
22 that any lawyer runs in any case that he has.

23 And so in that regard, where we have
24 chosen not to provide witnesses, we believe we've

1 done so with the very best belief that the
2 documents in the record speak for themselves, and
3 we're hesitant to call someone who doesn't have
4 firsthand knowledge. So, for example, why a
5 investment house may or may not have reduced our
6 credit rating is something that is beyond the scope
7 of Representative Howard's personal knowledge, and
8 so that's why we didn't call her for that purpose.

9 CHIEF JUSTICE FITZGERALD: Senator Radogno?

10 SENATOR RADOGNO: Thank you for the
11 explanation. We would request a caucus in order to
12 reformulate our questions for the witnesses that we
13 apparently will be hearing, including
14 Representative Rose, for 45 minutes.

15 CHIEF JUSTICE FITZGERALD: How much time do you
16 need, Senator? How much time do you need, Senator?

17 SENATOR RADOGNO: 45 minutes, please.

18 CHIEF JUSTICE FITZGERALD: Senator Cullerton?

19 PRESIDENT CULLERTON: Well, we normally agree
20 to requests for caucuses, but we would point out
21 that we specifically had this witness come back
22 this morning because of your request to review the
23 record, prepare questions for him. He's here. The
24 questions that you prepared apparently have been

1 submitted. Our discussion about other witnesses
2 is -- not being called is something for the future.

3 Right now we've got the witness here.
4 You've submitted questions. I don't really
5 understand why there would be a need for another
6 caucus, certainly not 45 minutes.

7 CHIEF JUSTICE FITZGERALD: Would you try with
8 a half an hour, Senator?

9 SENATOR RADOGNO: Yes.

10 CHIEF JUSTICE FITZGERALD: The Senate will
11 stand in recess to the call of the Chair during the
12 caucuses of one-half hour from now, which
13 would bring us to 10:15.

14 (Whereupon, a short recess
15 was taken.)

16 CHIEF JUSTICE FITZGERALD: The Senate will come
17 back to order. Chair recognizes the House
18 Prosecutor.

19 For what purpose do you rise?

20 HOUSE PROSECUTOR ELLIS: Thank you, Mr. Chief
21 Justice. In light of the exchange that we had,
22 your Honor, we understand that there are some
23 Members who are interested in asking some questions
24 in the record that may not be discussed by a live

1 witness, and we would seek leave of the Body to --

2 CHIEF JUSTICE FITZGERALD: Is this in the form
3 of a motion?

4 HOUSE PROSECUTOR ELLIS: Yes, sir. I -- we
5 would move -- we would orally move that at the
6 close of our witnesses today that we would be
7 permitted to collect any questions from the
8 Senators about the record and do our best to try
9 to answer those questions, direct them to the
10 relevant passages or answer them ourselves.

11 CHIEF JUSTICE FITZGERALD: You've all heard the
12 House Prosecutor's motion. Is there leave?

13 A VOICE: Leave.

14 CHIEF JUSTICE FITZGERALD: Hearing no
15 objection, I'm accepting the fact that there's
16 leave. The motion is adopted. I'm sorry. Before
17 we do that, recognition to Senator Radogno.

18 SENATOR RADOGNO: Thank you, Chief Justice.
19 First of all, I just wanted to express our
20 appreciation for the caucus and the time to
21 reformulate our questions for Representative Rose.
22 I would like to put on the record, however, that
23 our caucus would like to have heard from all of the
24 witnesses that were on the amended witness list.

1 And we would ask that if there's other changes,
2 that you'd notify us as soon as possible so we have
3 the opportunity to formulate questions for the
4 witnesses that we will be hearing.

5 We do appreciate the motion that you just
6 made. However, I'd just point out that it sounds
7 like then you would be answering the questions if
8 that occurs, Mr. Prosecutor?

9 HOUSE PROSECUTOR ELLIS: Well, Senator, I think
10 that's correct, if there's no live witness. What
11 we could do, I mean, you know, we're not looking
12 to testify, but we would certainly, at a minimum,
13 want to direct you to where we think you can find
14 the answer and certainly assist in any way with
15 helping you get the answer. We want you to have
16 the answers to the questions.

17 SENATOR RADOGNO: All right. And I'd just note
18 that, you know, obviously, you're not a sworn
19 witness as you've noted as well. We appreciate
20 the opportunity, though, and hope that our
21 concerns have been noted. Thank you.

22 HOUSE PROSECUTOR ELLIS: Thank you, Senator.

23 CHIEF JUSTICE FITZGERALD: That was not an
24 objection to the motion, was it, Senator? Thank

1 you. The record will reflect it was not.

2 I have a series of questions from the
3 Republican Caucus concerning Representative Rose's
4 testimony. And we'll have to call him back in.
5 The Sergeant-at-Arms is directed to escort
6 Representative Rose back into the Chambers and
7 to the podium.

8 You may be seated, Representative Rose.

9 The first question on the list directed to
10 Representative Rose from Senator Frank Watson:
11 Isn't it true that Ali Ata testified before the --
12 before Ata became executive director of the
13 Illinois Finance Authority that Tony Rezko sent him
14 to talk to John Filan, the Governor's budget
15 director, and Filan told Ata that Filan had hired
16 all the outside advisors for the Illinois Finance
17 Authority and that Rezko told Ata that Filan would
18 be trying to take over the agency, but that Ata
19 should report directly to Rezko.

20 THE WITNESS: Yes, Senator Watson. I believe
21 that's a good characterization of those events.
22 The only quibble I would have is I'm not sure that
23 Tony Rezko sent him to talk to John Filan. I think
24 Mr. Rezko -- I think Mr. Ata's testimony was that

1 Mr. -- someone from the administration would
2 contact him about a meeting, and then that meeting
3 subsequently was with Mr. Filan, but I think in
4 general, that's fair. Thank you.

5 CHIEF JUSTICE FITZGERALD: Second question is
6 also from Senator Frank Watson. Isn't it true that
7 Ali Ata testified under oath that Ata was told that
8 there was a select group of advisors referred to as
9 the kitchen cabinet? Who did Ata identify in his
10 testimony as being members of that kitchen cabinet?

11 THE WITNESS: Senator Watson, I do recall that
12 conversation being in the testimony. Unfortunately
13 I don't have the specific page cite in front of me,
14 but I -- my memory serves that it was Mr. Kelly,
15 Mr. Rezko. I believe at that point in time, they
16 may have mentioned Mr. Jay Hoffman. I cannot recall
17 if they mentioned anyone else. If someone would
18 want to provide me with the cite of the testimony,
19 I'd be happy to read the specific quotation.

20 CHIEF JUSTICE FITZGERALD: The next question
21 comes from Senator Dave Syverson. As you are
22 aware, your exhibits include the credit rating
23 report on the State from Standard & Poor's and a
24 Crain's news article on both Standard & Poor's

1 report and the downgrading of the State by Fitch
2 Ratings. The two credit rating agencies cite not
3 just the Governor's arrest, but also the State's
4 budget hole, which Standard & Poor's called the
5 State's growing budgetary shortfall, don't they?

6 THE WITNESS: Senator, I would first point out
7 that in preparation for my testimony yesterday, I
8 reread and reviewed extensively the two transcripts
9 of Ata and Cari as well as the two plea agreements
10 of Ata and Cari, so my memory on this goes back to
11 my service on the Impeachment Committee itself,
12 which now is approximately a month or so old.
13 That's my memory of it. I -- that's my memory of
14 it. I stand to be somewhat corrected, but I think
15 that's a -- that's correct. But, again, my -- my
16 knowledge is a little bit dated at this point.

17 CHIEF JUSTICE FITZGERALD: The follow-up
18 question, isn't it true that removal of the
19 Governor from office will not at all solve the
20 budgetary shortfall, if you're able to answer that?

21 THE WITNESS: I -- I mean, that's sort of
22 outside the purpose of why I'm here, but I
23 would think that that would make some sense.

24 CHIEF JUSTICE FITZGERALD: Senator Dave

1 Syverson, a second question: Isn't it true that
2 our downgraded credit rating will require higher
3 interest payments on both bonding we do in the
4 future and -- for capital and future short-term
5 borrowing to pay our Medicare providers and that
6 those huge -- or higher interest rates will cost
7 taxpayers millions of dollars over the years to come?

8 THE WITNESS: Again, Senator, my knowledge is
9 somewhat dated at this point. I did review those
10 documents when they came in as part of the Committee.
11 I would -- my memory of that is that there was a
12 direct immediate cost in that the interest
13 rate that we paid on the short-term debt note that
14 was floated in December as a State, the interest rate
15 went up and we paid millions of dollars more in
16 interest - it was in the 20 million range
17 as my memory serves. I can't give you the specific
18 amount.

19 There was also an insinuation made in the
20 letter that this could potentially affect future --
21 not only future debt ratings, but also our current
22 debt. But I don't think the letter was explicit
23 as to what exact consequences there would be
24 beyond the one I just mentioned.

1 CHIEF JUSTICE FITZGERALD: From Senator Chris
2 Lauzen: You are not an expert in credit ratings
3 and borrowing. Wouldn't it be appropriate for this
4 impeachment tribunal, to completely understand this
5 Governor's overall effect on our credit ratings and
6 borrowing, to have an expert in these
7 matters testify before us?

8 THE WITNESS: Sure, Senator, it makes sense to
9 me, and again, this is outside of the scope of why
10 I was asked to come here by the counsel. Thank you.

11 CHIEF JUSTICE FITZGERALD: Senator Tim Bivins:
12 Wouldn't it be appropriate for this impeachment
13 tribunal to have Treasurer Giannoulias personally
14 tell us about the effects on our credit ratings and
15 borrowing?

16 THE WITNESS: Senator, and I don't know where
17 you're sitting at these days. I apologize. There
18 you are. I appreciate your question because I was
19 the one who asked on the record in the Committee
20 to have Mr. Giannoulias send us a letter in the
21 first place, so that was my question. So I would
22 answer the same way I asked -- answered
23 Representative -- or, excuse me, Senator Lauzen's
24 question, yeah, I think that would make some sense.

25 CHIEF JUSTICE FITZGERALD: From Senator Tim

1 Bivins: Wouldn't it appropriate for this
2 impeachment tribunal -- I'm sorry.

3 Next question is from Senators John
4 Millner and Tim Bivins. The Governor does not
5 currently have security clearance from the
6 Department of Homeland Security, correct? Why?

7 THE WITNESS: Again, this goes back to our
8 conversations a month ago in the Committee, but my
9 understanding of it was that it was revoked because
10 of his arrest, and that's my understanding from a
11 month ago.

12 CHIEF JUSTICE FITZGERALD: And the second
13 question: As you know, before the Department of
14 Homeland Security revoked Governor Blagojevich's
15 security clearance, he was privy to classified
16 information about the welfare of the State and the
17 people therein. Can Governor Blagojevich
18 adequately access this same information without the
19 security clearances?

20 THE WITNESS: Senator Millner, Senator
21 Bivins, first let me state that I don't know what
22 he was privy to. I can only assume that that's
23 what he was privy to. I think that would be a safe
24 assumption. But that -- yes, I mean, I think this

1 is a big problem for the people of Illinois.

2 CHIEF JUSTICE FITZGERALD: Senator Tim Bivins,
3 again: How is the State of Illinois now receiving
4 its classified information?

5 THE WITNESS: Again, I have no firsthand
6 knowledge of that, and it wasn't why I was asked
7 to be here. But having reviewed some of the
8 documents that came in, I think that they've
9 appointed other officials within the administration
10 to receive such information, but I don't -- I would
11 refer you to somebody who would have better
12 knowledge than I do on that.

13 CHIEF JUSTICE FITZGERALD: Next from Senator
14 Dave Luechtefeld: If a natural or manmade disaster
15 was to occur while Governor Blagojevich's security
16 clearances were revoked, who would act as the
17 liaison to the federal government? Is this
18 individual duly elected by the people of the State
19 of Illinois?

20 THE WITNESS: I simply don't know the answer to
21 that question. It's beyond why I was asked to be here.

22 CHIEF JUSTICE FITZGERALD: From Senator Dave
23 Syverson: The Governor has signed a handful of
24 pieces of legislation since his arrest. Did the

1 House Impeachment Special Investigation Committee
2 thoroughly scrutinize and research that legislation
3 against the Friends of Blagojevich filings with the
4 State Board of Elections in an effort to discover
5 the possibility of a pay-to-play or any other type
6 of improper or illegal activity? Why or why not?

7 THE WITNESS: I can't speak for the entire
8 Committee, but I -- there is a little bit of an
9 issue in that the filing deadlines for documents,
10 contributions, with the State Board of Election was
11 not until January and after what would have been
12 the actual impeachment vote. As I think you know,
13 the Committee was also prohibited essentially by
14 the federal government from delving too far afield
15 into the topics of pay-to-play because they were
16 the subject of the ongoing criminal investigation.

17 I know at some point in time that some
18 documents were tendered via subpoena to the
19 Committee from attorneys for Friends of
20 Blagojevich, although, my memory serves, in that
21 letter, that they said that that was an incomplete
22 listing because many of the documents had been
23 taken by the federal government as part of their
24 investigation. Other than that, I can't really

1 answer your question.

2 CHIEF JUSTICE FITZGERALD: From Senator Matt
3 Murphy: Can any piece of legislation on Governor
4 Blagojevich's desk from this point forward be
5 signed into law or vetoed without accusation of
6 impropriety being made?

7 THE WITNESS: Senator Murphy. I don't see you.
8 I'm sorry. Oh, there you are. I think you're
9 asking me to draw a conclusion that's beyond my
10 purpose here today, quite frankly. But personally,
11 I think having watched different media accounts and
12 other things that have happened since then, you've
13 seen that question raised numerous times. And
14 other than that, I really do think that's outside
15 my scope today, and that's really an opinion of
16 mine. But -- I would encourage all of you to make
17 up your own minds.

18 CHIEF JUSTICE FITZGERALD: Second question from
19 Senator Matt Murphy: Can funds be released or
20 contracts be signed by the Governor's office
21 without appearance of impropriety being made?

22 THE WITNESS: I would simply repeat what I said
23 a minute ago and, if I could just leave it at that,
24 in the interest of time.

25 CHIEF JUSTICE FITZGERALD: Senator Dave

1 Luechtefeld: As an investigator on the House
2 Impeachment Special Investigation Committee, can
3 Governor Blagojevich ever make any appointment for
4 agency board seats, commissions or any other
5 appointment without a cloud of suspicion hanging
6 over the appointment and the appointee?

7 THE WITNESS: Senator Luechtefeld, I -- this is
8 very -- my answer would be very similar to that of
9 Senator Murphy's in that I think that each person
10 will have to draw their own conclusion. But my
11 personal conclusion would be that yes, everything
12 would be highly suspect at this point.

13 CHIEF JUSTICE FITZGERALD: Thank you. We ask
14 the House Prosecutor if he wishes to have any
15 redirect examination?

16 HOUSE PROSECUTOR KASPER: Thank you, Mr. Chief
17 Justice. The Prosecutor has no further questions.

18 CHIEF JUSTICE FITZGERALD: Representative
19 Murphy, please, you wanted to communicate
20 something? Did you have something that you wanted
21 to share with us?

22 THE WITNESS: Representative Rose.

23 CHIEF JUSTICE FITZGERALD: I'm sorry.

24 THE WITNESS: Yeah, if I may. I wanted to

1 clarify one thing that I stated yesterday, that
2 Mr. Cari -- I think there was a question that was
3 asked about why Mr. Cari decided to help with the
4 fundraiser, and his -- and I think I said something
5 to the effect that his law firm does business with
6 the State. I think the accurate assessment of that
7 would have been clients of his law firm had business
8 with the State. I just wanted to make that
9 clear to this Body.

10 CHIEF JUSTICE FITZGERALD: There appear to be
11 another list of questions, entitled questions for
12 Representative Chapin Rose. It's the first list.

13 From Senator Larry Bomke: Is it true that
14 Ali Ata has testified under oath in federal court
15 to raising campaign contributions first for
16 Candidate Blagojevich in 2002 and later making a
17 \$25,000 campaign contribution to Governor
18 Blagojevich in 2003 with the expectation that the
19 contributions would obtain a board appointment for
20 him from Governor Blagojevich?

21 THE WITNESS: Senator Bomke, I don't believe
22 that he ever testified as to an expectation, per
23 se, but certainly throughout the time period that
24 contributions were being made, jobs were being

1 discussed.

2 CHIEF JUSTICE FITZGERALD: Senator Carole
3 Pankau: Are you aware that by January 2005, a
4 Chicago newspaper reported that Chicago Alderman
5 Dick Mell and Governor Blagojevich's father-in-law
6 made similar allegations that Governor Blagojevich
7 traded appointments for contributions to -- of at
8 least \$25,000?

9 THE WITNESS: Senator Pankau, I'm not clear as
10 to what newspaper article you're referring to. I
11 know that our Committee took in a number of
12 newspaper articles. There was one something about
13 a \$25,000 Club. To be honest with you, I
14 don't know -- I can't remember what paper that was.
15 If that's the one you're referring to, that was an
16 article that discussed a \$25,000 Club which -- in
17 the context of appointments. But again, without
18 knowing exactly what article you're talking to, I'm
19 somewhat at a loss for words.

20 CHIEF JUSTICE FITZGERALD: Senator Kirk
21 Dillard: Is it true that Ali Ata testified that
22 his \$25,000 check for the 2002 campaign
23 contribution to Candidate Blagojevich was laid on
24 the table in front of Candidate Blagojevich and

1 Candidate Blagojevich asked if Ata had identified
2 business opportunities should Candidate Blagojevich
3 be elected?

4 THE WITNESS: Senator Dillard, that
5 conversation is substantially such. The only
6 correction I'd make is that I don't think there was
7 a discussion of should he be elected, but he said
8 has he identified -- something to the effect of has
9 he identified positions within the administration,
10 and at that point as a candidate, a potential
11 administration.

12 CHIEF JUSTICE FITZGERALD: Senator Tim Bivins:
13 Is it true that Ali Ata testified in -- that in 2003,
14 an appointment to the Illinois Finance Authority was
15 discussed with him along with the need to make
16 another contribution of at least \$25,000 to
17 Governor Blagojevich?

18 THE WITNESS: My understanding and my reading
19 of that is that that was not the same conversation
20 that Mr. Ata had a conversation about the Illinois
21 Finance Authority in 2003, and then a short time
22 thereafter, Mr. Rezko contacted him and asked for a
23 \$50,000 campaign contribution to which Mr. Ata
24 indicated he could only give 25.

1 CHIEF JUSTICE FITZGERALD: Senator John O.
2 Jones: Is it true that Ali Ata testified that
3 after making another \$25,000 contribution to
4 Governor Blagojevich in 2003, he was -- directly by
5 Governor Blagojevich that he, Blagojevich, was
6 aware of the new contribution and told Ata any
7 position he took with the administration had better
8 be one where he could make some money?

9 THE WITNESS: Senator Jones, I believe that is
10 accurate.

11 CHIEF JUSTICE FITZGERALD: Senator Gary Dahl:
12 Is it true that Ata was appointed as executive
13 director of the Illinois Finance Authority by
14 Governor Blagojevich near the end of 2003 with a
15 salary of \$127,000?

16 THE WITNESS: Senator Dahl, the authority was
17 not actually in effect until January 1st of 2004.
18 The \$127,000 figure was what was stated in the plea
19 agreement, but it was clear that he was working in
20 a -- in sort of an advisory, unofficial capacity,
21 helping get it up and running through the end of 2003
22 when it effectively went into effect on January 1st,
23 2004. I -- there is testimony, I believe it's in the
24 cross - I could be wrong on that - to

1 the effect that he was then at some point in time
2 given a retroactive compensation package for his
3 work earlier in 2003, but I would refer you to that
4 to be specifically sure.

5 CHIEF JUSTICE FITZGERALD: Senator Larry Bomke:
6 Isn't it true that Joseph Cari testified under oath
7 that he was later told there's a plan being put in
8 place by persons identified by Governor Blagojevich
9 as trusted associates, which plan was, in fact,
10 to give contracts, legal work, investment banking
11 work and consulting work to persons who helped the
12 administration, and in turn, those persons would be
13 solicited for campaign contributions?

14 THE WITNESS: Yes, Senator.

15 CHIEF JUSTICE FITZGERALD: Senator Tim Bivins:
16 Isn't it true that Joseph Cari testified in federal
17 court that Governor Blagojevich, then known as
18 Public Official A, through the same trusted
19 associates, was selected -- was selecting
20 consultants for private equity funds seeking State
21 pension fund business as part of a political
22 fundraising strategy?

23 THE WITNESS: Senator Bivins, I believe that's
24 a fair characterization. I would only note that at

1 the point in time where they were -- where Mr. Cari
2 was testifying in court, they had identified Public
3 Official A as Governor Blagojevich and his campaign
4 fund. Public Official A was part and parcel of the
5 plea agreement, the preceding plea agreement, but I
6 think that's a fair characterization.

7 CHIEF JUSTICE FITZGERALD: From Senator Frank
8 Watson: Did you testify that Mr. Cari's law firm
9 was doing work for the State of Illinois during the
10 Blagojevich administration? If so, do you know
11 when that started?

12 THE WITNESS: Senator Watson, I believe I just
13 clarified that. And I think I've clarified that.

14 CHIEF JUSTICE FITZGERALD: Senator Larry Bomke:
15 Is Joseph Cari's testimony in U.S. v. Rezko, he
16 states that Chris Kelly informed him that the
17 Governor needed his help to raise money on a
18 national level and that it would be good for the
19 law firm or private equity firm. He also stated
20 that he could have whatever he wanted.

21 Do you understand this to mean that Cari
22 would receive valuable State assets in return for
23 assisting Blagojevich with national funding
24 efforts? Do you have any reason to doubt that

1 Kelly was acting on behalf of the Governor when he
2 made these -- this statement?

3 THE WITNESS: Senator Bomke, as to the first
4 question, that's the exact inference that I drew
5 from it, and to the second, I have -- I would answer no.

6 CHIEF JUSTICE FITZGERALD: From Senator Frank
7 Watson: You mentioned Chris Kelly on direct. Is
8 this the same Chris Kelly who just pled guilty in
9 federal court to federal criminal charges?

10 THE WITNESS: Senator Watson, as you can
11 imagine, we've been a little bit busy, but -- and I
12 haven't reviewed the actual plea of Mr. Kelly, but
13 it's my understanding they're one in the same.

14 CHIEF JUSTICE FITZGERALD: Senator Brad
15 Burzynski. And it's three parts, and I'll read the
16 three parts for you, sir: Mr. Cari's plea
17 agreement pleading guilty for extortion was dated
18 September 15th, 2005; isn't that correct? The
19 extortion was related to selecting -- go ahead.

20 THE WITNESS: I'm sorry. May I get the
21 document out, Mr. Justice? Thank you.

22 CHIEF JUSTICE FITZGERALD: Go ahead.

23 THE WITNESS: Okay. Go ahead, sir.

24 CHIEF JUSTICE FITZGERALD: Do you want me --

1 you don't want me to repeat the question, do you?

2 THE WITNESS: No. Go ahead, sir.

3 CHIEF JUSTICE FITZGERALD: Two, the extortion
4 was related to selecting consultants in 2004 for
5 the Illinois public pension funds, wasn't it? So
6 this 2004 extortion was known in September 2005 at
7 the time of the plea agreement; isn't that correct?

8 THE WITNESS: As to the first question, it was
9 September 15th, 2005. That is in your packet. As
10 to the second question, the extortion that he --
11 the attempted extortion that he acted upon was
12 related to the Illinois public pension funds. And
13 in fact, if you read the entirety of the document,
14 there is a substantial factual basis that outlines
15 the attempted extortion that becomes the substance
16 and basis of the plea agreement.

17 I don't know where you went, Senator
18 Burzynski. There you are.

19 CHIEF JUSTICE FITZGERALD: From Senator Brad
20 Burzynski again. Mr. Cain's plea -- Mr. Cari's
21 plea agreement pleading guilty for extortion was
22 dated September 15th, 2005; isn't that correct?
23 The extortion was related --

24 THE WITNESS: I think that's the one we just

1 did, Mr. Chief Justice.

2 CHIEF JUSTICE FITZGERALD: Okay. I'm sure
3 you're right.

4 Senator Larry Bomke: To the best of your
5 knowledge, the Governor has no statutory authority
6 to influence or otherwise direct the action or
7 votes of the Planning Board, does he? So would
8 it be fair to say that any attempt by the -- by
9 Governor Blagojevich to do so would be outside his
10 statutory authority?

11 THE WITNESS: Senator Bomke, I assume you're
12 referring to the Health Facility Planning Board.
13 I -- if that's what you're referring to, that's my
14 understanding, yes, and then that would be outside
15 of his authority. That's my opinion, but again,
16 you all are free to draw whatever conclusions and
17 opinions you would like.

18 CHIEF JUSTICE FITZGERALD: From Senator Paul
19 {sic} Althoff: Are the entries in Illinois who
20 wish to build a health facility required to obtain
21 a certificate of need, a CON, from the Planning
22 Board prior to construction?

23 THE WITNESS: Yes, they are for many types of
24 facilities. There are probably some that are

1 exempted, but in many cases, they must.

2 CHIEF JUSTICE FITZGERALD: Is it also proper to
3 infer that prosecution {sic} health facilities and
4 their clients, the taxpayers of the State of
5 Illinois, have a vested interest in decisions made
6 by the Planning Board?

7 THE WITNESS: Yes, I think that's fair.

8 CHIEF JUSTICE FITZGERALD: Is it fair -- from
9 Senator Carole Pankau: Is it fair to say that in
10 your mind as well as others that Mr. Rezko was a
11 friend, advisor and close confidant of the
12 Governor?

13 THE WITNESS: Yes.

14 CHIEF JUSTICE FITZGERALD: Okay. And that
15 Mr. Rezko acted on the Governor's behalf?

16 THE WITNESS: That's what I took from the
17 testimony, yes.

18 CHIEF JUSTICE FITZGERALD: Is it also true that
19 in United States v. Rezko, Stuart Levine testified that
20 Tony Rezko directly influenced the decisions of the
21 Planning Board to award a CON in exchange for a
22 political contribution to Friends of Blagojevich?

23 THE WITNESS: Senator Pankau, the -- there's
24 only a very, very small part of the Ata testimony,

1 two, three pages, four most, that deals with the
2 Health Facilities Planning Board. That was not why
3 I was called here as a witness, so I have not gone
4 back and thoroughly reviewed those documents. I
5 know that they -- I believe that that was in -- the
6 sum and substance of your question was primarily
7 contained in the affidavit of Special Agent Cain.

8 I read that at the time that we were
9 considering it, and I believe he was here
10 yesterday. So rather than answer your question and
11 get something wrong, I'd probably refer you to
12 what -- to other -- to his testimony, but I don't
13 know.

14 CHIEF JUSTICE FITZGERALD: I think this is the
15 next one. Did Levine also testify that in 2003,
16 Rezko informed him that he had some people in mind
17 that he wanted to be appointed to the planning
18 board and that one of those individuals was
19 named Almanaseer.

20 THE WITNESS: Pardon me for one moment, Chief
21 Justice.

22 CHIEF JUSTICE FITZGERALD: Imad.

23 THE WITNESS: The -- again, I would -- did not
24 familiarize myself with the Levine testimony for my

1 purpose here today. I was here for -- yesterday
2 and today -- the limited purpose of Ata and Rezko.
3 I would note, however, in the Ata direct, there is
4 some discussion involving the folks that -- the
5 individual you mentioned here. Again, it's a very
6 brief discussion, and if I may just have a second
7 to find it.

8 It begins on Page 66, Line 20, and
9 the Assistant U.S. Attorney questioning Mr. Ata,
10 quote, All right. And what did Mr. Rezko say to
11 you about the Health Facilities Planning Board, end
12 quote?

13 Answer: Quote, That he had some people
14 in mind to appoint and will be appointing some
15 people to the board of health facilities authority,
16 end quote.

17 Question: Quote, Did he tell you the
18 names of the individuals, end quote?

19 Answer: Yes. That was in quotes.

20 Question: Quote, What names did he tell
21 you, end quote?

22 Answer: Quote, Dr. Almanaseer,
23 Dr. Fortune -- I don't know how to pronounce it,
24 but Fortunee, and Dr. Malek, end quote.

1 And it goes on shortly thereafter, but
2 that's --

3 CHIEF JUSTICE FITZGERALD: Both of these
4 statements were made under oath in a federal
5 courtroom, correct?

6 THE WITNESS: Well, again, that question -- the
7 question refers to Mr. Levine's testimony, so I
8 cannot answer that question, but the quotes I just
9 read were from Mr. Ata's testimony, which was under
10 oath and subject to cross-examination.

11 CHIEF JUSTICE FITZGERALD: Next from Senator
12 Dale Risinger: Isn't it true that Stuart Levine
13 testified under oath that in an October of 2003
14 conversation with Governor Blagojevich, he thanked
15 Blagojevich for reappointing him to the planning
16 board?

17 THE WITNESS: Again, I would -- Senator, I
18 would politely refer you to Agent Cain's testimony
19 and the affidavit. That was not the purpose for
20 which I was here.

21 CHIEF JUSTICE FITZGERALD: Did Stuart Levine
22 also testify that the Governor told Levine you
23 stick with us and you will do very well for
24 yourself?

1 THE WITNESS: Politely, the same answer.

2 CHIEF JUSTICE FITZGERALD: Do you have any
3 reason to doubt that they were, in fact, the words
4 of the Governor?

5 THE WITNESS: Again, I can't answer that
6 question.

7 CHIEF JUSTICE FITZGERALD: Senator Bill Brady:
8 Is it true that two members of the planning board,
9 Thomas Beck and Imad Almanaseer, have testified in
10 federal court that they took direct orders from
11 Mr. Rezko when voting on the approval of a CON
12 application?

13 THE WITNESS: Again, Senator Brady, as I've
14 stated to the other Senators, this was in preceding
15 testimony outside of the scope of why I was here.
16 I'd refer you to that. And I know it's contained
17 -- the sum and substance of your question is
18 contained in the affidavit, the sworn affidavit of
19 Special Agent Cain.

20 CHIEF JUSTICE FITZGERALD: Also, did one or
21 both of the planning board members in question
22 ever testify that they believe Rezko issued his
23 directives for CON applications on behalf of the
24 Governor?

1 THE WITNESS: Senator, politely, the same
2 answer.

3 CHIEF JUSTICE FITZGERALD: And also from
4 Senator Brady, Bill Brady: Did Jeffrey Mark,
5 Executive Secretary of the Illinois Health
6 Facilities Planning Board, or David Carvalho,
7 Deputy Director, Illinois Department of Public
8 Health, testify before the House Special
9 Investigation Committee? If not, why not?

10 THE WITNESS: I don't believe they did, and I
11 can't -- I believe that this is part of the
12 prohibited area for the U.S. Attorney's Office.
13 But again, we're going back some point in time here,
14 and this was not why I was asked to be here today,
15 so I could get you an answer, Senator.

16 CHIEF JUSTICE FITZGERALD: Senator Paul {sic}
17 Althoff: Did anyone testify under oath that the
18 board members, Almanaseer, Beck and Levine, were
19 directed by Rezko to vote against approving a CON
20 application submitted by Mercy Hospital? If so,
21 when?

22 THE WITNESS: Senator Althoff, I would refer
23 you to Special Agent Cain's affidavit. That was
24 not the purpose of my testimony here.

1 CHIEF JUSTICE FITZGERALD: Was there sworn
2 testimony that Rezko eventually reversed his
3 position and directive and asked that the planning
4 board members approve Mercy's CON and application?

5 THE WITNESS: Same answer, Senator Althoff.

6 CHIEF JUSTICE FITZGERALD: Did Mr. Levine also
7 testify that Mr. Rezko ordered the approval of
8 Mercy's CON application because Mercy had agreed to
9 make a political contribution to Blagojevich?

10 THE WITNESS: Again, same answer, Senator
11 Althoff.

12 CHIEF JUSTICE FITZGERALD: Also from Senator
13 Bill Brady: Is it true that the planning board
14 eventually approved the Mercy Hospital application
15 by a vote of five-four?

16 THE WITNESS: My memory serves from having
17 read the affidavit months ago, but again, I
18 would -- that that's accurate, but I would, again,
19 refer you to that and the testimony of others.

20 CHIEF JUSTICE FITZGERALD: Are you aware of
21 sworn testimony that in response to questions by
22 board member Almanaseer as to why Rezko had
23 reversed his directions on Mercy's CON application
24 that Mr. Rezko stated the Governor wanted it to pass?

1 THE WITNESS: I remember a statement to that
2 effect in the affidavit, but again, you'd be better
3 off reading the affidavit. That was not why I was
4 asked to be here.

5 CHIEF JUSTICE FITZGERALD: Didn't Rezko further
6 testify that Blagojevich was fully aware of this
7 decision?

8 THE WITNESS: Again, I would refer you to the
9 affidavit of Inspector -- Agent Cain.

10 CHIEF JUSTICE FITZGERALD: Senator Pam Althoff:
11 The Governor claims that the healthcare is a top
12 priority, but doesn't the scheme to control the
13 votes on the Health Facilities Planning Board show
14 that he was more concerned with campaign
15 contributions than providing access to healthcare?

16 THE WITNESS: Again, that -- the sum and
17 substance of that is in the special agent's
18 affidavit, however, I will tell you my recollection
19 from being a member of the committee was that
20 certainly he was not -- the actions of the Health
21 Facilities Planning Board were not concerned with
22 providing healthcare. That's my opinion.

23 THE COURT: Doesn't the fact that a hospital
24 had to pay bribes or make campaign contributions

1 add to the cost of providing healthcare in
2 Illinois?

3 THE WITNESS: Sure. I think that would be a
4 factual statement about any bribe for anything that
5 would add to the cost of doing business.

6 CHIEF JUSTICE FITZGERALD: Senator Kirk
7 Dillard: Did Ali Ata ever make cash contribution
8 to Friends of Blagojevich, or were they all by
9 check?

10 THE WITNESS: Senator, I don't know if there
11 were any cash contributions. I know that the two I
12 referenced yesterday, my memory is that they were
13 both by checks. There were -- there was testimony
14 there were additional earlier contributions. I
15 don't know what form those took.

16 There was also some testimony that later
17 on, additional cash donations were taken to
18 Mr. Rezko. Although, it seemed a little bit
19 unclear from the testimony as to where those
20 ultimately ended up.

21 CHIEF JUSTICE FITZGERALD: What was the total
22 amount from 2002 to the present of Ata's
23 contributions to the Blagojevich campaign?

24 THE WITNESS: To the present, I don't have that

1 answer for you, Senator. We could, I'm sure, get
2 you an answer.

3 CHIEF JUSTICE FITZGERALD: Did he give
4 donations to any other political committees? If
5 so, which ones and how much?

6 THE WITNESS: I believe his testimony indicated
7 that he had been involved in politics. I don't
8 know what other committees and how much.

9 CHIEF JUSTICE FITZGERALD: Are you aware of any
10 money that has been given directly or indirectly to
11 Governor Blagojevich personally, his family or any
12 immediately that Governor Blagojevich's personal --
13 I'm sorry -- intermediately that Governor
14 Blagojevich personally, his family or any others
15 subsequently provided the money to Governor
16 Blagojevich or his family?

17 I know you can read the question. It's
18 printed.

19 THE WITNESS: Senator, I'm not sure what basis
20 of knowledge I'd have for my personal knowledge
21 of anything that would have gone to Governor
22 Blagojevich or his family. So I -- I've read press
23 accounts of, I think, gifts, but I don't know that
24 I have any personal -- well, I don't have any

1 personal knowledge, so I would -- I can't really
2 answer your question.

3 CHIEF JUSTICE FITZGERALD: From Senator
4 Luechtefeld: Is it safe to say that much of the
5 information that has been raised as grounds for the
6 impeachment charge occurred during the first four
7 years of Governor Blagojevich's administration?

8 THE WITNESS: Senator, I would say this, that
9 there appears to be a pattern of abuse that began
10 before he was even elected that's continued to the
11 present day, and I would note -- I would note that
12 much of the -- most of the sworn affidavit of -- or
13 a lot of the sworn affidavit of Special Agent Cain
14 and the arrest of the Governor dealt with actions
15 that occurred just last year. So I think what it's
16 safe to say is that, my opinion is, it started
17 before he was elected, and then the pattern of abuse
18 has continued up through the arrest.

19 CHIEF JUSTICE FITZGERALD: Finally, from
20 Senator Watson: Much of your testimony has related
21 to Joe Cari's plea agreement and his testimony in
22 the Rezko trial. Do you know if Joe Cari has held
23 office for any political party? That office was
24 National Finance Chairman of the Democratic

1 National Committee or some other title with the
2 Democratic National Committee, isn't it?

3 THE WITNESS: Senator, my recollection is that
4 Mr. Cari was the 2000 finance chairman for Al
5 Gore's presidential bid for the National Democratic
6 Party. I think there's also testimony that he was
7 heavily involved in the U.S. Senate Democratic
8 fundraising operation as well. I don't recall the
9 status. I want to say he was a director of that,
10 but I don't specifically recall that status.

11 CHIEF JUSTICE FITZGERALD: Does the House
12 Prosecutor have any questions of the witness at
13 this time?

14 HOUSE PROSECUTOR KASPER: Sorry, everyone.
15 Thank you, Mr. Chief Justice. I just have one
16 follow-up question for clarification.

17 BY HOUSE PROSECUTOR KASPER:

18 Q. Representative Rose, a number of the
19 questions have related to a CON application filed
20 by Mercy Hospital. Is that the Mercy Hospital
21 located in Crystal Lake, Illinois?

22 A. That is my understanding that it is, yes.

23 HOUSE PROSECUTOR KASPER: Thank you. We have
24 no further questions for this witness.

1 CHIEF JUSTICE FITZGERALD: Representative Rose
2 is excused with the reservation that the witness
3 may be recalled for further questions. You're
4 excused, Representative. Thank you very much.

5 (Whereupon, the witness was
6 excused.)

7 CHIEF JUSTICE FITZGERALD: We're going to take
8 a short recess at this time, and I would like to
9 see both President Cullerton and Representative --
10 I'm sorry, Radogno in my small Chambers. This will
11 be with the court reporter. At ease.

12 (Whereupon, proceedings were
13 held outside the presence of
14 the Senate floor which are not
15 herein transcribed.)

16 CHIEF JUSTICE FITZGERALD: The House -- the
17 Senate will come to order. The House Prosecutor
18 will call his next witness.

19 HOUSE PROSECUTOR KASPER: Thank you, Mr. Chief
20 Justice. Michael Kasper, again, on behalf of the
21 House Prosecutor. We'd like to call Vicki Thomas.

22 CHIEF JUSTICE FITZGERALD: The Sergeant-at-Arms
23 will please escort the witness to the podium.

24 Ms. Thomas -- Madam Secretary, please

1 swear in the witness in accordance with
2 Impeachment Rule 22.

3 (Whereupon, the witness was
4 duly sworn.)

5 CHIEF JUSTICE FITZGERALD: House Prosecutor may
6 commence his direct examination.

7 HOUSE PROSECUTOR KASPER: Thank you, your
8 Honor.

9 VICKI THOMAS,
10 having been first duly sworn, was examined and
11 testified as follows:

12 DIRECT EXAMINATION

13 BY HOUSE PROSECUTOR KASPER:

14 Q. Would you please state your name and spell
15 your name for the court reporter.

16 A. My name is Vicki Thomas, V-i-c-k-i,
17 T-h-o-m-a-s.

18 Q. Ms. Thomas, could you tell us your job
19 title?

20 A. I'm the executive director of the Joint
21 Committee on Administrative Rules usually known as
22 JCAR.

23 Q. And how -- how do you -- how did you come
24 to have that position?

1 A. I'm appointed by the Senate president, the
2 Speaker of the House and the two minority leaders.

3 Q. And how long have you held that position?

4 A. For 18 years.

5 Q. And you identified JCAR as a committee.
6 Could you tell us who sits on the committee?

7 A. JCAR is made up of 12 legislators, three
8 each appointed by the President, the Speaker and
9 the two minority leaders.

10 Q. And when was JCAR created?

11 A. In 1977.

12 Q. And how was JCAR created?

13 A. There was an amendment to the Illinois
14 Administrative Procedure Act, which is usually
15 referred to as the IAPA, which is the governing law
16 for the rule-making process in Illinois. That
17 amendment created JCAR two years after the original
18 legislation was passed.

19 Q. And what is JCAR's primary function?

20 A. We're the part of the General Assembly
21 that continues to look at the implementation of
22 statute after it's created. Its implementation is
23 through administrative law, so we review and we
24 act upon agencies' attempts to make

1 administrative law or rules and regulations.

2 Q. And do you think that's an important
3 function?

4 A. Yes, I do.

5 When the General Assembly creates new
6 statute, or amends statute, creates programs,
7 it creates a broad outline. It doesn't create
8 day-to-day detail like whether application forms
9 have to be filed, what deadlines are. These are
10 the items that are added later by administrative
11 agencies through delegated authority from the
12 General Assembly, but they can make a big
13 difference. So because it's still part of the
14 implementation of the statute, it's my strong
15 belief that the General Assembly needs to continue
16 to oversee that process.

17 Q. Okay. And you mentioned rules. Could you
18 tell us what types of rules agencies issue?

19 A. There's a number. The three major
20 categories of rules are proposed or permanent
21 rules - that's most of the rules that go through.
22 There's also special categories, emergency
23 rule-making and preemptory rule-making.

24 Q. Okay. I'd like to take those one at a

1 time. Could you explain to us what a proposed
2 permanent rule is?

3 A. Okay. Like I said, that's most of the
4 rule-makings. It's a situation where an agency
5 gives notice of its proposal to the public, takes
6 public comment, submits it to JCAR. After JCAR
7 takes action on it, then it adopts the rules.

8 Q. Does the proposed permanent rule become
9 effective before JCAR takes action?

10 A. No. JCAR takes action, and then the
11 agency can adopt the rule.

12 Q. I think the second category you mentioned
13 was an emergency rule. Could you explain what an
14 emergency rule is?

15 A. In situations in which there is a threat
16 to the public interest, safety or welfare, an
17 agency can adopt an emergency rule. It can be
18 effective immediately upon adoption, and at this
19 point, neither the public has been exposed to it,
20 nor has JCAR reviewed it. It's a unilateral
21 action by the agency. An emergency rule is only
22 effective for a maximum of 150 days.

23 Q. Okay. And the third category you mentioned
24 was called a preemptory rule. Could you explain

1 what that is?

2 A. There's three instances in which
3 preemptory rule-making can be used. One is if the
4 State is under federal law or regulation that
5 requires the adoption of a rule. The second is if
6 there's a collective bargaining agreement that
7 requires a change in the rule, and the third is a
8 court order that requires a change in the rule.

9 In the case of a preemptory rule-making,
10 it is a permanent rule-making that's effective
11 immediately when the agency adopts it. JCAR
12 reviews it afterwards.

13 Q. And does JCAR review every rule?

14 A. Yes, we do.

15 Q. And when does JCAR review rules?

16 A. The members meet generally monthly, and
17 then they make their -- they take their actions on
18 rule-makings at that time.

19 Q. And what does JCAR look for when it's
20 reviewing rules?

21 A. We have standards under the law that we
22 have to follow. The basic standard is does the
23 rule-making have statutory authority, clear
24 statutory authority. Other standards include such

1 things as legislative intent, effect on the State
2 budget, economic impact on the affected public,
3 whether the agency has created adequate standards
4 to control its own actions. We have a variety of
5 standards for review, but those are the major ones.

6 Q. You indicated that JCAR reviews rules.
7 Does it take action regarding those rules as well?

8 A. Yes, we do.

9 Q. And what types of actions does it take,
10 say, to approve a rule?

11 A. The simplest action we can take is to
12 issue a certificate of no objection. We do that
13 when the committee finds nothing important wrong
14 with what the agency is doing. The strongest
15 action that JCAR can take is to suspend or prohibit
16 filing of a rule.

17 Q. Okay. A certificate of no objection, does
18 that have the effect of allowing a proposed
19 permanent rule to go into effect or allowing an
20 emergency or preemptory rule to continue in
21 effect?

22 A. Certificates of no objection only occur on
23 the proposed rules. So with this certificate, the
24 agency can go to the Secretary of State's office

1 and adopt its rule.

2 Q. And you indicated something about
3 suspending a rule. Could you explain what it means
4 to suspend a rule?

5 A. Suspension and filing prohibition are
6 basically the same action. When the underlying
7 rule-making was an emergency rule or a preemptory
8 rule that's already gone into effect, then JCAR
9 suspends that rule, and it can no longer have any
10 effect.

11 Q. What does it mean to prohibit a rule?

12 A. With respect to a proposed rule that's not
13 yet gone into effect, JCAR prohibits, which means
14 the agency is stopped from ever adopting it in the
15 first place.

16 Q. And how does JCAR prohibit or suspend a
17 rule?

18 A. This has to be done by a three-fourths
19 vote of the membership. When we have a full
20 12-member panel seated, that's eight votes.

21 Q. And how does JCAR do it? Does it issue a
22 written prohibition or suspension?

23 A. Yes. A motion is offered and passed at a
24 JCAR meeting that then is reduced to a statement of

1 objection and filing prohibition or objection and
2 suspension, and then that's published in the
3 Illinois Register and filed with the Secretary of
4 State.

5 Q. And as a general rule, why does JCAR
6 suspend or prohibit a rule?

7 A. This is an action that JCAR reserves for
8 the most serious violations of those rule-making
9 standards that I referred to, statutory authority,
10 legislative intent, et cetera.

11 Q. And how often does JCAR suspend or
12 prohibit a rule?

13 A. It's a rare action. In the 31-year
14 history of JCAR, they've considered probably 20,000
15 rule-makings. In that time, they've issued
16 69 prohibitions or suspensions. Half of -- almost
17 half, 33 of those, have occurred under the current
18 administration.

19 Q. All right. Ms. Thomas, I believe you've
20 been tendered a copy of Exhibit 51, which, ladies
21 and gentlemen, is part of the record and is in
22 the packets that's been distributed for the JCAR
23 witnesses.

24 Do you recognize this document,

1 Ms. Thomas?

2 A. Yes, I do.

3 Q. And what is it?

4 A. This is a notice of emergency rule-making
5 filed by the Department of Healthcare and
6 Family Services in early November of 2007.

7 Q. You say it was a notice of emergency
8 rules --

9 A. Yes.

10 Q. -- is that correct?

11 Okay. Could you briefly describe the rule?

12 A. The rule-making did two things. It, first
13 of all, did what was called an SCHIP pickup, and
14 then the second half of it expanded the FamilyCare
15 Program.

16 Q. Would you explain the first half, the --
17 what you described as the SCHIP pickup, please?

18 A. SCHIP is the -- it's a federal program
19 called the State Children's Health Insurance
20 Program. In Illinois, that basic SCHIP program is
21 called KidCare. Okay. There's also another
22 component to KidCare that's called FamilyCare, and
23 FamilyCare is a program run under a waiver that the
24 State of Illinois received from the federal

1 government that allowed certain adults to be
2 covered as well. These adults were the parents of
3 children who were in KidCare.

4 So we got a five-year waiver that let us
5 run a program called FamilyCare. That waiver
6 expired September 30th of 2007. At that point, the
7 approximately 20,000 adults who had been covered by
8 KidCare were at a position where the federal
9 government support for their coverage was going to
10 go away, so the Department of Healthcare and Family
11 Services decided that the State would assume
12 liability for continued healthcare coverage for
13 those people, and they embodied that in this
14 emergency rule.

15 Q. And you mentioned that there were two
16 parts -- you mentioned that there were two parts to
17 that rule. Could you explain what the second part
18 of that rule was?

19 A. In addition to picking up the people being
20 left behind by the SCHIP waiver, HFS proposed to
21 expand the FamilyCare Program itself. Again,
22 that's the adult coverage program. To that point,
23 it had had an 185 percent of federal poverty level
24 income cap. In this rule-making, the department

1 decided to increase that to 400 percent FPL.

2 Q. By PL, do you mean poverty level?

3 A. Federal poverty level, yes.

4 Q. Okay. And what was JCAR's response
5 to the emergency rule?

6 A. JCAR voted an objection and suspension,
7 and then it also voted a recommendation.

8 Q. And could you explain the recommendation?

9 A. The recommendation was that the Department
10 agree to separate those two issues, to separate
11 the SCHIP pickup from the FamilyCare expansion.

12 Q. And could you explain the objection and
13 suspension?

14 A. The objection and suspension were based on
15 the fact that while the Department adequately
16 showed that there was an emergency situation with
17 respect to the SCHIP pickup, it had not made the
18 members comfortable with the fact that there was an
19 emergency requiring the FamilyCare expansion.

20 Q. And so what was the effect of the
21 suspension and objection?

22 A. As of the time that that suspension was
23 filed with the Secretary of State, the rules for
24 the FamilyCare expansion could no longer be

1 invoked or administered by the Department.

2 Q. And then what happened next?

3 A. The next step came in February of 2008
4 when the permanent version of this emergency rule
5 came before JCAR.

6 Q. And what did JCAR do with the proposed
7 permanent rule?

8 A. This time, JCAR issued an objection and
9 filing prohibition.

10 Q. And why did JCAR do so?

11 A. The reasons cited in the motion were that,
12 first of all, the Department could not show that it
13 had specific statutory authority to expand
14 FamilyCare. Secondly, it showed that there was no
15 special FY 08 budget line item that was to cover a
16 FamilyCare expansion, meaning that the General
17 Assembly could not see that -- there would not be a
18 bad economic impact on the State from the expansion.

19 And then the third item was legislative
20 intent. A very similar or practically identical
21 issue had been considered by the General Assembly
22 the previous spring and had not been successfully
23 enacted.

24 Q. Did the Department abide by JCAR's

1 decision?

2 A. No, it did not.

3 Q. And do you believe that by not abiding by
4 JCAR's decision, did the Department violate State
5 law?

6 A. Yes, I do.

7 HOUSE PROSECUTOR KASPER: I have no further
8 questions for this witness. Thank you, your Honor.

9 CHIEF JUSTICE FITZGERALD: Thank you.

10 Pursuant to Senate Resolution 7, the
11 Governor or his counsel has the right to conduct a
12 cross-examination of this witness. However, as
13 neither the Governor nor counsel has -- on his behalf
14 have appeared, there can be no cross-examination.
15 Therefore, we'll proceed directly to taking written
16 questions from the Senators regarding the testimony
17 of this witness.

18 Chair recognizes President Cullerton.
19 For what purpose do you rise, sir?

20 PRESIDENT CULLERTON: Thank you, Mr. Chief
21 Justice. I'd like to ask for a Democratic Caucus
22 for the purpose of formulating questions to ask
23 this witness, also, perhaps, to take a lunch break
24 and come back when you decide we should.

1 CHIEF JUSTICE FITZGERALD: Senator Radogno, for
2 what purpose do you rise?

3 SENATOR RADOGNO: Thank you, Chief Justice. We
4 would also request a caucus for the purpose of
5 formulating questions.

6 CHIEF JUSTICE FITZGERALD: There will be
7 allowance for a half-hour caucus and the Court --
8 the Senate will stand recessed until 1:00 p.m. And
9 we'll have the lunch break at the same time as the
10 caucus. The House will stand -- the Senate will
11 stand adjourned.

12 (Whereupon, a luncheon recess
13 was taken.)

14 CHIEF JUSTICE FITZGERALD: The Senate will come
15 to order.

16 Sergeant-at-Arms will please bring the
17 witness back into court.

18 Madam Secretary, have questions been
19 submitted? Actually, I have them up here.

20 MADAM SECRETARY: Yes, I have questions
21 submitted by the Democratic Caucus, sir.

22 CHIEF JUSTICE FITZGERALD: I believe there's
23 also questions from the Republican Caucus.

24 MADAM SECRETARY: I'm so sorry. I have them.

1 I apologize. And I also have questions from the
2 Republican Caucus.

3 CHIEF JUSTICE FITZGERALD: I would like to
4 advise the Senate that at some point during the
5 proceedings, we may change the methodology of
6 reading the questions to the witness, reading the
7 Senate's questions to the witness. And if I feel I
8 need a little help in doing that, I will call upon
9 the Secretary and the Assistant Secretary to read
10 questions, one from the Democrats and one from the
11 Republicans. And that has been agreed to by the --
12 by each of the Caucuses.

13 We begin first with a question from the
14 Democrats from Senator Sullivan. And it is, with
15 respect to the FamilyCare Program of Governor
16 Blagojevich and JCAR, what was the vote in JCAR,
17 and what were the members voting against, and who
18 voted for it?

19 THE WITNESS: There were two votes in JCAR. If
20 you remember correctly, I said there was first the
21 emergency rule and then the proposed rule. On the
22 emergency rule, the vote was two negative votes,
23 and I believe -- the question was -- I believe the
24 ones voting no were Representative Hassert and

1 Representative Mulligan.

2 On the proposed rule, which happened two
3 months later, I think it was probably the same
4 vote. I don't have that information in front of
5 me, but I'm pretty sure that it was the same vote.

6 CHIEF JUSTICE FITZGERALD: Next from the
7 Republican side, Senator Burzynski: Would you
8 describe and contrast from your experience as the
9 executive director of the Joint Committee on
10 Administrative Rules, JCAR, over the past 18 years,
11 how the Blagojevich administration has been to work
12 with in the rule-making process and your direct
13 comparison to your experience with previous
14 administrations.

15 THE WITNESS: The main difference that I've
16 seen is that under previous administrations, we
17 dealt directly with agency personnel who were very
18 free in answering substantive questions to JCAR.
19 They never denied us information. They gave us
20 whatever we asked for. We would have differences
21 of opinion, but there was no lack of flow of
22 information.

23 In this administration, it's been a little
24 different. Agency people have not been able, in

1 many cases, to speak directly to JCAR. They had to
2 get permission from their chief legal counsels or
3 the Governor's office before they could even answer
4 our questions. So I'd say that's been probably the
5 main difference.

6 CHIEF JUSTICE FITZGERALD: And from the
7 Democratic Caucus side, Senator Rickey Hendon: Are
8 you aware of the facts of the -- that the House of
9 Representatives placed rule-making language on the
10 vast majority of bills sent to the Senate,
11 including Senators' bills combatting autism,
12 mortgage foreclosure and job losses?

13 Is it the intention of JCAR to use
14 rule-making language to handcuff legislation in the
15 Senate?

16 THE WITNESS: First of all, this was never a
17 JCAR proposal. We had no input into it at all. I
18 believe it was a proposal that came directly from
19 the Speaker's office.

20 CHIEF JUSTICE FITZGERALD: From Senator
21 Burzynski again: With respect to any cited
22 difficulties experienced with the Blagojevich
23 administration, have those developed in just the
24 past two years, or are they problems symptomatic of

1 the things that occurred early in the Blagojevich
2 administration?

3 THE WITNESS: The different way this
4 administration has had of dealing with rule-making
5 started right from the beginning. The -- when we
6 got into a position where they were directly taking
7 an action that JCAR had voted and ignoring it, that's
8 definitely occurred since, I'd say, late 2007.

9 CHIEF JUSTICE FITZGERALD: Again, from Senator
10 Rickey Hendon: Is it the intent of the Illinois
11 Constitution for JCAR to be the chief executive of
12 the State of Illinois?

13 And the follow-up questions: Did JCAR
14 serve both the House and the Senate, or does JCAR
15 serve both the House and the Senate?

16 Are you aware that several of the
17 Governor's healthcare initiatives were passed and
18 supported in the Senate? Is the House superior to
19 the Senate in JCAR's mind?

20 THE WITNESS: The answer to the first question
21 is no. Does JCAR serve both the House and the
22 Senate? The answer to that question is yes. The
23 issue about a piece of legislation that passes one
24 house, but not the other, for JCAR, when we

1 determine legislative intent, we have to look at
2 what was successfully put in the statute books by
3 the entire General Assembly, so we do not look at
4 it on a house-by-house basis at all. A law is not
5 a law until it gets through both houses and is
6 signed by the Governor.

7 CHIEF JUSTICE FITZGERALD: Next from Senator
8 Hultgren on the Republican side: Do you know when
9 the first occurrence was that JCAR found it
10 necessary to prohibit a rule under the Blagojevich
11 administration?

12 THE WITNESS: We maintain a chart on that
13 purpose -- on that situation that we'd be happy to
14 share with anyone anytime. It's public
15 information. I can't say exactly the year or the
16 month, but it was very early in this
17 administration.

18 CHIEF JUSTICE FITZGERALD: Next from the
19 Democratic side, from President Cullerton:
20 Please read from Exhibit 51 the results on the last
21 page of the JCAR report regarding the motion to
22 suspend and reject the administrative rule.

23 THE WITNESS: This whole thing is Exhibit 51.
24 I have here the actual motion to object and

1 suspend. Is that the motion that I'm supposed to be
2 reading? Can we clarify what you mean about the
3 minutes of the JCAR meeting?

4 CHIEF JUSTICE FITZGERALD: The witness has
5 asked to clarify the reference to the minutes of
6 the JCAR meeting. You may do that.

7 THE WITNESS: I'm reading from the minutes of
8 the JCAR meeting from November 2007. The motion to
9 object to and suspend the emergency rule passed on
10 a roll call vote of nine to two to zero, the no
11 votes were Hassert and Mulligan.

12 CHIEF JUSTICE FITZGERALD: Next from Senator
13 Rutherford: In your statement before the House
14 Special Investigative Committee, you stated since
15 its inception in 1977, JCAR has prohibited agencies
16 rule-making only 69 times in its history. Of those
17 69 prohibitions, 33 have issued since Governor
18 Blagojevich took office in 2003.

19 Accordingly, isn't it fair to say
20 approximately 48 percent of all prohibitions
21 against JCAR -- issued by JCAR over the past
22 30 years have been -- occurred in the last five
23 years?

24 THE WITNESS: That is correct.

1 CHIEF JUSTICE FITZGERALD: Senator Garrett on
2 the Democratic side: Was the Governor consulted by
3 attorneys or other experts before he circumvented
4 the legislative process and went to JCAR on the
5 FamilyCare issue?

6 THE WITNESS: I can't speak to what kind of
7 conversations were held in the Governor's office.
8 I really don't know to whom he spoke or with whom
9 he consulted.

10 CHIEF JUSTICE FITZGERALD: Senator Burzynski:
11 Further in your statements before the House Special
12 Investigative Committee, you stated that since
13 1977, only in nine of 69 prohibitions or
14 suspensions issued by JCAR has an issue remained
15 unresolved causing the filing prohibition to become
16 permanent. In fact, seven of those nine unresolved
17 issues have occurred since Governor Blagojevich
18 took office in 2003; is that correct?

19 THE WITNESS: Again, if I had the chart before
20 me, I would be able to tell definitively, but based
21 on the fact that I have reviewed this material over
22 the last few weeks, I would say that is certainly
23 very close to being accurate.

24 CHIEF JUSTICE FITZGERALD: Next from Senator

1 Hultgren: In 2004, a significant statutory change
2 was made with respect to the powers and authority
3 of JCAR with respect to suspensions and
4 prohibitions of rule-making, Public Act 93-1035,
5 Senate Bill 73rd {sic} (73), 93rd General Assembly.
6 What was the change?

7 THE WITNESS: The major change in that
8 legislation had to do only with to what extent a
9 prohibition or suspension by JCAR became what we
10 call permanent. Prior to that time, it became
11 permanent if the General Assembly by passage of a
12 vote of both houses said it was permanent. The
13 change that law made said that the JCAR action was
14 permanent unless over ridden by the General
15 Assembly.

16 CHIEF JUSTICE FITZGERALD: Did Governor
17 Blagojevich sign this change into law?

18 THE WITNESS: Yes, he did.

19 CHIEF JUSTICE FITZGERALD: Did this significant
20 2004 law change affecting JCAR suspension and
21 prohibitions occur because there was a recognized
22 need almost five years ago to curtail the efforts
23 of the Blagojevich administration and their abuse
24 of the rule-making process?

1 THE WITNESS: In my job, I never find it
2 advisable to tell anyone what was in the mind of a
3 group of legislators when they made a decision.
4 That's not something I'm privy to. I think that
5 would be a fair assumption, based on the way the
6 vote went.

7 CHIEF JUSTICE FITZGERALD: Senator Rutherford:
8 As the executive director of JCAR, you have worked
9 with DHFS on a number of occasions with respect to
10 the planned expansion of the Family -- of
11 FamilyCare to 400 percent FPL. What is your
12 understanding that the rule change in question was
13 initiated {sic} of Governor Blagojevich, or did you
14 understand this to be an initiative of the
15 Department of Healthcare and Family Services without
16 the knowledge and consent of the Governor?

17 THE WITNESS: This question was put to HFS
18 personnel by the JCAR committee a number of times
19 without a clear answer ever being offered. There
20 were other indicators at the time that led me to
21 believe that HFS was not on its own in control of
22 the situation.

23 CHIEF JUSTICE FITZGERALD: Okay. And the next
24 question to follow-up -- it may not fit -- is, why

1 do you believe that?

2 THE WITNESS: One of the main reasons is that
3 comments the Governor himself made to the press
4 took credit for going ahead with the program
5 regardless of what JCAR did.

6 CHIEF JUSTICE FITZGERALD: Next from the
7 Democratic side, Senator Kotowski: Is it true that
8 on the litigation related to the Governor's
9 rule-making, both the trial court and the Appellate
10 Court have affirmed that the Governor violated his
11 statutory authority in his attempt to bypass the
12 legislature by expanding the KidCare and
13 FamilyCare programs?

14 THE WITNESS: That court case is still open,
15 but the early activity by both the Circuit Court
16 and the Appellate Court indicated that they did not
17 believe that the FamilyCare expansion was legally
18 constituted. The order of the Circuit Court was to
19 the Comptroller telling him he could pay no bills
20 under the expanded FamilyCare Program. That was
21 affirmed by the Appellate Court. So far, the
22 merits of the case have not yet been argued, in my
23 understanding of it.

24 CHIEF JUSTICE FITZGERALD: Senator Burzynski on

1 the Republican side: With regards to DHFS's
2 decision to ignore actions of JCAR to suspend the
3 emergency rule-making, expand FamilyCare and
4 subsequently prohibit the permanent rule-making for
5 the same, did you understand this to be a direction
6 and action of the agency, or did you believe it to
7 be an initiative of Governor Blagojevich to ignore
8 JCAR and Illinois legislation and the Illinois
9 Administrative Procedure Act by implementing the
10 healthcare expansion program anyway?

11 And I guess why do you believe that? This
12 is the follow-up to that question.

13 THE WITNESS: Again, I was not privy to any
14 conversations between HFS and the Governor's
15 office. The smaller indications, the Governor's
16 statements, informal statements of HFS personnel
17 would have indicated that the Governor's office was
18 knowledgeable about what HFS was doing.

19 CHIEF JUSTICE FITZGERALD: From Senator
20 Hutchinson on the Democratic side: With regard to
21 the expansion of FamilyCare by the Governor, did
22 the Governor exceed his legal authority? If so,
23 what specific action constituted the violation of
24 the Administrative Procedure Act with regard to the

1 emergency rule, with regard to the permanent rule?

2 THE WITNESS: It's my opinion that, yes, he
3 violated statute when they went forward with
4 the FamilyCare Program. The Illinois
5 Administrative Procedure Act and Supreme Court
6 action based on that Act both say that no agency of
7 State government can enforce a policy that affects
8 anyone outside of that agency unless they do so by
9 rule.

10 When JCAR took its action on the emergency
11 rule, then as of that date, that rule was no longer
12 effective. So the Governor violated the IAPA and
13 the dictates of a court case in Senn Park that said
14 that they could not take action that was not based
15 on rule that had been legally adopted. That was
16 the case with the emergency rule.

17 With the permanent rule, it was the same
18 situation. JCAR prohibited filing. There could
19 not -- the emergency rule was suspended. It was
20 not in place. We prohibited filing, so there was
21 no permanent rule in place either. The Governor
22 went ahead and implemented this policy with no rule
23 in place, contrary to the Illinois Administrative
24 Procedure Act.

1 CHIEF JUSTICE FITZGERALD: Senator Rutherford's
2 question: As the executive director of JCAR since
3 1981, are you aware of any State entity previous to
4 the Blagojevich administration having disregarded a
5 suspension or filing prohibition and implementing
6 -- implemented a rule despite JCAR's objection
7 and action to stop the -- its implementation?

8 THE WITNESS: In my 18 years of experience with
9 JCAR, this has not occurred, and my looking at the
10 records of what JCAR did before I was there, I
11 would say it had not occurred prior to that time
12 either.

13 CHIEF JUSTICE FITZGERALD: Final question from
14 the Republican side, Senator Bivins: Before the
15 last recess, you were asked if you thought the
16 Governor acted illegally. Can you restate your
17 answer and explain why you believe that?

18 THE WITNESS: Again, this is, I believe, the
19 same question I just answered. Without rule having
20 been adopted, a State agency is not supposed to do
21 anyone -- do anything that affects a person outside
22 of that State agency. Once the JCAR actions were
23 in place, then the rule-making was not in place,
24 hence, they had no rule on which they were running

1 the FamilyCare Program. They were running it
2 totally outside of rule, which is contrary to the
3 Illinois Administrative Procedure Act.

4 CHIEF JUSTICE FITZGERALD: The House Prosecutor
5 may ask the questions on re -- witness questions on
6 redirect.

7 HOUSE PROSECUTOR KASPER: Thank you, your
8 Honor.

9 REDIRECT EXAMINATION

10 BY HOUSE PROSECUTOR KASPER:

11 Q. Ms. Thomas, I just have one question.
12 It's a point of clarification.

13 I believe in a response to a question from
14 Senator Hendon, you described the FamilyCare
15 Program as an initiative of the Speaker's office,
16 and I think you may have misspoke. Would you like
17 to clarify that testimony?

18 A. I was not speaking to the FamilyCare
19 Program. I believe the question was about the
20 legislation that was enacted two years ago that
21 changed some of the operating procedures at JCAR --
22 oh, I'm sorry, I'm sorry.

23 He was asking about recent actions in the
24 House to add an amendment to some legislation. I

1 just clarified that that was not JCAR's proposal.
2 This had nothing do with FamilyCare. This is
3 about the procedure.

4 Q. Okay. Thank you for the clarification.

5 HOUSE PROSECUTOR KASPER: No further questions,
6 your Honor.

7 CHIEF JUSTICE FITZGERALD: Thank you. The
8 witness is excused.

9 (Whereupon, the witness was
10 excused.)

11 CHIEF JUSTICE FITZGERALD: If the House
12 Prosecutor would please call his next witness.

13 HOUSE PROSECUTOR ELLIS: Yes, your Honor.
14 Thank you very much. And if I could first, a
15 couple of things. First, with regard to
16 Representative Lang, because we think that
17 Ms. Thomas covered all the material testimony that
18 we would have elicited from Representative Lang, we
19 will not be calling Representative Lang.

20 In addition, before we call our next
21 witness, we would be -- I'm handing out for the
22 Members, if we could, some documents, a copy of the
23 Executive Ethics Commission Report. It's in the
24 record. Members may already have it, but it is

1 something that we will no longer have live
2 testimony on.

3 Also, with regard to the information in
4 Exhibit 37, which we were planning on introducing
5 through Representative Howard, if we could just
6 hand those documents out with your permission,
7 your Honor.

8 CHIEF JUSTICE FITZGERALD: You may try your
9 case as you wish.

10 HOUSE PROSECUTOR ELLIS: Thank you, your Honor.

11 CHIEF JUSTICE FITZGERALD: Excuse me, Senator
12 Radogno. You rise for what purpose?

13 SENATOR RADOGNO: Thank you, Mr. Chief Justice.
14 I would just like to state on behalf of the
15 Republican Caucus once again our concern about the
16 shortened witness list. I know that we are all
17 very, very committed to an open, thorough and fair
18 process. We know the impeachment is serious
19 business, and we're facing some pretty serious
20 allegations of corruption, and it seems to me we
21 need to accomplish three things.

22 We need to make sure the Governor gets a
23 fair trial. We need to be sure that every Member
24 of this Body has enough information to make a good

1 decision. But we also, I think, have an obligation
2 to the people that sent us here to represent them
3 that they have an opportunity to hear the evidence
4 to the extent that they wish to watch these
5 proceedings.

6 There are hundreds and hundreds of pages
7 of documents, and the fact of the matter is live
8 witnesses really make those documents come alive
9 and help people understand what it is we're dealing
10 with. So our concern is a reflection of the fact
11 that fewer witnesses will lessen the ability of the
12 people of this State to understand what is going on
13 here. Thank you.

14 CHIEF JUSTICE FITZGERALD: The House Prosecutor
15 will call his next witness, please.

16 HOUSE PROSECUTOR WIER: Heather Wier Vaught for
17 the Prosecution. We'd like to call Andrew Morriss.

18 CHIEF JUSTICE FITZGERALD: Mr.
19 Sergeant-at-Arms, will you please escort the
20 witness to the podium?

21 Madam Secretary, please swear the witness
22 in according to -- with Impeachment Rule 22.

23 MADAM SECRETARY: Please raise your right hand
24 and repeat after me and insert your name at the

1 proper place.

2 (Whereupon, the witness was
3 duly sworn.)

4 CHIEF JUSTICE FITZGERALD: Will the witness
5 please be seated?

6 The House Prosecutor may examine the
7 witness.

8 HOUSE PROSECUTOR WIER: Thank you, your Honor.

9 ANDREW MORRISS,
10 having been first duly sworn, was examined and
11 testified as follows:

12 DIRECT EXAMINATION

13 BY HOUSE PROSECUTOR WIER:

14 Q. Mr. Morriss, can you please state your
15 name for the record and spell it for the court
16 reporter.

17 CHIEF JUSTICE FITZGERALD: Just one moment,
18 please. Wait for them.

19 THE WITNESS: Andrew Morriss.

20 BY HOUSE PROSECUTOR WIER:

21 Q. Can you please spell your name for the
22 court reporter?

23 A. A-n-d-r-e-w, M-o-r-r-i-s-s.

24 Q. Thank you, Mr. Morriss.

1 And what is your occupation?

2 A. I'm a law professor at the University of
3 Illinois College of Law.

4 Q. Can you briefly tell us about your
5 educational background?

6 A. I got my undergraduate degree from
7 Princeton in 1981, my law degree and a master's in
8 public affairs from the University of Texas at
9 Austin in 1984, and a Ph.D. in economics from MIT.

10 Q. Thank you.

11 And as a professor at University of
12 Illinois, do you focus on a particular body of law?

13 A. I teach administrative law, and most of my
14 research concerns administrative law topics.

15 Q. So have you studied the Illinois
16 rule-making process?

17 A. Yes.

18 Q. And have you studied the rule-making
19 process in other states as well?

20 A. Yes, and at the federal level.

21 Q. Great.

22 And is the Illinois rule-making process
23 consistent with the rule-making process elsewhere?

24 A. Yes. Procedures vary from state to state,

1 but in general, the scheme is the same.
2 Rule-making operates -- an agency issues a rule or
3 proposes a rule implementing legislation passed by
4 the legislature. Public is given an
5 opportunity to comment. And then after the agency
6 reviews that public comment, it determines
7 whether that warrants a revision to its proposal
8 and issues a final version of the rule.

9 Q. Can you tell us what is the real purpose
10 of rule-making?

11 A. Well, properly done, administrative
12 rule-making enables governments to function by
13 allowing the legislature to delegate to the
14 Executive Branch agencies the task of creating the
15 detailed procedures and forms and so forth that
16 implement the policies embodied in legislation.

17 This is very useful because it allows the
18 legislatures to decide policy and allows the
19 administration to decide the details that are
20 necessary to actually implement the legislature's
21 policies.

22 Q. And what are some of the potential
23 problems with this legislative delegation of
24 authority to agencies?

1 A. The main problem would be that the
2 Executive Branch might attempt to exercise
3 legislative powers, which it's forbidden to do so.

4 Q. And why should legislators be concerned
5 with this?

6 A. Well, if the Executive Branch exercises
7 legislative powers, it's a violation of the
8 principle of separation of powers, and separation
9 of powers is really the bedrock of the American
10 system of government. It's embodied in every state
11 Constitution and the Federal Constitution.

12 Q. Is the concept of separation of powers
13 applicable here in Illinois?

14 A. Yes. Article II, Section 1 of the
15 Illinois Constitution provides that no branch of
16 government may exercise the powers that belong to
17 another branch.

18 Q. So how can the legislature protect against
19 overreaching by another branch of government,
20 particularly the Executive Branch?

21 A. Well, it can set up a process by which the
22 legislature reviews the exercise of the delegated
23 authority, and, indeed, it should set up such a
24 process to ensure that the actions of the Executive

1 Branch are consistent with the legislature's wishes.

2 Q. Has Illinois done that?

3 A. Yes. It's set up a legislative committee
4 known as the Joint Committee on Administrative
5 Rules or JCAR.

6 Q. How do you view JCAR's role in this State?

7 A. I think JCAR is fundamental to holding
8 administrative agencies accountable to the public
9 for their actions. The policies set by this Body,
10 the legislature, need to be the ones that are
11 implemented, and we want to make sure that the
12 fundamental policy choices are made by the elected
13 representatives of the people, not by unelected
14 people appointed by the Governor.

15 Q. Do states other than Illinois have
16 entities such as JCAR?

17 A. Yes. 38 states, including Illinois, have
18 some official mechanism for the legislative review
19 of administrative rules created by the Executive
20 Branch. 22 states, including Illinois, have
21 legislative review committees, and this is
22 something that's been a consistent feature of
23 American state government at least back to 1939.

24 Q. And what powers do JCAR have to protect

1 them -- to protect the Legislative Branch and to
2 prohibit overreaching by the Executive Branch by
3 State agencies?

4 A. Well, JCAR has the power to object to an
5 agency rule where the rule exceeds the agency's
6 authority. And then if the agency does not rewrite
7 the rule in a less intrusive way on the
8 legislature's authority, JCAR can prohibit the
9 implementation of that rule.

10 Q. So if JCAR takes action, are the
11 Governor's agencies legally required to abide by
12 JCAR's actions?

13 A. Yes. The Governor's agencies are
14 obligated to follow the law until a court of
15 competent jurisdiction has ruled otherwise.

16 Q. Are you familiar with the rules that the
17 Governor's department filed regarding the
18 FamilyCare case?

19 A. Yes.

20 Q. And about those rules, do you believe that
21 the Governor's agency followed the law?

22 A. No, because JCAR suspended or prohibited
23 the Governor's FamilyCare rules, and the agency
24 went ahead and implemented them anyway.

1 Q. Going ahead and implementing them anyway,
2 does that violate the law?

3 A. Yes.

4 Q. Are you aware of any court decisions that
5 have held that the rule-making process here in
6 Illinois or JCAR's role is unconstitutional?

7 A. No, I'm not aware of any such case, and in
8 fact, the Governor's representatives testified to
9 the effect there was no such case in the
10 House.

11 Q. And if there were such a case, would you
12 be aware of it?

13 A. Yes.

14 Q. Professor Morriss, in your opinion, is
15 JCAR constitutional?

16 A. Yes, it is.

17 Q. Why do you hold that opinion?

18 A. Well, when an agency exercises rule-making
19 authority, it's performing a power that is properly
20 that of the legislature. Now, the legislature can
21 choose to delegate that power to an agency, but as
22 a result of the fact that it's exercising a
23 legislative power, legislative oversight of that
24 agency function is appropriate and, indeed, I

1 think, essential because the legislature is
2 essentially overseeing the proper execution of its
3 own authority.

4 Q. So if the Governor or his lawyers disagree
5 with your opinion, can they simply disregard a
6 decision made by JCAR?

7 A. No. If the Governor felt that JCAR was
8 unconstitutional, the proper thing to do would be
9 to file a lawsuit challenging it. It's
10 inappropriate for the chief executive to simply
11 choose which laws he will abide by.

12 Q. And are you aware if the Governor's office
13 filed such a lawsuit?

14 A. I'm not aware of them.

15 Q. Professor Morriss, did you testify before
16 the House Special Investigative Committee?

17 A. Yes, I did.

18 Q. And did you also submit written testimony
19 during that -- during your appearance?

20 A. Yes, I did.

21 Q. And were the Governor's attorneys present
22 at that hearing?

23 A. Yes, they were.

24 Q. Did they have an opportunity to

1 cross-examine you and ask various questions?

2 A. Yes, they did, and they did ask questions.

3 Q. Great.

4 HOUSE PROSECUTOR WIER: Ladies and gentlemen of
5 the Senate, Mr. Morriss's testimony at the House
6 Committee is available in your packets that you
7 received earlier, and the dialogue between Mr. Morriss
8 and the Governor's attorneys is also available at
9 Page 377 of the Committee's transcript.

10 Thank you, Professor. I have no further
11 questions.

12 CHIEF JUSTICE FITZGERALD: One moment, sir.

13 Pursuant to Senate Resolution 7, the
14 Governor or his counsel has a right to conduct a
15 cross-examination of the witness. However, as
16 neither the Governor nor counsel on his behalf have
17 appeared, there can be no cross-examination.
18 Therefore, we will proceed directly to the taking
19 of written questions from Senators regarding the
20 testimony of this witness.

21 President Cullerton, for what purpose do
22 you rise?

23 PRESIDENT CULLERTON: Mr. Chief Justice, I
24 don't believe we need a caucus. There might be

1 some questions that we can address just by
2 remaining here in the Chambers.

3 CHIEF JUSTICE FITZGERALD: Very well.

4 Senator Radogno, for what purpose do you
5 rise?

6 SENATOR RADOGNO: We would request a caucus to
7 formulate questions as well as discuss some other
8 matters.

9 CHIEF JUSTICE FITZGERALD: Yes, Senator
10 Cullerton?

11 PRESIDENT CULLERTON: Maybe I can ask a
12 question, Mr. Justice, of the Prosecution,
13 House Prosecutor?

14 CHIEF JUSTICE FITZGERALD: Sir.

15 PRESIDENT CULLERTON: It's my understanding
16 that they wish to complete all of their witnesses
17 today, so if we could just get a time frame for
18 those witnesses and how long they think their
19 testimony will be so that we can determine how many
20 more caucuses we're going to need.

21 HOUSE PROSECUTOR ELLIS: Mr. President, we have
22 one remaining witness, Auditor General William
23 Holland. We would expect approximately one hour
24 for his direct testimony.

1 CHIEF JUSTICE FITZGERALD: I don't know how to
2 do this. The Senate -- the Democratic side
3 would -- yes. Senator Cullerton, are you going to
4 help me out a little bit?

5 PRESIDENT CULLERTON: Yes, Mr. Justice. I
6 mean, I'd like to find out from the Republicans how
7 long they need for their caucus. I would hope it
8 would be very short.

9 CHIEF JUSTICE FITZGERALD: I was going to go
10 with a half an hour.

11 PRESIDENT CULLERTON: At the most?

12 CHIEF JUSTICE FITZGERALD: At the most, yes.

13 Do you just wish to be -- retire at ease?

14 PRESIDENT CULLERTON: We will caucus.

15 CHIEF JUSTICE FITZGERALD: Okay. The Senate
16 will stand in recess to the call of the Chair
17 during the caucuses. We will return after the
18 caucus at the hour of 2:20. We will return after
19 the caucus at the hour of 2:20 for any questions
20 for the witness. The Senate stands in recess to
21 the call of the Chair.

22 (Whereupon, a short recess

23 was taken.)

24 CHIEF JUSTICE FITZGERALD: The Senate will come

1 to order.

2 Madam Secretary, have any questions
3 been submitted?

4 MADAM SECRETARY: Yes. Question -- a question
5 list has been received from both the Democratic
6 Caucus and the Republican Caucus.

7 CHIEF JUSTICE FITZGERALD: The questions will
8 be posed by the Secretary and the Assistant
9 Secretary beginning first with the Secretary, then
10 with the Assistant Secretary and back and forth
11 until we're through with the questions.

12 The Sergeant-at-Arms will bring the
13 witness back into the Chamber, please.

14 Professor, of course, you realize you're
15 still under oath?

16 THE WITNESS: Yes, sir.

17 CHIEF JUSTICE FITZGERALD: You may be seated.

18 MADAM SECRETARY: The first question is
19 from Senator Raoul.

20 You made the statement that the
21 appropriate thing for the Governor to do would
22 be -- would have been to file suit. Is it not true
23 that our courts do not give advisory opinions?

24 THE WITNESS: That's correct, that the courts

1 don't give advisory opinions, but for a -- to
2 challenge it in the context of a specific rule
3 would not be an advisory opinion.

4 MR. SECRETARY: Question from Senator
5 Rutherford: Do you view JCAR or a similar function
6 a necessary part of the checks and balances for the
7 effective and cohesive operation of the three
8 branches of Illinois government?

9 THE WITNESS: Yes, sir.

10 MR. SECRETARY: Also from Senator Rutherford:
11 More specific, do you believe JCAR or a similar
12 function is a necessary check and balance of the
13 Executive Branch of our State's government?

14 THE WITNESS: Yes, I do.

15 MADAM SECRETARY: From Senator Noland:
16 What precedent is there for a seated Illinois
17 Governor to file a lawsuit similar to that in
18 question or as you have referred to?

19 THE WITNESS: Well, I don't think there is a
20 precedent because no sitting Illinois Governor has
21 ever contended that JCAR is unconstitutional
22 before.

23 MR. SECRETARY: Question from Senator Carole
24 Pankau: In your opinion, would it be a violation

1 of the Illinois Constitution's separation of powers
2 provision for a Governor to override the Joint
3 Committee on Administrative Rules?

4 THE WITNESS: Yes.

5 MADAM SECRETARY: From Senator Noland, in
6 four parts: JCAR was created by the legislature,
7 correct?

8 THE WITNESS: Yes.

9 MADAM SECRETARY: It was not created under the
10 Constitution, correct?

11 THE WITNESS: That's correct.

12 MADAM SECRETARY: The Circuit Court and the
13 Appellate Court that have ruled as to whether the
14 Governor exceeded his authority did so under the
15 Illinois statute, not our Constitution, correct?

16 THE WITNESS: Yes.

17 MADAM SECRETARY: So no determination as to
18 whether the Governor has exceeded his
19 constitutional authority has been rendered by a
20 court of competent jurisdiction, has there?

21 THE WITNESS: That's correct.

22 MR. SECRETARY: Question from Senator Brad
23 Burzynski: Since 1977, only nine of the 69
24 prohibitions or suspensions issued by JCAR have had

1 the filing prohibition become permanent. Seven of
2 these nine unresolved rule-makings have occurred
3 since Governor Blagojevich took office in 2003.
4 Would you agree this statistic is significant?

5 THE WITNESS: Yes, I would. It indicates a
6 greater degree of challenge to JCAR's authority
7 under the current administration.

8 MADAM SECRETARY: Senator Rickey Hendon: Has
9 there ever been a case in which JCAR or a similar
10 entity has been seen to have too much power?

11 THE WITNESS: There have been challenges to
12 similar entities in other states, but there are
13 differences between Illinois' Constitution and
14 those other states' so I don't think they're
15 relevant.

16 MADAM SECRETARY: And a second part of
17 that question: Is the purpose of JCAR to be the
18 chief executive of the State of Illinois?

19 THE WITNESS: No. I think the purpose of JCAR
20 is to exercise a check on the executive's
21 implementation of a State law.

22 MADAM SECRETARY: Thank you.

23 MR. SECRETARY: Question from Senator Hultgren:
24 In your time following, studying and teaching about

1 state government, particularly Illinois, have you
2 ever seen an instance of executive excess that
3 equals the Governor's actions with regards to
4 ignoring legislative oversight, specifically
5 implementing an administrative rule that not only
6 had not been approved but was fully rejected and
7 set aside by a legislative panel in accordance with
8 law?

9 THE WITNESS: I have not seen such an example,
10 other than this one.

11 MADAM SECRETARY: From Senator Hendon: Are
12 there any other professionals who may disagree with
13 your opinion?

14 THE WITNESS: Well, I'm certain there are law
15 professors who disagree with virtually all other
16 law professors. I'm not aware of any
17 that disagree with this particular opinion, but
18 we could probably find one.

19 MADAM SECRETARY: Thank you.

20 MR. SECRETARY: Question from Senator Dan
21 Rutherford: Can you please summarize your
22 cross-examination by Governor Blagojevich's legal
23 counsel in the House Special Investigation
24 Committee?

1 THE WITNESS: I remember there were a number of
2 questions that were hotly contested by the Chair
3 whether or not they were appropriate, so I don't
4 specifically recall the cross-examination.

5 MADAM SECRETARY: Senator Kotowski: So is it
6 your opinion that Governor Blagojevich's decision
7 to unilaterally reject the JCAR process shifted a
8 large amount of power from the legislator --
9 legislature to the Executive Branch?

10 THE WITNESS: Yes.

11 MADAM SECRETARY: Thank you.

12 This is from Senator Jacobs: How is an
13 unelected executive director of JCAR any more
14 powerful than the unelected director appointed by
15 the Governor?

16 THE WITNESS: I don't think the director of
17 JCAR is more powerful. The importance is that JCAR
18 is made up of Members of the legislature who are
19 reviewing the exercise of the authority they have
20 delegated to the Executive Branch agencies. It's
21 the Members of the legislature, not the director -
22 who's a staff position.

23 MADAM SECRETARY: Thank you.

24 CHIEF JUSTICE FITZGERALD: The House Prosecutor
25 may question the witness on redirect.

1 HOUSE PROSECUTOR WIER: We have no further
2 questions for the witness, your Honor. Thank you.

3 CHIEF JUSTICE FITZGERALD: Thank you. The
4 witness is excused.

5 (Whereupon, the witness was
6 excused.)

7 CHIEF JUSTICE FITZGERALD: And if the House
8 Prosecutor would please call his or her next witness.

9 Excuse me.

10 Recognizing President Cullerton.

11 PRESIDENT CULLERTON: Yes. Thank you, Mr. Justice.

12 I wanted to inform the Senate that our
13 plan was to -- for the schedule was to finish this
14 next witness, have a caucus to prepare questions,
15 and then it's my understanding that the House
16 Prosecutor would then rest.

17 The plan for us then would be to come back
18 tomorrow -- I presumed it would be 10:00 o'clock --
19 for the House Prosecutor to give a closing argument
20 that would last one hour.

21 I have been informed that the Governor
22 would like to come here tomorrow and ask leave of
23 us to file an appearance. We would have to give
24 him permission to do that.

1 I would urge us all to give him that leave
2 so that he can then argue as his own attorney. The
3 rules would allow him an hour and a half to do that
4 from 11:00 till 12:30.

5 My suggestion is that we would then take a
6 break, and the House Prosecutor then would have 30
7 minutes to rebut -- for rebuttal. And at that
8 point in time, we would then start our
9 deliberations.

10 So I just thought I would inform you of
11 the Governor's request and for planning purposes
12 know what our schedule would be.

13 And it's not appropriate at this time to
14 vote because the Governor has to come and file a
15 motion asking leave to file his appearance, but
16 we'll take that up tomorrow.

17 CHIEF JUSTICE FITZGERALD: The Prosecutor may
18 call his next witness.

19 The Sergeant-at-Arms will escort the
20 witness to the podium.

21 HOUSE PROSECUTOR KASPER: I would like to call
22 Auditor General William Holland.

23 CHIEF JUSTICE FITZGERALD: Senator Radogno.

24 SENATOR RADOGNO: Thank you, Mr. Chief Justice.

1 I just wanted to suggest - I realize we
2 don't need to deal with this until tomorrow - but
3 if, in fact, the Governor does show up, I would,
4 like President Cullerton, urge us all to allow him
5 leave to testify before the Body, and we would
6 welcome that.

7 Thank you.

8 CHIEF JUSTICE FITZGERALD: Senator Cullerton.

9 PRESIDENT CULLERTON: Yes. Just to clarify, it's
10 my understanding that the Governor wishes to file an
11 appearance to give a closing argument, not to
12 testify or to submit himself to cross-examination,
13 just to give a closing argument, just to clarify
14 that. We still would have to give him leave to do
15 that.

16 Thank you.

17 CHIEF JUSTICE FITZGERALD: You may proceed,
18 Counsel. No. You need a witness.

19 Will the Sergeant-at-Arms please bring in
20 the witness? Thank you.

21 Madam Secretary, will you please swear in
22 the witness?

23 MADAM SECRETARY: Please raise your right hand
24 and repeat after me, inserting your name at the

1 proper place.

2 (Whereupon, the witness was
3 sworn.)

4 CHIEF JUSTICE FITZGERALD: Will the witness
5 please be seated?

6 The House Prosecutor may --

7 MADAM SECRETARY: He prefers to stand, if
8 that's okay.

9 CHIEF JUSTICE FITZGERALD: You prefer to stand?
10 Do you have any objection to the witness
11 standing, Counsel?

12 HOUSE PROSECUTOR KASPER: No objection, your
13 Honor.

14 CHIEF JUSTICE FITZGERALD: All right. You may
15 proceed with your examination.

16 Want to wait while the distribution is
17 made?

18 WILLIAM G. HOLLAND,
19 called as a witness herein, having been first duly
20 sworn, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY HOUSE PROSECUTOR KASPER:

23 Q. Sir, would you please state your name and
24 spell your last name for the court reporter?

1 A. My name is William G. Holland,
2 H-o-l-l-a-n-d.

3 Q. And Mr. Holland, could you please tell us
4 your position and experience?

5 A. I am the Auditor General for the State of
6 Illinois, and I have been the Auditor General since
7 August 1 of 1992.

8 Q. And what did you do before you were
9 Auditor General?

10 A. The previous or the immediate nine years
11 before being Auditor General, I was the Chief of
12 Staff for the President of the Illinois Senate.

13 Q. In your capacity as Auditor General, are
14 you involved in any organizations?

15 A. Yes.

16 I have been involved in the National
17 Association of State Auditors, Comptrollers and
18 Treasurers. I have been involved with the National
19 State Auditors Association and have been a past
20 president of the National State Auditors
21 Association.

22 Q. How many governors has Illinois had during
23 your tenure as Auditor General?

24 A. Three governors.

1 Q. And what are your responsibilities as
2 Auditor General?

3 A. Article VIII, Section 3 of the Illinois
4 Constitution directs my office to conduct the audit
5 of the public funds of the State of Illinois. In
6 addition, I am directed occasionally to do audits,
7 other studies and investigations as may be directed
8 by the General Assembly. I do those, and every
9 year, my office releases anywhere between 175 to
10 225 audits a year.

11 Q. Thank you, General.

12 Turning your attention to the documents
13 that have been distributed, did your office conduct
14 a management audit of the flu vaccine procurement
15 and the I-SaveRx program?

16 A. Yes, we did.

17 Q. General, I believe you have been copied --
18 tendered a copy of Exhibit No. 6, which is in the
19 packets, Ladies and Gentlemen of the Senate, that
20 has been distributed.

21 Do you recognize this document?

22 A. Yes, I do.

23 Q. And what is that?

24 A. It is the management audit of the flu

1 vaccine and procurement of the I-SaveRx program.

2 Q. And why did your office conduct that
3 audit?

4 A. This audit was conducted pursuant to a
5 House resolution, House Resolution 394, which
6 passed the House in May of 2005.

7 Q. And what did the resolution direct your
8 office to do?

9 A. The resolution directed my office to
10 examine the roles of the Governor's Office and the
11 Office of Special -- Special Advocate For
12 Prescription Drugs in the development of the flu
13 vaccine procurement and then to look at the
14 participating agencies and their participation in
15 the development of the I-SaveRx program and then to
16 examine the laws as it related to the procurement
17 of both the flu vaccine and the I-SaveRx program.

18 Q. All right. Thank you.

19 General, I would like to begin with a
20 timeline of events regarding the flu vaccine.

21 HOUSE PROSECUTOR KASPER: Ladies and gentlemen,
22 I believe this is located on Page 1 of your
23 packets, and it is also located on Pages 26 and 27
24 of the audit contained in Exhibit No. 6.

1 BY HOUSE PROSECUTOR KASPER:

2 Q. General, would you tell us what happened
3 in the fall of 2004?

4 A. Yes.

5 In the fall of 2004, the Food and Drug
6 Administration let it be known that vaccines that
7 had -- anticipated to be used for the flu season
8 were unsafe for use.

9 Q. And how much of the flu vaccine used in
10 the United States was determined to be potentially
11 unsafe?

12 A. Approximately half of the amount that had
13 been anticipated.

14 Q. And what was the State of Illinois'
15 response to the FDA announcement?

16 A. The State of Illinois' response at the
17 time was to begin the process of seeking out
18 additional vaccines.

19 Q. And did any person or official in
20 particular take that responsibility?

21 A. The Office of the Governor and the Office
22 of Special Advocate For Prescription Drugs were
23 involved with pursuing that.

24 Q. Are you familiar with the Office of

1 Special Advocate?

2 A. In the context of this audit, I am.

3 Q. And could you tell us who was or were the
4 special advocates during the time frame covered by
5 your audit?

6 A. In the case of the audit, I am familiar
7 with the two special advocates. One was Mr. Scott
8 McKibbin, and the second was Dr. Ram Kamath.

9 Q. That is K-a-m-a-t-h.

10 Do you know if anyone from the Governor's
11 staff worked on the flu vaccine issue?

12 A. There were a number of people who did work
13 on the flu vaccine issue. Deputy Governor Bradley
14 Tusk was involved, the Deputy Chief of Staff for
15 Social Services, Louanner Peters, the Director of
16 the Governor's Office of Management and Budget,
17 John Filan, and there were two attorneys in the
18 office, Mike Lurie and Tom Londrigan.

19 Q. And do you know if the staff from the
20 Governor's Office worked directly with the Special
21 Advocate?

22 A. To the best of my knowledge, they would
23 have worked directly with the Special Advocate,
24 yes.

1 Q. And did the people from the Governor's
2 staff that you mentioned, did they report directly
3 to the Governor?

4 A. They were all high-level individuals in
5 the Governor's Office, and I think it's safe to
6 presume that they did report directly to the
7 Governor.

8 Q. Thank you.

9 I'd like to turn your attention back to
10 the timeline of events regarding the audit. You
11 stated that the announcement by the FDA was on
12 October 15th, 2004. What did the Special Advocate
13 do in response to that audit? I'm sorry. Not the
14 audit, in response to that announcement.

15 A. Announcement from the FDA?

16 Q. Yes, correct.

17 A. The Special Advocate began to make
18 contacts with European wholesalers to secure
19 additional vaccines.

20 Q. And did they settle upon a particular
21 vendor for that vaccine?

22 A. Yes. They had settled on a vendor whose
23 name was -- is Ecosse who happened to be a
24 subsidiary of the wholesaler from the United

1 Kingdom, and Ecosse was the subsidiary and the
2 pharmaceutical supplier that they had settled on.

3 Q. Okay. I'd like to direct your attention
4 to the two weeks immediately following the FDA
5 announcement. Could you tell us what happened
6 during that period in late October of 2004?

7 A. I'm sorry. Would you repeat that one more
8 time?

9 Q. Yes.

10 I'd like to focus on the two weeks
11 immediately following the FDA announcement. Could
12 you tell us what happened in that period which was
13 late October 2004?

14 HOUSE PROSECUTOR KASPER: And ladies and
15 gentlemen, that's reflected in the first box of the
16 timeline circled in red on your timelines.

17 BY HOUSE PROSECUTOR KASPER:

18 Q. Could you tell us what happened?

19 A. Well, the first thing that happened was
20 that the Special Advocate for Prescription Drugs
21 secured an order or placed an order with Ecosse for
22 35,000 flu vaccines.

23 Q. What happened the next day?

24 A. The next day, the Deputy Governor added to

1 that order an additional 200,000 vaccines to be
2 procured from the pharmaceutical supplier, Ecosse.

3 Q. And were additional doses ordered -- were
4 additional doses ordered beyond that 200,000 order?

5 A. Yes. On November the 1st, an additional
6 300,000 doses were ordered.

7 Q. So is it fair to say that during the two
8 weeks following the FDA announcement, the
9 Governor's Office had obligated the State of
10 Illinois to purchase over a half a million doses of
11 vaccine?

12 A. Yes.

13 Q. By -- at the time that they ordered the
14 500,000 doses of vaccine, did the State of Illinois
15 have a contract with Ecosse?

16 A. No.

17 Q. Okay. Thank you.

18 General, the audit makes a recommendation
19 regarding the procurement of the vaccine. I'd like
20 to turn your attention to that recommendation, which
21 appears on Page 34 of Exhibit No. 6.

22 What is your office's assessment of this
23 procurement?

24 A. Well, our finding and our recommendation

1 suggested that in order to protect the State's
2 interests and to not put State resources at risk
3 that the audit -- the Office of the Governor should
4 enter into timely formal agreements with any
5 vendors that they chose to; they should require
6 appropriate planning before entering into any
7 contracts; they should ensure that
8 appropriately qualified staff participate in
9 contract negotiations; and they should execute
10 formal agreements with anybody that they anticipate
11 to be a part of the procurement. And finally, we
12 suggested they should maintain an appropriate
13 contract file with a clear written determination as
14 to the need for the procurement.

15 Q. Okay. Thank you, General.

16 I'd like to just walk through your
17 findings in a little bit more detail.

18 Did the Governor's Office negotiate
19 with Ecosse for a flu vaccine for governmental
20 units outside the State of Illinois?

21 A. Yes, they did.

22 Q. And do you know which ones?

23 A. Yes. They negotiated with the cities of
24 New York City and Cleveland, Ohio and the states of

1 Tennessee, Kansas and New Mexico.

2 Q. And how many doses did Ecosse bill to
3 Illinois on behalf of these other governments?

4 A. Well, the total amount that was billed was
5 for 773,250, of which -- of which for the State of
6 Illinois, our share was 254,250.

7 Q. Why did the Governor's Office seek flu
8 vaccines for places outside of Illinois?

9 A. I don't know.

10 Q. Did the Governor's Office enter into
11 written contracts with other cities and states?

12 A. No.

13 Q. Why not?

14 A. I don't know.

15 Q. Can you tell us the total amount of money
16 billed by Ecosse to the State of Illinois for the
17 vaccine?

18 A. Ecosse billed the State for \$8.2 million
19 for the vaccines, for all of the vaccines.

20 Q. And I'd like to turn your attention to
21 Page 32 of Exhibit No. 6, your audit.

22 Did Ecosse ever demand payment for the
23 \$8.2 million?

24 A. Yes, they did.

1 Q. And why did Ecosse believe it was entitled
2 to \$8.2 million?

3 A. Well, on February the 8th of 2005, the
4 director of Ecosse sent a letter to the Governor.
5 And as you indicated, it's on -- referenced on Page
6 32 of my audit. And in it, the director discusses
7 the need for payment and says, and I quote:
8 It is with extreme disappointment that I find
9 myself forced to write to you today to request
10 immediate payment of all monies outstanding to us
11 in excess of 8 million US dollars - 8 million US
12 dollars - relating to the above. And the above
13 was the order.

14 Further, the correspondence states, and I
15 quote: Your State's commitment to us has been
16 fully documented between us and with full
17 disclosure throughout and backed up by personal
18 representations and commitment to me by your Deputy
19 Governor on Friday, the 17th of December, 2004.

20 Q. Thank you, General.

21 Are you familiar with federal law
22 governing the importation of vaccines into the
23 United States?

24 A. Yes.

1 Q. And what is your understanding of federal
2 law regarding the importation of vaccines from
3 other countries?

4 A. Well, it's a little complicated, and if
5 you'll let me explain it. The public service --
6 the Public Health Service Act is a federal law, and
7 it prohibits the importation of unapproved vaccines
8 into the interstate commerce.

9 Now, a separate federal law, that is the
10 Federal Food, Drug, and Cosmetic Act, prohibits the
11 importation of drugs into the United States.

12 Now, for the purposes of the Federal Food,
13 Drug and Cosmetic Act, vaccines are considered to
14 be drugs, and as such, they would be prohibited
15 from entering into the interstate commerce unless,
16 unless there was a -- what was referred to as an
17 IND, an Investigational New Drug Application, on
18 file with the Food and Drug Administration.

19 Q. And did Illinois have an IND on file with
20 the FDA at the time --

21 A. They did not.

22 Q. -- the flu vaccine was ordered?

23 I'm sorry. Would you repeat your answer?

24 A. They did not have an IND on file.

1 Q. Did federal law permit the Governor to
2 authorize the importation of flu vaccine
3 without FDA approval either through an IND or
4 otherwise?

5 A. No.

6 Q. Did the Governor's Office contact the FDA
7 to obtain approval for importing flu vaccine?

8 A. Yes, they did.

9 Q. All right. General, I believe you have
10 been tendered a copy of Exhibit No. 6, which is
11 also in the packets that's been distributed.

12 Are you familiar with this document?

13 A. Do you want to say that again?

14 Q. I'm sorry.

15 A. I have too many fingers up here, and
16 it's my fault.

17 Q. I believe that you've been tendered a copy
18 of Exhibit No. 6, which is in -- 60 -- I'm sorry --
19 which is in the packets.

20 Are you familiar with this document?

21 A. I'm sure I am.

22 Q. Regarding a request for a waiver from the
23 FDA?

24 A. Oh, yes, I am familiar with that document.

1 Yes, I am.

2 Q. Okay. And could you -- did the Governor
3 request approval from the FDA?

4 A. The Governor did request approval from the
5 FDA, yes, and we notified -- that is, I believe,
6 identified on your time chart.

7 Q. Yes, I believe it is.

8 A. I can't read it. Well, --

9 Q. I'm not sure if it is on your timeline,
10 General.

11 A. I'm sorry?

12 Q. I'm not sure if it is on your timeline.
13 It's October 25th, 2004.

14 A. Right. It was October 25th of 2004 that
15 the Governor's Office did request permission for
16 the flu vaccine to be entered into the United
17 States.

18 Q. And did the FDA respond to that request?

19 And I'd like to direct your attention to
20 Page 37 of your audit.

21 A. Yes.

22 Q. And what was the FDA's response?

23 A. And the FDA's response was dated October
24 27th of 2004, and it indicated that because the

1 flu vaccine was not licensed for use in the country,
2 it would not be admitted.

3 Q. Thank you.

4 Now I'd like to turn your attention to
5 various communications that your office uncovered
6 during the course of the audit.

7 What was the first communication between
8 the Department of Public Health and the Governor's
9 Office?

10 HOUSE PROSECUTOR KASPER: Ladies and gentlemen,
11 this communication is referenced in Circle Number 2
12 on the timeline of events.

13 THE WITNESS: Well, it's important to note that
14 this first communication is between the Department
15 of Public Health and the Governor's Office, and in
16 that communication, it indicated that the need for
17 vaccines for the State of Illinois for the priority
18 population within the State of Illinois would be
19 approximately somewhere between 160 and 200,000
20 doses of vaccines.

21 BY HOUSE PROSECUTOR KASPER:

22 Q. And what is meant by a priority population?

23 A. A priority population generally refers to
24 people who are over 65 years of age, infants, women

1 who are pregnant, people who work in the healthcare
2 field who might be more susceptible to contracting
3 the flu.

4 Q. And at the end of the day, how many doses
5 were ordered for Illinois?

6 A. At the end of the day, the administration
7 had ordered 254,250 doses for Illinois.

8 Q. And was that more than necessary for
9 Illinois's priority population?

10 A. Yes.

11 Q. Okay. Now I'd like to turn your attention
12 to some of the e-mails that your audit discusses,
13 and I'd like to begin with the audit from -- I'm
14 sorry -- the e-mail from the Special Advocate's
15 Office to the Department of Public Aid.

16 HOUSE PROSECUTOR KASPER: I believe this is
17 also in your packet on Page 31 of Exhibit No. 6.

18 BY HOUSE PROSECUTOR KASPER:

19 Q. Could you tell us about this e-mail?

20 A. Are you discussing the e-mail dated
21 November the 10th from the Special Advocate's
22 Office to the Public Aid, to the Office of Public
23 Aid?

24 Q. Yes, I am.

1 A. Yes, I am familiar with that one.

2 Q. Could you describe that e-mail to us,
3 please?

4 A. On November the 10th, the Special Advocate
5 indicated to a Public Aid official that -- and I
6 quote -- we need to know if there's any way to
7 expedite payment to the vendor. Can payment be
8 made followed by paperwork?

9 Q. And who is the vendor that's referred to
10 in the e-mail?

11 A. Again, the vendor is Ecosse.

12 Q. In your position as Auditor General, is it
13 permissible for the State to have paid Ecosse
14 before any paperwork had been filed?

15 A. Well, it's not permissible for me to make
16 it, neither is it permissible for the
17 Comptroller. In the next sentence, we say that per
18 the Procurement Code, the Comptroller may process
19 no payments before a written contract has been
20 filed.

21 Q. All right. I'd like to direct your
22 attention to the next e-mail which appears on Pages
23 30 and 31 of Exhibit No. 6. Could you tell us
24 about that e-mail, please? It's an e-mail from the

1 Special Advocate.

2 A. Again, this -- which one are you referring
3 to now, again?

4 Q. I'm sorry. I'm referring to the e-mail on
5 Pages 30 and 31 --

6 A. Yeah, I understand.

7 Q. -- from the Special Advocate.

8 A. I thought you said a different page and
9 you started to throw me off there.

10 Q. I apologize.

11 A. Yes.

12 This e-mail was from -- was to the State
13 Purchasing Officer at the Department of Public Aid
14 from the Special Advocate, and in this e-mail, the
15 Special Advocate says, and I quote: First time
16 anyone has used the term contract. I have been
17 talking to the Budget Office, the Deputy Governor,
18 et cetera, and nobody has said word one about a
19 contract. We have been told several times the
20 payment would be processed COD. If someone needs a
21 contract, then you or someone else needs to get it
22 done without delay. If the vendor is told this
23 payment will be delayed, Illinois and all other
24 governments will not have these flu shots shipped.

1 Q. Okay. General, the e-mail references a COD
2 or cash on delivery. In your entirety of the period
3 you've been Auditor General, have you ever
4 encountered a State contract paid COD?

5 A. I have not.

6 Q. Okay. I'd like to ask you about one
7 additional e-mail which is Exhibit No. 14 in the
8 packets. And this is an e-mail from the Special
9 Advocate to the Deputy Governor.

10 Could you describe that e-mail for us from
11 December 21st, 2004?

12 A. Which exhibit are you referring to again,
13 now?

14 Q. It's Exhibit No. 14 in the packets, and
15 it's the December 21st, 2004 e-mail from the
16 Special Advocate.

17 It's Exhibit 14 in the packets. It
18 appears in the timeline as Circle Number 4.

19 A. I just was -- I was pulling it up from the
20 package of information you gave me.

21 Yes.

22 Q. Do you have the document?

23 A. I do have the document in front of me.

24 Q. Could you describe that e-mail?

1 A. Yes. This is a document from Mr. McKibbin
2 to Michael Lurie in the Governor's Office and to
3 Bradley Tusk with copies sent to Tom Londrigan and
4 John Filan.

5 The critical element in this particular
6 e-mail which is short, but the critical element is
7 that the Special Advocate for Prescription Drugs
8 notes that they probably won't be taking -- won't
9 be taking possession of the drugs. And in it, they
10 say, and I quote: We probably will never take
11 delivery of these doses so we will need to find a
12 way to pay for the service they performed.

13 Q. I notice that the word "service" is in
14 quotation marks in that e-mail. Do you attribute
15 any significance to that?

16 A. Well, it was clear that the Administration
17 Special Advocate knew that the drugs were never
18 going to come into the United States because they
19 had been prohibited by the FDA. So the intent, as
20 you could tell by this e-mail, is that they were
21 going to try and shift the payment for something
22 other than a tangible product to something more in
23 the nature of a service.

24 Q. Would that have had any impact on the

1 price?

2 A. Well, it has more an impact on the
3 billing. The price of the -- we wouldn't be
4 receiving any vaccines.

5 Q. But there was no discussion of lowering
6 the amount?

7 A. No.

8 Q. Okay. And did Mr. Lurie respond to the
9 e-mail?

10 A. Yes, he did.

11 Q. And could you describe that e-mail to us?
12 I believe it's on the same document.

13 A. This e-mail is also in your Exhibit 14.

14 Again, this e-mail goes from Michael Lurie
15 to Mr. McKibbin and to the Deputy Governor and to
16 the -- Tom Londrigan and to John Filan and a Mr. John
17 Frigo in the office.

18 And in it, Mr. Lurie says, and I quote:
19 If you do not anticipate Illinois actually taking
20 delivery of the vaccines, and the contract is either
21 broad enough or could be clarified in an amendment
22 now to refer to the payment for the, quote,
23 services, i.e., not receipt of the drugs
24 themselves, then that should be -- should make our

1 lives and dealing with the Comptroller a heckuva
2 lot easier in terms of getting these guys paid
3 promptly in the absence of FDA approval.

4 Q. And again, I noticed that the word
5 "services" is also in quotation marks in this
6 e-mail. Do you attribute the same significance to
7 that?

8 A. Yes.

9 Q. Okay. And could you explain one more time
10 what the significance of shifting the contract from
11 a product to a service would be?

12 A. Well, it was clear - and it was clear on
13 October the 27th when the Food and Drug
14 Administration indicated that those vaccines would
15 not be allowed into the country - that now we are in
16 a position to have placed orders and obligated the
17 State for \$8.2 million, and the need was to -- if
18 Ecosse was going to get paid and we couldn't take a
19 tangible product, in order to make payment, we had
20 to alter that particular agreement, which was as yet
21 not in place, in order for payment to be made. And
22 "services" was the catchall. It did not result in
23 any vaccines being -- entering into the State of
24 Illinois.

1 Q. As of the date of this e-mail,
2 December 21st, 2004, had the State received FDA
3 approval to import the vaccine?

4 A. No.

5 Q. Did the State ever receive approval from
6 the FDA?

7 A. No.

8 Q. Did your audit reveal that the Special
9 Advocate and the Governor's Office knew that the
10 FDA approval was needed in order for the State to
11 receive the vaccines?

12 A. Yes.

13 Q. Did they nonetheless have an agreement
14 with Ecosse for approximately 700,000 doses of
15 vaccine?

16 A. They -- at the time of those discussions,
17 they had a verbal agreement for the delivery of
18 773,250 doses.

19 Q. Did they also know that the Federal
20 Government had found enough vaccine for the need in
21 Illinois and the United States?

22 A. Yes. In fact, in early December, the
23 Centers For Disease Control had indicated that
24 sufficient vaccines had been found for the Illinois

1 priority population.

2 Q. And did the State of Illinois nonetheless
3 continue to pursue a contract with Ecosse?

4 A. Yes, they did.

5 Q. When did the State formally enter into a
6 contract with Ecosse for the flu vaccines?

7 A. The State formally entered into a contract
8 on January the 13th of 2005 with Ecosse --

9 Q. And --

10 A. -- for \$2.6 million.

11 Q. Was this after the CDC had announced that
12 there was sufficient supply in the United States?

13 A. More than a month.

14 Q. And what was the amount that was
15 eventually billed to the State of Illinois by
16 Ecosse?

17 A. Well, the amount that was eventually
18 billed to the State of Illinois was approximately
19 \$2.6 million.

20 Q. And was that pursuant to the written
21 contract?

22 A. That was pursuant -- well, the -- actually,
23 the amount that was billed was actually billed
24 before the contract was in place, and then the

1 contract reflected that billing.

2 Q. Thank you.

3 Did the State of Illinois ever receive the
4 vaccine from Ecosse?

5 A. No.

6 Q. Why not?

7 A. As I indicated, the Food and Drug
8 Administration had indicated that the vaccines
9 would not be allowed into the country.

10 Q. And what happened to the vaccine?

11 A. The vaccines were -- arrangements had been
12 made for the vaccines to be shipped to Pakistan
13 where -- the last that we heard was that the
14 vaccines had been destroyed because their -- they
15 were no longer -- their lifespan had expired and
16 they were no longer useful.

17 Q. And did the State of Illinois pay the \$2.6
18 million to Ecosse?

19 A. It did not. That is the subject of a case
20 before the Illinois Court of Claims.

21 Q. So Ecosse has sued the State for the
22 money?

23 A. Yes.

24 Q. Okay, thank you.

1 At this point, I'd like to turn your
2 attention to the second half of the audit regarding
3 the I-SaveRx program.

4 What is the I-SaveRx program?

5 A. The I-SaveRx program is a program
6 initiated by the Governor in October of 2004. And
7 generally, it provided for prescription refills to
8 be filled by foreign international pharmaceutical
9 companies for consumers in the State of Illinois.

10 Q. And did someone in the Governor's Office
11 research a foreign drug importation program?

12 A. Yes, they did. And I need to give you
13 just a little bit of background on that because I
14 indicated that the I-SaveRx program was established
15 in October of 2004. And in fact, at the direction
16 of the Governor's Office, the Special Advocate did
17 some research in September of 2003 preceding that
18 for a drug importation program. It wasn't called
19 the I-SaveRx program at the time, but it was a drug
20 importation program which at the time was designed
21 or intended to be used for the drug importation for
22 refilling prescriptions for State employees and
23 State retirees.

24 Q. Okay. And you said the Special Advocate.

1 Who was the Special Advocate at this time?

2 A. Again, the Special Advocates were
3 Mr. Scott McKibbin and Dr. Ram Kamath.

4 Q. And could you tell us what the Special
5 Advocates' research revealed?

6 A. The Special Advocates' research.

7 Q. Oh, I'm sorry. Is that not what I said?

8 A. I just wanted to make sure that it was
9 clear that you understood it was the Special
10 Advocates' research revealed that they believed
11 that the prescription refills could be safely
12 brought into the country.

13 Q. Okay. And I believe we have a timeline of
14 events for the I-SaveRx program as well, which is
15 the second document in the packets that's been
16 distributed, and we're also posting it for your
17 review.

18 I believe you've been tendered a copy of
19 Exhibit No. 41 which is the FDA's response. Do you
20 have that document?

21 A. Yes, I do.

22 Q. And what did the FDA respond?

23 A. The response which was sent by Mr. William
24 K. Hubbard, who was the Associate Commissioner for

1 Policy and Planning at the Food and Drug
2 Administration, was sent to Ram Kamath and Scott
3 McKibbin on November the 6th, 2003, and it was a
4 three-page, four-page response.

5 The critical sentence in here is that
6 they -- and I quote: We are also concerned that
7 if your -- your plan, if implemented, would be
8 in direct conflict with federal and State law.

9 Q. What happened next? Did the Governor act
10 in response to the FDA's actions or letter?

11 A. What happened next was the Governor then
12 in middle of December of 2003 sought through the
13 Health and Human Services a waiver.

14 And at the time, Governor Blagojevich sent
15 a letter to Tommy Thompson on December the 22nd,
16 2003, and in that letter, he indicates: I'm
17 writing today to request your authorization for the
18 State of Illinois to launch the first
19 re-importation demonstration program.

20 Q. Okay. Thank you.

21 HOUSE PROSECUTOR KASPER: Ladies and gentlemen,
22 the letter from the Governor is included in the
23 packets.

1 BY HOUSE PROSECUTOR KASPER:

2 Q. And, General, did the FDA respond to this
3 request?

4 A. Yes, they did.

5 HOUSE PROSECUTOR KASPER: And, ladies and
6 gentlemen, the June 3rd, 2004 response is indicated
7 on the second circle in the timeline for this
8 exhibit.

9 BY HOUSE PROSECUTOR KASPER:

10 Q. Have you reviewed this letter, General?

11 A. Yes, we have.

12 Q. And could you describe it for us, please?

13 A. Again, this letter is from the acting
14 commissioner of Food and Drugs, Mr. Lester Crawford
15 or Dr. Lester Crawford, and it was dated June
16 the 3rd and sent directly to Governor Blagojevich.

17 And in it, it says -- the operable
18 sentence is: We do not believe that a waiver could
19 be granted to allow the State's pilot project for
20 the safe importation of prescription drugs under
21 the current law.

22 Q. And what happened after the FDA refused to
23 allow the importation of drugs?

24 A. Well, the State of Illinois began to

1 embark upon a drug importation program.

2 Q. Notwithstanding the FDA's reaction?

3 A. Notwithstanding the FDA's disapproval.

4 HOUSE PROSECUTOR KASPER: Yes. And, ladies and
5 gentlemen, that appears in the third circle on
6 the timeline.

7 BY HOUSE PROSECUTOR KASPER:

8 Q. General, did your audit findings conclude
9 that the program if implemented without FDA
10 approval would violate federal law?

11 A. Yes.

12 Q. And did your audit also conclude that it
13 would likewise violate State law?

14 A. Yes.

15 Q. Which State law?

16 A. We indicated that it would violate the
17 Illinois Pharmacy Practice Act.

18 Q. And why is that?

19 Well, let me take a step backwards a
20 little bit.

21 Could you just explain how the I-SaveRx
22 program worked? That might be an easier way to go
23 through it.

24 This is Exhibit 1 and 2, Page 11 of the

1 audit.

2 A. I'm trying to find our handy little flow
3 chart. Do we have that up there?

4 You want to know how the I-SaveRx program
5 actually operates?

6 Q. Correct.

7 A. Well, essentially, the I-SaveRx program
8 operates -- I can't put my hands quite on that flow
9 chart.

10 Q. Well, how does it begin? Does a person
11 mail in a prescription order?

12 A. There you go. I found it. I knew it was
13 in there.

14 It's on Page 11 of the audit. And it's a
15 pretty simple process, I must admit. The client
16 completes an I-SaveRx order form, and then goes to
17 his or her doctor and gets a prescription refill
18 for three months. They take that prescription
19 refill, they mail it in to the I-SaveRx program who
20 then, once they receive that application, call the
21 client and confirm that the order has been made and
22 payment has been made. And then what happens is
23 three to four weeks later, the medications are
24 dispensed directly from the supplier of

1 the prescription refill directly to the client.

2 Q. So does that mean that the people enrolled
3 in the program would receive their drugs directly
4 from the foreign pharmacy?

5 A. Yes. It passes through no hands in the
6 State of Illinois.

7 Q. Do any Illinois officials ever see the
8 drug sent by the foreign pharmacy?

9 A. No.

10 Q. Do State officials ever take possession of
11 the drugs sent by the foreign pharmacy?

12 A. No.

13 Q. Did the Special Advocate or anyone else
14 monitor whether prescriptions were only being
15 filled by approved foreign pharmacies?

16 A. No.

17 Q. Did the State ever do any testing of these
18 drugs?

19 A. No.

20 Q. Did the State oversee the refilling of
21 prescriptions in any way?

22 A. No.

23 Q. Had State officials, when seeking the FDA
24 approval, indicated that they were going to test

1 these drugs?

2 A. Yes. In fact, in the letter that -- when
3 the Governor requested the pilot project in
4 December of 2003, the Governor indicated that in
5 collaboration with the University of Illinois'
6 College of Pharmacy, Illinois will implement a
7 monitoring program to evaluate the safety and
8 efficacy of drugs received by plan participants
9 from all sources.

10 Q. And was that ever done?

11 A. No.

12 Q. When the program was created, was it legal
13 to import drugs into the country from foreign
14 sources?

15 A. No.

16 Q. Did your audit find that the I-SaveRx
17 program violated federal law?

18 A. Yes, it did. Yes.

19 Q. What was the Administration's response to
20 your audit?

21 A. The day the audit was released, the
22 Governor's Office issued a press release announcing
23 that not only would they continue the I-SaveRx
24 program but they would expand the program.

1 Q. And do you have any response to the
2 Governor's letter regarding your audit?

3 A. Well, I thought it was odd.

4 Q. And why did you think it was odd?

5 A. This was a program that had been the
6 subject of an audit that we had clearly suggested
7 violated not only State law but federal law and
8 that to continue to proceed with it was
9 inexplicable in our eyes.

10 Q. All right. Thank you, General.

11 The last topic I'd like to go to is a
12 discussion of the Governor's efficiency initiative
13 payments.

14 Did your office release a Department of
15 Central Management Services compliance audit for
16 the two years ending June 30, 2004?

17 A. Yes, we did.

18 Q. And I believe that you have been tendered
19 a copy of that which is part of Exhibit 6 in the
20 packets.

21 Did the audit of CMS result in any
22 additional documents being prepared by your office?

23 A. The audit was a -- as you indicated, was an
24 audit of the Department of Central Management Services,

1 but many of the programs that we took a look at and
2 the initiatives that we took a look at within CMS
3 affected many other State agencies, and to that
4 end, we issued a summary report of our findings and
5 how the efficiency initiative payments related to
6 the other State agencies.

7 Q. Okay. And could you briefly explain the
8 Efficiency Initiative Program?

9 A. The Efficiency Initiative Program of the
10 Governor's Office was designed to put in place some
11 programs in various areas of State government
12 designed to streamline and make these areas of
13 government more efficient.

14 The areas that had been selected for the
15 efficiency initiative focus were procurement,
16 procurement practices within the State, the
17 information technology development within the
18 State, the vehicle fleet management for the
19 automobiles and cars at the various State agencies,
20 the facilities management, that is our leasing and
21 our buildings, our State buildings. And finally,
22 the other remaining two initiatives were related to
23 the consolidation of the internal audit function of
24 the State of Illinois and the legal research

1 function within the State.

2 Q. And could you generally describe your
3 findings regarding the Efficiency Initiative
4 Program?

5 A. Our first finding was -- actually is a
6 pretty good summary, and I'll add a little
7 description. It indicated that the Department of
8 Central Management Services made payments for
9 initiative -- efficiency initiative buildings
10 from improper line item appropriations.

11 And by that, I mean that the Finance Act
12 had directed that efficiency initiative payments
13 should be made only from those line items where
14 their savings had been -- had occurred and not from
15 any other line items.

16 And in fact, what we found was that the --
17 is that agencies were directed to make payments
18 from where there were simply surpluses and money
19 that was not going to be spent.

20 The second thing that we disclosed was
21 that the Department of Central Management Services
22 essentially transferred the responsibility for
23 determining cost savings for efficiency initiatives
24 to another agency when the responsibility was

1 granted to CMS by law.

2 And in this case, the Governor's Office of
3 Management and Budget essentially handled all of
4 the buildings and directed what would be charged to
5 the individual agencies. And under the Illinois
6 State Finance Act as creating the efficiency
7 initiative, that responsibility was to lie within
8 the Department of Central Management Services.

9 Q. I'd like to take a little bit more time on
10 the two of those aspects of your findings.

11 You said that the payments were made from
12 any line item that had available funds. Could you
13 give us an example of what you're talking about?

14 A. Yes.

15 And these -- there are several of these
16 disclosed in the audit, but for example, the
17 General Assembly had appropriated some additional
18 money for veterans' beds at the Manteno Veterans'
19 Home, 38 additional veterans' beds, and from that
20 appropriation, \$433,000 was taken from that
21 appropriation and spent on the procurement
22 initiative without any demonstration that savings
23 were accruing to the Department of Veterans'
24 Affairs for those 38 additional beds.

1 Q. And did this apply to other agencies as
2 well?

3 A. Yes.

4 We found examples like this all over. And
5 it goes back to -- what occurred were, at the
6 direction of the Governor's Office of Management
7 and Budget, the agencies were just simply taking
8 money where they thought that there would be a
9 surplus.

10 And in the case of -- another example
11 would be the Environmental Protection Agency had
12 about a little over \$200,000 set aside for some
13 environmental studies, and that money was taken
14 from EPA for the procurement initiative. And
15 again, no demonstration was provided to us that
16 there had been savings in that particular line item
17 appropriation.

18 Another one would have been in the
19 Department of Human Services, in the Early
20 Intervention Program, \$1.2 million was taken from
21 that particular program, and again, no
22 demonstration that there had been savings accrued
23 to that line item or to that program.

24 Q. And why does your office believe that to

1 be an issue or a problem?

2 A. That's a problem from our perspective,
3 when the General Assembly directs by
4 appropriation that money should be spent in a given
5 way and then the money is spent in some other way
6 that was not directed by the appropriation process
7 and not directed by the General Assembly. We
8 believe that that violates certainly the
9 legislative -- the intention of the General
10 Assembly and it violated the Finance Act because
11 the Finance Act said that this is how the money
12 should be spent and how it should be billed, and it
13 was not billed that way.

14 Q. All right.

15 And the second part of your findings that
16 you mentioned was regarding the direction of the
17 Governor's Office of Management and Budget. Could
18 you explain that in a little bit greater detail?

19 A. What we discovered -- excuse me.

20 What we discovered was that the billings
21 for these particular initiatives were actually
22 being established by the Governor's Office of
23 Management and Budget and they were being sent over
24 to CMS who in turn took those billings, put them on

1 CMS letterhead, sent them back to the Governor's
2 Office of Management and Budget who then determined
3 which agencies would be billed and which agencies
4 would not be billed.

5 Q. And did your office -- did your audit
6 discover if the agencies that were billed were
7 accurately billed?

8 A. No. In fact, in most cases, the agencies
9 that were billed were overbilled.

10 Q. And did this apply to all agencies?

11 A. The vast majority of them, and in fact, in
12 the audit report, we disclose that -- where some of
13 these instances occurred -- if you'll allow me to
14 flip here.

15 So for instance, in the procurement
16 initiative, there were 39 agencies that were
17 billed, and of those 39, 35 of them were overbilled
18 and four were billed -- were underbilled.

19 But to give you an example of the
20 overbilling, in the case of the Department of
21 Transportation, they were billed a little over \$17
22 million for the procurement initiative when, in
23 fact, all they could document was \$1.2 million in
24 savings. So they were significantly overbilled.

1 Q. And did your audit discover whether the
2 Governor's Office had developed a document entitled
3 Winners and Losers?

4 A. I apologize if I got ahead of myself, but you
5 were -- that would be The Winners and Losers. I'm sorry.

6 Q. Could you describe that in a little bit
7 greater detail what -- The Winners and Losers?

8 A. Well, the winners and losers were those
9 agencies and those that were -- that we identified
10 as having been overbilled for the initiatives that
11 were in place.

12 And this -- the Winners and Losers document
13 was actually created by CMS. It was their document
14 that created that.

15 Q. And what was the purpose of having some
16 winners and some losers?

17 A. The -- I think the purpose is better said
18 that it was to -- it was the intent to get a
19 certain amount of money in place for their
20 consultants that they would be paying.

21 Q. And I'd like to turn now back to your
22 compliance examination.

23 Did your audit produce any findings
24 regarding the development and award of proposals

1 under the efficiency initiative?

2 A. Yes.

3 In the CMS audit, we specifically looked
4 at nine contracts, and in those nine contracts, we
5 discovered that six of the nine had either actively
6 developed the RFPs or had - the requests for
7 proposals - or had been granted waivers by the
8 Governor's Office in order to bid on the proposals.

9 Q. And why does your office consider this to
10 be a problem?

11 A. It goes to the question of a level playing
12 field in the procurement process.

13 When you procure, your hope is that
14 everybody has equal access to the same amount of
15 information, and if you are part of the development
16 of the RFP, you have clearly some additional inside
17 information, if you will.

18 Q. And during the audits, did your office
19 find any evidence that members of the Governor's
20 staff participated in drafting the proposals or sat
21 on selection committees for the award of these
22 contracts?

23 A. Yes. In fact, in seven of the nine
24 proposals, seven of the nine proposals, Governor's

1 office staff assisted in the development of the
2 RFPs and -- and/or sat -- actually sat on the
3 evaluation committee that determined who would be
4 the winner of the proposal.

5 Q. And why does your office consider that to
6 be a problem?

7 A. Well, in this particular initiative, the
8 responsibility under the Finance Act was left with
9 the office -- or with the Central Management
10 Services. And if you're going to ask that agency
11 to administer the program, it ought to be left
12 to them to make the determination.

13 If you have a shadow institution or
14 somebody overseeing from outside that you -- that
15 is not readily apparent to everybody else, it,
16 again, is -- creates an unfair level playing field.

17 Q. General, are you familiar with an entity
18 called Illinois Property Asset Management or IPAM?

19 A. Yes.

20 Q. And what did your audit discover regarding
21 the IPAM entity?

22 A. IPAM, the Illinois Property Asset
23 Management Group, was the single-largest recipient
24 of an award in this initiative. It was for

1 approximately \$25 million.

2 Q. And what did your office discover
3 regarding the award of the IPAM contract in the
4 conduct -- in conducting its audit?

5 A. In the IPAM contract, what we discovered
6 was that during the evaluation process, the firm,
7 IPAM, was allowed to extensively revise their
8 proposal while consideration was being given to who
9 would win or who would lose. That was number one.

10 Number two, we found that during the
11 process, a high-level CMS individual who was
12 responsible -- a part of the Procurement Review
13 Committee had dinner shortly before the award was
14 granted with a high-level IPAM official.

15 We further discovered that the company,
16 IPAM, did not exist at the time of its award. In
17 fact, the company was awarded the contract on
18 December the 29th of 2003, and it was not actually
19 -- IPAM was not actually created, incorporated,
20 until it filed on January the 15th of 2004 with its
21 Articles of Incorporation with the Secretary of
22 State's office. So it was two weeks after it
23 received the contract award did it come into
24 existence.

1 And finally, once it did come into
2 existence, we monitored some of its expenditures
3 and found that there were tens of thousands of
4 dollars of inappropriate expenditures made by IPAM
5 and billed back to the State of Illinois.

6 Q. General, did CMS object to the findings in
7 your audit?

8 A. Did CMS object?

9 Q. Yes.

10 A. Yes, they did.

11 Q. And did your audit indicate that the
12 departments under the Governor violated the
13 Procurement Code?

14 A. Yes.

15 Q. Did your findings indicate that the
16 Governor's Office violated the State Finance Act?

17 A. Yes.

18 Q. Do you continue to support the findings in
19 your audit?

20 A. Yes, I continue to support the findings.

21 And I would point out also that while the
22 Department of Central Management Services did
23 object to the findings initially and
24 I would -- it would be safe to say that they rather

1 vehemently objected to the findings, as time went
2 on and we worked with the agency, they came to
3 agree with all of our findings relating to the
4 efficiency initiatives and the procurements.

5 Q. Thank you.

6 General, did you testify before the House
7 Investigative Committee?

8 A. Yes, I did.

9 Q. And is the testimony that you gave before
10 the House Committee substantially similar to what
11 you've given here today?

12 A. Yes.

13 Q. And were the Governor's attorneys present
14 during your testimony before the House Committee?

15 A. Yes.

16 Q. And did the Governor's attorneys have an
17 opportunity to ask you questions when you appeared
18 before the House Committee?

19 A. Yes.

20 HOUSE PROSECUTOR KASPER: Ladies and Gentlemen
21 of the Senate, the exchange between Mr. Holland and
22 the Governor's attorneys is located at Pages 460 --
23 begins at Page 463 regarding efficiency
24 initiatives and 505 regarding the flu vaccine and

1 the I-SaveRx audit of the committee transcript.

2 General Holland, thank you for your time.

3 Your Honor, I have no further questions at
4 this time.

5 CHIEF JUSTICE FITZGERALD: Mr. Holland, we'll
6 be just a moment. You can be seated.

7 Pursuant to Senate Resolution 7, the
8 Governor or his counsel has the right to conduct a
9 cross-examination of the witness. However, as - of
10 this time - neither the Governor nor counsel on his
11 behalf have appeared, there can be no direct -- no
12 cross-examination. We'll therefore proceed
13 directly to the taking of written questions from
14 the Senate regarding the testimony of this witness.

15 President Cullerton.

16 PRESIDENT CULLERTON: Yes. Thank you,
17 Mr. Chief Justice.

18 I would like to ask for a caucus so that
19 we can prepare questions for this witness.

20 And I think I would defer to the
21 Republican Leader to determine the length, since it
22 appears that -- that they -- even though they have
23 fewer Members, they need more time for their caucuses.
24 So I'll defer to Senator Radogno.

1 CHIEF JUSTICE FITZGERALD: Senator Radogno.

2 SENATOR RADOGNO: Thank you, Mr. Chief Judge.

3 We would like to have a caucus for approximately a
4 half an hour to develop questions.

5 CHIEF JUSTICE FITZGERALD: There will be --
6 each party will have a caucus of a -- you said a
7 half an hour -- of a half an hour. That will take
8 us to 20 minutes after 4:00. The Senate will stand
9 in recess.

10 (Whereupon, a short recess was
11 taken.)

12 CHIEF JUSTICE FITZGERALD: The Senate will come
13 to order.

14 Mr. Sergeant-at-Arms, would you please
15 escort the witness back into the courtroom?

16 Madam Secretary, have any questions been
17 submitted?

18 MADAM SECRETARY: Yes. A question list has
19 been received from both the Democratic Caucus and
20 Republican Caucus.

21 CHIEF JUSTICE FITZGERALD: We will once again
22 have the questions read by the Secretary and
23 Assistant Secretary, commencing first with the
24 Secretary.

1 Mr. Holland, would you rather stand or
2 sit?

3 THE WITNESS: Would it be okay if I stand?

4 CHIEF JUSTICE FITZGERALD: It would be just
5 fine.

6 MADAM SECRETARY: The first question
7 from Senator Demuzio in three parts. What --

8 MR. SECRETARY: Hang on, Deb. Okay, you're set now.

9 MADAM SECRETARY: Again, Senator Demuzio: What
10 are some of the examples of improper expenditures
11 or billings of the Illinois Property Management
12 group you referenced?

13 THE WITNESS: Well, in -- there were, as I
14 indicated in my testimony, tens of thousands of
15 dollars of improper billings.

16 In one case, what we -- what the State of
17 Illinois was asked to pay for was for a victory
18 dinner for the IPAM group that had just secured the
19 contract award, and that was particularly egregious
20 in our view that the contract award that was given
21 to -- by the State of Illinois to them, we got
22 billed back for their victory dinner.

23 MADAM SECRETARY: And the second part is: What
24 or -- what were or are the expenditure totals?

1 THE WITNESS: I do not have those right at my
2 fingertips, but they're all contained in our audit.

3 MADAM SECRETARY: And they were paid by the
4 State?

5 THE WITNESS: Yes.

6 MADAM SECRETARY: Thank you.

7 MR. SECRETARY: Question from Senators Watson
8 and John O. Jones: Did you turn over the findings
9 of your CMS audit which included findings on some
10 of the efficiency initiative contracts to Attorney
11 General Lisa Madigan? If you did, did she
12 investigate and prosecute illegal acts? If not,
13 why not?

14 THE WITNESS: We did turn them over, and as to
15 the disposition, I can't address that.

16 MADAM SECRETARY: From Senator Forby: General,
17 it is -- is it your opinion that State government
18 could operate more efficiently without the
19 Department of Central Management Services?

20 THE WITNESS: No, that would not be my opinion.

21 MADAM SECRETARY: Thank you.

22 MR. SECRETARY: Question from Senator John O.
23 Jones: Isn't it true that the law on efficiency
24 initiatives required the Department of Central

1 Management Services to bill the agencies for
2 payments, but the Governor's Budget Director, John
3 Filan, and his staff actually directed CMS on the
4 billings?

5 THE WITNESS: That was what we discovered.

6 MADAM SECRETARY: From Senator Haine: Does
7 your testimony describe gross incompetence in
8 pursuit of well-meaning policies, or is it both
9 incompetence and a willful pattern of obstructing
10 your office's lawful oversight?

11 THE WITNESS: There was certainly -- there was
12 certainly some incompetence that was associated
13 with the department at the time, and in some cases,
14 we found that there was some willful obstructing by
15 Central Management Services and some employees
16 within Central Management Services to obstruct our
17 lawful oversight. Yes, we did find that.

18 MADAM SECRETARY: Thank you.

19 MR. SECRETARY: Question from Senator Frank
20 Watson: Did your audit find that an efficiency
21 initiative contract was awarded to a firm that
22 helped prepare the request for proposals for the
23 contract with the -- that the firm later won? And
24 were any of the contractors chosen from employers

1 of any CMS employees?

2 THE WITNESS: We did find that contracts were
3 awarded to firms that did help prepare the RFPs,
4 and that was the subject of my testimony.

5 Were any of the contractors chosen former
6 employers of any CMS employees? I don't know right
7 off the top of my head, Senator. I just don't
8 know. I can't recall. I'm not evading you; I just
9 can't recall. I have to think through that. If it
10 comes to me during the course of this, I'll --

11 MR. SECRETARY: I didn't hear what he said.

12 MADAM SECRETARY: "I will follow up."

13 Question from Senator Demuzio in two
14 parts: What is the current status of the I-SaveRx
15 program?

16 THE WITNESS: From my understanding, the
17 pharmaceutical supplier terminated the agreement a
18 couple of days ago, but I just read that in the
19 paper.

20 MADAM SECRETARY: And are there any audits
21 besides the one presented today?

22 THE WITNESS: Regarding the I-SaveRx program,
23 no.

24 MADAM SECRETARY: Thank you.

1 THE WITNESS: Other than any follow-up work we
2 would do within the context of an individual audit,
3 agency audit.

4 MR. SECRETARY: Question from Senator Frank
5 Watson: In your testimony, you referred to, quote,
6 consultants, end quote, in relation to the Agency
7 Efficiency Initiative.

8 Can you be more specific and provide any
9 detail about that term, "consultants"?

10 THE WITNESS: Well, in our audit, we detailed a
11 number of the consultants that were involved with
12 the Agency Efficiency Initiative, and that -- those
13 related to our Finding 4-2, and it listed a
14 number of the people who were involved.

15 Is that what you were looking for? In
16 addition to the Asset -- the IPAM group,
17 BearingPoint and Accenture were involved; McKinsey
18 & Company; EKI, Electronic Knowledge Interchange;
19 Deloitte & Touche; Team Services; Maximus and
20 BearingPoint.

21 MADAM SECRETARY: Next question comes from
22 Senator Haine: Page 5 outlines your findings that
23 despite no payment by CanaRX, there were
24 nonetheless significant expenditures of State funds

1 for travel, contractual services, marketing
2 programs and over \$220,000 in legal fees.

3 Do you know and can you tell the Senate
4 those persons who received the benefits from these
5 expenditures?

6 THE WITNESS: Senator, I don't have those names
7 in the audit itself, but I'm sure that those names
8 would be in our work papers. And between these
9 three audits that we're discussing, we're talking
10 about over 50,000 pages of work papers that are
11 involved, and I apologize, I don't remember all the
12 names.

13 MADAM SECRETARY: Thank you.

14 MR. SECRETARY: Senator Millner has a two-part
15 question.

16 Did the Governor first propose the
17 efficiency initiatives, implement them with his
18 executive orders and approve savings
19 determinations?

20 And secondly, did his staff help select
21 the contractors and determine payments to be made
22 by agencies out of specific appropriation lines?

23 THE WITNESS: Well, part of this emanated from
24 Executive Order Number 10, in answer to the first

1 question.

2 In answer to the second question, that was
3 my testimony, Senator Millner, that staff from the
4 Governor's Office did assist in participating in
5 the evaluation of those contract awards.

6 MADAM SECRETARY: Senator Schoenberg: The
7 Auditor General's findings for the Illinois Finance
8 Authority during the tenure of Mr. Ali Ata as
9 executive director were objectively more severe
10 than those audits which were included within the
11 House Impeachment Report, particularly in
12 accounting for the use of public funds and
13 potentially fraudulent behavior.

14 Could you please summarize those audit
15 findings for the IFA during Mr. Ata's leadership?

16 And then a second part: Why were these
17 extremely critical findings not included as part of
18 the House Impeachment Record?

19 THE WITNESS: Well, working backwards, I'm not
20 sure I can answer the question of why they were not
21 included as part of the House Impeachment Record
22 because that's not what I was asked to address the
23 House Impeachment Committee on.

24 And I'm not totally prepared to talk about

1 the Illinois Finance Authority and the audits that
2 were done under Mr. Ata's tenure. But I can tell
3 you generally that they were very challenging
4 audits with -- that had indicated significant
5 problems within the administration of the Illinois
6 Finance Authority during his tenure, and it took us
7 a great deal of time and effort to get those audits
8 out the door primarily because of -- the leadership
9 was weak and -- and poor.

10 MR. SECRETARY: Senator John O. Jones asks: Am
11 I correct that you issued audits on 25 agencies
12 that included audit findings on efficiency
13 initiatives with the audits released on dates
14 ranging from March 2005 through June 2005 based on
15 audits for fiscal year 2004, which was July 1, 2003
16 through June 30, 2004?

17 Also, did you issue a summary audit on
18 efficiency initiatives in June 2005 which also
19 covered fiscal year 2004?

20 THE WITNESS: To each of those questions, yes.

21 MADAM SECRETARY: Senator Jeff Schoenberg:
22 Please elaborate on whether the Governor's
23 efficiency initiatives resulted in diminished
24 accountability and transparency in monitoring

1 contracting and spending practices according to
2 your audit findings for Central Management
3 Services.

4 THE WITNESS: Well, it clearly diminished
5 accountability and transparency by moving all of
6 these moneys from one fund or several funds to one
7 fund and then spending that money.

8 And again, taking money from various State
9 appropriations and putting it into a new
10 accountability and efficiency fund and then
11 spending for it, it was very hard to track, took
12 us a great deal of time.

13 In addition, what we found and what was
14 troubling from my perspective was it was hard to
15 reconcile it with what the General Assembly had
16 appropriated the funds for. And as I use those
17 examples, there are others where the savings did
18 not accrue but the money was used for other
19 purposes.

20 Again, it violated not only the intent of
21 the General Assembly through the appropriations
22 process, but it also violated the Finance Act in
23 how that money was spent.

24 MADAM SECRETARY: Thank you.

1 MR. SECRETARY: Senator Carole Pankau asks:
2 Was the State law on efficiency initiatives
3 followed that requires payments to be made only
4 from the line item appropriations where the cost
5 savings were to occur rather than on any line item
6 with available funding?

7 THE WITNESS: They were to be made only from
8 where the line items -- where the savings were to
9 occur and not from just simply any fund where the
10 money was available. And that was pursuant to the
11 Act that created the initiative.

12 MADAM SECRETARY: Senator A.J. Wilhelmi: Based
13 on your audit of the flu vaccine procurement and
14 the SaveRx {sic} program as well as your testimony
15 today, is it your opinion that in these two
16 instances, the Governor himself acted in utter
17 disregard to the federal and State law? And is it
18 your opinion that in these two instances, the
19 Governor acted with reckless disregard to the
20 taxpayers and to the State treasury by jeopardizing
21 millions of dollars belonging to the State of
22 Illinois?

23 THE WITNESS: Clearly, the Governor acted in
24 disregard to State and federal law. And clearly,

1 that action disregarded the efficient use of
2 taxpayers' money.

3 MR. SECRETARY: Senator Brad Burzynski has a
4 question:

5 Is it true that your summary audit on
6 efficiency initiatives on Page 7 stated that \$58.9
7 million of the agency's efficiency payments in
8 fiscal year 2004, approximately half of all
9 payments, was transferred into the General Revenue
10 Fund for other uses?

11 THE WITNESS: That is true.

12 MADAM SECRETARY: Senator Rickey Hendon:
13 Auditor General, when you served Senate President
14 Phil Rock, did you defend him at all costs and on
15 every issue, right or wrong, as part of your job?

16 And when President Rock had a problem with
17 other people, didn't you work hard to help him
18 solve it? To that end, if Phil Rock was the
19 Governor and you were his chief of staff, wouldn't
20 you help him implement his policies regardless of
21 any opposition?

22 THE WITNESS: Senator Hendon, my role as
23 Auditor General is significantly different than my
24 role as Chief of Staff.

1 Again, as I indicated in my opening
2 comments, Article VIII, Section 3 of the
3 Constitution clearly establishes what my roles and
4 responsibilities are. And I think that to compare
5 the two would be unfair and diminish the role of
6 the Auditor General.

7 Did I work hard for Phil Rock? Yes, sir,
8 I did.

9 MR. SECRETARY: Senators Gary Dahl and John O.
10 Jones ask: Doesn't Page 6 of your summary audit
11 state that \$433,448 was taken for efficiency
12 payments out of the Department of Veterans' Affairs
13 line item appropriation for 38 additional beds at
14 the Manteno Veterans' Home? And did the payment
15 out of that line item violate State law?

16 THE WITNESS: Well, it violated the efficiency
17 initiative, the law that created the efficiency
18 initiative. So, the answer is yes.

19 MADAM SECRETARY: And another question,
20 Senator Rickey Hendon: If New York, Cleveland,
21 Tennessee, Kansas, New Mexico and other states were
22 looking for a flu vaccine, was there an emergency
23 or some great need nationwide?

24 THE WITNESS: The Food and Drug Administration

1 had indicated that there was an emergency, and
2 shortly after that indication that there was a
3 shortage of flu vaccines, as we indicated, flu
4 vaccines had been procured for the entire country.
5 So the flu vaccine initiative, the efforts on
6 behalf of the Federal Government to solve the
7 problem took place; solved the problem.

8 MADAM SECRETARY: And as a follow-up: Does the
9 Governor have a responsibility to protect the
10 health of the citizens in their state? Wasn't that
11 the purpose of the flu vaccine?

12 THE WITNESS: Certainly the Governor has the
13 responsibility to protect the health of the
14 citizens of the State of Illinois, within the
15 confines of State and federal law.

16 The ability just to ignore State and
17 federal law is not granted by trying to protect the
18 health and welfare of the citizens of the State of
19 Illinois. We live in a nation and State that
20 operates under the rule of law.

21 My responsibility is not to make judgments
22 about what is correct or incorrect with regard to
23 any program that is operated by the State of
24 Illinois or by any administration, but it is to

1 attempt to determine whether or not laws have been
2 followed, and that's what I did. That was my job;
3 I did my job.

4 MR. SECRETARY: Question from Senator Pam
5 Althoff: Doesn't Page 5 of your summary audit
6 state that \$1.2 million was taken for efficiency
7 payments out of the Department of Human Services
8 line item appropriation for early intervention
9 programs? And did that payment out of that line
10 item violate State law?

11 THE WITNESS: Yes.

12 MADAM SECRETARY: Senator Dan Kotowski:
13 Regarding the Winners and Losers document that was
14 created by CMS, can you point this Body in the
15 right direction in the materials supporting your
16 testimony where we can locate the list of winners?
17 Can you identify and name the top winners?

18 THE WITNESS: That would be identified on Page
19 47 of the CMS compliance examination for the two
20 years ended June 30th of 2004, and in it, the top
21 losers were the Department of Insurance, Natural
22 Resources, Labor Relations Board, Department of
23 Transportation, Lieutenant Governor, Labor,
24 Revenue, Emergency Management Agency, Financial

1 Institutions, Professional Regulation, Public
2 Health, Banks and Trusts, Arts Council, Veterans'
3 Affairs, Educational Labor Relations Board, Medical
4 District Commission, Human Rights, Property Tax
5 Appeals Board, Military Affairs, Commerce and
6 Economic Opportunity, Office of the Governor, Prisoner
7 Review, Guardianship and Advocacy Council {sic},
8 Pollution Control Board and the Capital Development
9 Board. Those were all the biggest losers.

10 The biggest winners were Department of
11 Human Services, EPA, Central Management Services
12 and Aging.

13 MR. SECRETARY: Senator Pam Althoff has a
14 question:

15 Doesn't Page 5 of your summary audit state
16 that \$8.7 million for efficiency payments was taken
17 out of a Road Fund appropriation for road
18 construction and other improvements by the
19 Department of Transportation? And did that payment
20 out of that Road Fund line item violate State law?

21 THE WITNESS: Yes.

22 MADAM SECRETARY: Senator Sullivan: In your
23 opinion, were the efficiency initiatives an attempt
24 to, as the title says, make government work more

1 efficiently, or was it an attempt to consolidate
2 power into the hands of the Governor?

3 THE WITNESS: Certainly the intent, the stated
4 intent, was to make government more efficient. But
5 as it played out, it clearly consolidated
6 significant administrative responsibility within
7 the Office of the Governor and the Governor's
8 Office of Management and Budget.

9 MR. SECRETARY: Question from Senator Frank
10 Watson: Is it true that the primary owner of IPAM,
11 once it finally was created, was the firm Mesirow
12 Stein, and is one of their lobbyists a relative of
13 the Governor's former budget director?

14 THE WITNESS: I believe the answer to the first
15 question is yes. I'm unfamiliar with the second
16 part of that question. I don't know the answer to
17 that.

18 MADAM SECRETARY: And I believe I have a final
19 question from Senator Steans:

20 Upon receiving the results of your audits,
21 did the Governor or his staff take actions to
22 implement any of your recommendations?

23 THE WITNESS: Well, in fact, with the
24 Department of Central Management Services, as I

1 indicated in my testimony, there had been some
2 resistance to the audit findings initially.

3 And the -- as time wore on and we spent
4 our time working with the Department of Central
5 Management Services, they came to accept all of
6 our findings with regard to the CMS audit.

7 With regard to the I-SaveRx audit, as I
8 indicated that -- subsequent to the release of our
9 audit, the Governor announced that he was not only
10 going to maintain the program but he would continue
11 to expand the program, so I would -- so he ignored
12 the audit.

13 With regard to the flu vaccine, it was a
14 one-time initiative, and it has not happened again.

15 MR. SECRETARY: Senator Dale Righter has a
16 four-part question:

17 Regarding your testimony concerning the
18 efficiency initiatives, I have the following
19 questions: 1. Did you discover evidence that any
20 good faith attempt was made by the Office of the
21 Governor to determine whether State agencies ever
22 actually saved funds that would be properly paid to
23 the Department of Central Management Services?

24 THE WITNESS: There was an attempt made to

1 validate the savings, and that savings -- that
2 validation took place after CMS had hired an
3 outside consultant to come in and assist them with
4 that particular validation effort.

5 We did a cursory review, kind of a facial
6 review, of that particular analysis and determined
7 that right from the get-go, any of the validation
8 that had -- that was attributed was only a gross
9 number and the firm that had did the work -- done
10 the work did not net out any of the expenses that
11 were associated with all of this. And that -- those
12 expenses were in -- over \$70 million in expenses.

13 So we looked at it and frankly didn't pay
14 much attention to it.

15 MR. SECRETARY: Part 2 of Senator Righter's
16 question: How did State agencies make payments of
17 so-called savings to CMS, and were those payments
18 in compliance with State law?

19 THE WITNESS: Well, they made them, as I
20 indicated in my testimony, based upon amounts that
21 had been determined by the Governor's Office of
22 Management and Budget, sent to CMS, where those were
23 -- those numbers were put on CMS letterhead and sent
24 back to the Governor's Office of Management and

1 Budget who then determined who would be billed.

2 MR. SECRETARY: Part 3: Was Governor
3 Blagojevich given permission by the General
4 Assembly to conduct this program? If so, when?

5 THE WITNESS: It was legislation that was
6 passed by the General Assembly in -- shortly after
7 he became Governor.

8 MR. SECRETARY: Part 4: This program has been
9 referred to publicly as a money-laundering scheme,
10 unquote. Do you agree with that characterization?

11 THE WITNESS: As the Auditor General -- and
12 you'll note in our audits, we refrain from
13 descriptions like that, historically.

14 MR. SECRETARY: Senator John O. Jones asks:
15 How many millions in State agencies' efficiency
16 payments were made in this, quote, money-laundering
17 scheme, unquote, in fiscal year 2004?

18 THE WITNESS: Well, there were \$137 million in
19 efficiency payments made. Believe that's the
20 number. Agencies were billed \$136 million, \$136.9
21 million, 137 million.

22 MR. SECRETARY: Question from Senator Frank
23 Watson: Did the Governor personally propose and
24 promote the I-SaveRx and flu vaccine programs?

1 THE WITNESS: Yes.

2 MR. SECRETARY: Question from Senators Dale
3 Risinger and Frank Watson: Did federal officials
4 state that the I-SaveRx and flu vaccine programs
5 violated federal law?

6 Did the Governor acknowledge the federal
7 officials' opinions?

8 Did the Governor then continue to publicly
9 push the I-SaveRx and flu vaccine programs, even
10 after he knew they were illegal?

11 THE WITNESS: Well, the answer is -- did the
12 federal officials state that the I-SaveRx and flu
13 vaccine violated federal law? The answer to that is
14 yes.

15 Did the Governor acknowledge the federal
16 officials' opinions? Yes.

17 In the letter that the Governor sent to
18 the Food and Drug Administration indicating that he
19 wanted to start a demonstration program for the
20 I-SaveRx program, it acknowledged that there was --
21 that they had had trouble getting authority to
22 implement a wide-ranging program. So he did
23 acknowledge it in that letter.

24 And did the Governor continue to publicly

1 push, the answer is yes.

2 MR. SECRETARY: Question from Senator Frank
3 Watson: Did House Resolution 394, sponsored by
4 Representative Jack Franks and approved unanimously
5 by the House of Representatives on May 30, 2005,
6 direct you to perform an audit on the I-SaveRx and
7 flu vaccine programs, and was this audit issued in
8 September 2006, covering actions taken from late
9 2003 through April 2006?

10 THE WITNESS: Yes.

11 MR. SECRETARY: Senator Watson asks: Was the
12 I-SaveRx program expanded in 2005, after the Federal
13 Drug Administration had publicly announced the
14 program was illegal?

15 THE WITNESS: That was my testimony, yes.

16 MR. SECRETARY: Question from Senator Tim
17 Bivins: Did your audit of the I-SaveRx program
18 state in the synopsis that only 3,689 Illinois
19 residents placed prescription orders in the program
20 in the 19 months covered by your audit?

21 And did your audit synopsis also state
22 that 521 State employees promoted the program at an
23 estimated payroll cost of \$488,000 with additional
24 State costs of \$111,000 for mainly out-of-country

1 travel, \$71,018 for contractual services and
2 \$54,454 for marketing and \$220,000 for legal
3 services?

4 THE WITNESS: Yes.

5 MR. SECRETARY: Senator Larry Bomke asks this
6 question: Were the foreign pharmacies in the
7 I-SaveRx program inspected by individuals who were
8 not regular State of Illinois drug compliance
9 investigators?

10 THE WITNESS: The Special Advocates did do some
11 examinations, but again, the Illinois Pharmacy Act
12 requires that licensed pharmacies should be
13 inspected by authorized drug compliance
14 investigators.

15 MR. SECRETARY: Senator Chris Lauzen asks:
16 When Governor Blagojevich defends his I-SaveRx
17 program by saying that Rahm Emanuel, Dick Durbin
18 and several other states' governors
19 enthusiastically supported his initiative, how
20 would you respond to that assertion?

21 THE WITNESS: I would say that's outside the
22 purview of the Office of the Auditor General.

23 MR. SECRETARY: Senator Chris Lauzen has this
24 question: Isn't it true that the Governor does not

1 claim that he, quote, violated the law, unquote, by
2 instructing his I-SaveRx -- by instituting --
3 excuse me -- his I-SaveRx program, but rather that
4 there was no clear federal direction for states
5 regarding the re-importation of prescription drugs?

6 Subpart 1: Would it be fair to say from
7 your audit finding that the federal law was indeed
8 clear regarding, quote, governments, unquote,
9 re-importing prescriptions to be illegal? However,
10 quote, individual citizens, unquote, could indeed
11 buy prescription medications legally, for example,
12 on out-of-the-country bus trips at any time at that
13 time as long as the medications were for personal
14 use only, 90-day supply limit, with a doctor's
15 prescription acceptable in the U.S. and the country
16 like Canada or Mexico and did not represent a
17 controlled substance?

18 THE WITNESS: Well, it was clear the Food and
19 Drug Administration had indicated that they did not
20 approve this program and they believed that it
21 violated State and federal law.

22 MR. SECRETARY: Part 2 of Senator Lauzen's
23 question: Would it be fair to say that there would
24 be no confusion if a person's intention was to

1 follow the law at any time?

2 THE WITNESS: I would say that the language and
3 the letters from the Food and Drug Administration
4 and the language in the Illinois Pharmacy Practice
5 Act is pretty clear. There should be no confusion.

6 MR. SECRETARY: Question from Senator Tim
7 Bivins: Were safety concerns with the I-SaveRx
8 program expressed by federal officials as stated on
9 Page 15 of your audit synopsis?

10 THE WITNESS: Yes, they were. Those were
11 concerns also.

12 MR. SECRETARY: Senators Dale Risinger and Dan
13 Duffy ask: Was \$2.6 million in State tax dollars
14 put at risk by the flu vaccine purchase order as
15 noted in your audit synopsis?

16 THE WITNESS: Yes.

17 MR. SECRETARY: Question from Senator Dan
18 Duffy: To the best of your knowledge, was the flu
19 vaccine the Governor had purchased ever used by
20 anyone?

21 THE WITNESS: No. In fact, the indication we
22 have is that after it was shipped to Pakistan, it
23 was destroyed because it had outlasted its useful
24 life.

1 MR. SECRETARY: Senator Brad Burzynski asks:
2 Is it correct, as you stated on Page 3 of your audit
3 synopsis, that the flu vaccine program was not
4 properly planned and monitored and that the safety
5 concerns were expressed by federal officials about
6 the vaccine being purchased from a foreign
7 manufacturer, as noted on Page 6 of the audit?

8 THE WITNESS: Yes.

9 MR. SECRETARY: Senator John O. Jones has this
10 question: Is it possible that Governor Blagojevich's
11 I-SaveRx program took away any jobs from Illinois
12 residents, such as pharmacy jobs in Illinois?

13 THE WITNESS: We didn't look at that in the
14 scope -- within the scope of our audit.

15 CHIEF JUSTICE FITZGERALD: That completes the
16 questions.

17 Mr. Prosecutor, do you have a redirect?

18 HOUSE PROSECUTOR KASPER: We have no redirect
19 examination for this witness, your Honor. Thank
20 you very much.

21 CHIEF JUSTICE FITZGERALD: One second, Mr. Holland.

22 Mr. Holland, you're excused. Thank you
23 very much.

24 (Whereupon, the witness was

1 excused.)

2 CHIEF JUSTICE FITZGERALD: Madam Secretary,
3 have Senators submitted questions to be posed to
4 the House Prosecutor regarding other evidence in
5 the record?

6 MADAM SECRETARY: I have no questions posed,
7 sir.

8 CHIEF JUSTICE FITZGERALD: Having received no
9 questions, has the House Prosecutor concluded his
10 presentation of the prosecution?

11 HOUSE PROSECUTOR ELLIS: Thank you, your Honor.

12 We would be handing out, at this point
13 before we rest, a copy of the Special Investigative
14 Committee's final report. This summarizes all the
15 evidence that was found by the House Special
16 Investigative Committee. Thought it might be
17 helpful for the Members. It's already in the
18 record. We thought we would hand that out.

19 Other than that, your Honor, we will not
20 be calling any further witnesses.

21 CHIEF JUSTICE FITZGERALD: Thank you very much.

22 You rest then?

23 HOUSE PROSECUTOR ELLIS: We would rest, your
24 Honor.

1 CHIEF JUSTICE FITZGERALD: Pursuant to Senate
2 Resolution 7, the Governor or his counsel has the
3 right to present a defense. However, as neither the
4 Governor nor counsel on his behalf have appeared at
5 this time, no defense can be presented. Therefore,
6 we will proceed directly to closing arguments which
7 will convene tomorrow.

8 The impeachment tribunal will stand in
9 recess until the hour of 10:00 o'clock a.m. on
10 Thursday, January 29th, 2009. At that appointed
11 time, I will reconvene the Senate as an impeachment
12 tribunal for the -- for closing arguments.

13 Mr. President.

14 PRESIDENT CULLERTON: There being no further
15 business to come before the Senate, the Senate
16 stands adjourned until the hour of 9:45 a.m. on
17 Thursday, January 29th, 2009. The Senate stands
18 adjourned.

19

20 (Whereupon, the proceedings
21 were continued to January 29,
22 2009 at 9:45 a.m.)

23

24

1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF C O O K)

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5 Gina M. Luordo and Brenda S. Tannehill
6 being first duly sworn, on oath say that they are
7 court reporters doing business in the City of
8 Chicago; and that they reported in shorthand the
9 proceedings of said hearing, and that the foregoing
10 is a true and correct transcript of their shorthand
11 notes so taken as aforesaid, and contains the
12 proceedings given
13 at said hearing.

14

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GINA M. LUORDO, CSR, RPR, CRR

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BRENDA S. TANNEHILL, CSR, RPR, CRR

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